

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM**Dated this the 30<sup>th</sup> day of October 2023.

Filed on: 17/09/2021

**PRESENT**

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member

Smt.Sreevidhia.T.N

Member

**CC.No.328/2021****COMPLAINANT**

Cdr. Keerthi M. Kuriens I.N (Retd.), S/o. Late Shri. P.M.Kuriens,  
Apt.1102, Kristal Ruby Apartment, Ashoka Road, Kaloor. Ernakulam  
District.Kerala. Pin-682017 Mob-9447036009 Email-  
keerthikuriens@gmail.com

**VS****OPPOSITE PARTIES**

1. The Manager, Samsung India Electronics Pvt Ltd., Door No:38/2955,  
Prestige TMS Square, 7th Floor, NH-66 Bypass, Edapally, Kochi –  
682024  
(o.p 1 rep. by Adv.K.S.Arundas, #35, DD Oceana Mall, Near Taj  
Gate Way Hotel, Marine Drive, Ernakulam, Cochin-682 031)
2. The Sales Manager, Bismi Home Appliances, JLN Stadium, Kaloor,  
Kochi – 682017.

**(o.p 2 rep. by Adv.T.J.Lakshmanan)****FINAL ORDER****D.B. Binu, President.****1. A brief statement of facts of this complaint is as stated below:**

The complaint was filed under Section 35 of the Consumer Protection Act, 2019. The brief facts, as averred in the complaint, are that the first opposite party is a private limited company registered under the Indian Companies Act of 1956, specializing in the sale of household items. The second opposite party serves as the authorized representative of the first opposite party. The first opposite party manufactures electronic devices and home appliances and is known for offering refrigerators in the market, boasting high production standards and a digital Inverter Compressor that

adjusts its speed for efficient cooling. They also claim to provide top-notch customer service.

The complainant was persuaded by the second opposite party to purchase a 675 Ltr double-door refrigerator for Rs.72,000 in July 2016 based on these claims. However, in April 2021, the refrigerator started experiencing cooling issues. The complainant contacted Samsung Customer Care for assistance but faced delays and unresponsiveness. After several attempts, an engineer named Manoj inspected the fridge and identified a relay change and a potential gas leak.

Despite these attempts at repair, the fridge's performance did not improve, and communication with the engineer was challenging. Eventually, the service centre decided to take the refrigerator for further inspection, claiming that it could not be repaired on-site. The complainant questioned this decision, as it seemed unreasonable for Samsung-certified engineers not to know if on-site gas filling was possible.

The fridge was returned after a brief repair, but the gas had not settled, as advised. When the complainant raised these concerns, the service centre asked for payment in cash, which was declined by the complainant, who preferred to pay by check. Eventually, the fridge's performance worsened, and the complainant registered another complaint with Samsung.

A different engineer, Manoj, came again and confirmed a manufacturing defect involving a gas leak within the refrigerator's integrated tubes. The engineer informed the complainant that Samsung would offer a coupon for a new fridge with a 10-15% price reduction.

However, subsequent communication with Samsung's local office contradicted this agreement, stating that the price reduction was based on the usage of the fridge over 4.5 years. The complainant's attempts to resolve this issue through discussions with Samsung's representatives, including Mr. Amal, were met with delays and unresponsiveness.

The complainant has endured this ordeal for over three months, causing undue mental agony and financial loss. They now seek the following remedies from this Commission:

- a) Direct the opposite party to refund Rs. 72,000/- for the fridge or provide a replacement.
- b) Award Rs. 20,000/- as compensation for the service delay.
- c) Award Rs. 20,000 as compensation for mental agony and undue hardship.
- d) Order the opposite party to cover the cost of this complaint.

## **2) Notice**

The notices to the opposite parties were sent by the commission, and the opposite parties filed their versions.

## **3) THE VERSION OF THE FIRST OPPOSITE PARTY**

The complainant filed the complaint without verifying facts or exercising due diligence and wrongly included OP No. 1 (Samsung India Electronics Pvt. Ltd.) in the complaint.

The 1<sup>st</sup> opposite party is a reputable company with a large customer base, engaged in manufacturing electronic appliances and mobile handsets.

The complaint is baseless, groundless, and unsustainable in law, and should be dismissed under Section 26 of the Consumer Protection Act, 2019.

The alleged defects in the Samsung refrigerator do not necessarily constitute manufacturing defects and could be due to mishandling or other reasons that can be rectified. The Consumer Protection Act requires expert opinion when defects are not visible.

The service engineer, when inspecting the refrigerator, informed the complainant that the damages occurred outside the warranty period and were irreparable. The service centre offered a depreciated refund as a

goodwill gesture, which the complainant denied and demanded an 85% to 90% refund.

The complainant never approached the 1<sup>st</sup> opposite party (the manufacturer) for after-sales service. Therefore, there was no deficiency in service on the part of 1<sup>st</sup> opposite party, and the complainant did not receive unfair trade practices.

Legal precedent, such as the Supreme Court case **C. N. Anantharam vs. Fiat India Ltd.**, supports the manufacturer's position that they are not compelled to replace a product when there is no major manufacturing defect.

The Consumer Protection Act does not apply to this case as it is not a consumer dispute.

The complaint is an abuse of the legal process with ulterior motives and malafide intentions and should be dismissed.

The complainant's claim for a refund of the refrigerator and compensation is inappropriate and should be dismissed.

The complainant should be directed to produce expert evidence.

In conclusion, the First Opposite Party requests the Commission to dismiss the complaint with exemplary costs in favour of the opposite parties and against the complainant in the interest of justice, equity, and good conscience. The complainant is not entitled to any relief against the opposite parties.

#### **4) THE VERSION OF THE SECOND OPPOSITE PARTY**

The second opposite party contends that the complaint against them is not legally or factually valid. The complainant lacks a legitimate cause of action against them and the complaint is time-barred. The complainant purchased the refrigerator in 2016 and filed the complaint in 2021, which exceeds the allowable time frame under the Consumer Protection Act.

The complainant voluntarily visited their showroom, inspected the refrigerator, and chose to buy it based on their own preferences. They deny the accuracy of the complainant's claims in paragraph 4 of the complaint. Furthermore, the complainant used the refrigerator without any issues for five years before alleging a defect in 2021, suggesting that the complaint is an attempt to obtain a new refrigerator unjustly.

The second opposite party maintains that, after the sale, it is the responsibility of the first opposite party, as the manufacturer, to provide warranty and after-sales service. They claim not to have offered any warranty or service and point to a Supreme Court precedent (**Hindustan Motors v. Shivakumar and Or's**) to support their stance that a dealer is not liable for manufacturing defects.

They also assert that they are unaware of any communications or transactions between the complainant and the manufacturer. They argue that there is no evidence of unfair trade practices or service deficiencies on their part, emphasizing that the burden of proving such deficiencies rests with the complainant.

In conclusion, the second opposite party requests that the Commission dismiss the complaint against them with costs, stating that the complainant is not entitled to compensation, a refund, or any other relief from them.

## **5) . Evidence**

The complainant had filed a proof affidavit and 6 documents that were marked as **Exhibits-A-1 to A 9**.

**Exhibit-A-1:** A copy of the Invoice.

**Exhibit-A-2:** True copy of the printout of mail to Samsung Customer Support by the complainant's son-in-law - Jerome Abraham Samuel.

**Exhibit-A-3:** True copy of printout chat with Samsung Support.

**Exhibit-A-4:** True copy of printout SMS messages with Mr. Ebin.

**Exhibit-A-5:** True copy of printout Acknowledgement of Service.

**Exhibit-A-6:** True copy of printout SMS messages with Mr. Amal.

**Exhibit-A-7:** True copy of Independent Expert Commissioner's Report

**Exhibit-A-8:** True copy of Cash Receipt issued by Samsung (No.8522).

**Exhibit-A-9:** True Copy of Customer Service Record Card & Technical Report.

The first opposite party had filed a proof affidavit and 3 documents that were marked as **Exhibits-B-1 to B3**.

**Exhibit-B-1:** A copy of the PA (Power of Attorney) dated 01.1.2021.

**Exhibit-B-2:** A copy of warranty terms and conditions.

**Exhibit-B-3:** A copy of the Customer service records.

**6) The main points to be analysed in this case are as follows:**

- i) Whether the complaint maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- iv) Costs of the proceedings if any?

**7) The issues mentioned above are considered together and are answered as follows:**

In the present case in hand, as per Section 2(7) of the Consumer Protection Act, 2019, a consumer is a person who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment. A copy of the Invoice. The receipt evidences payment to the

opposite parties (Exhibit A-1). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 2019 (Point No. i) goes against the opposite parties.

The complainant filed the above case seeking compensation due to the deficiency in service and unfair trade practices caused by the opposite party's failure to refund the cost of the defective fridge. The opposite parties did not fulfil their obligation to return the money, which resulted in a deficiency in the service provided to the complainant.

The complainant disputes the accuracy of the first opposite party's (OP No. 1) statement in their written response regarding the irreparability of the refrigerator. They question why 1<sup>st</sup> opposite party would take the refrigerator for service, falsely claim it was repaired, bill the complainant for repairs, and insist on cash payment if they believed it was irreparable.

The service receipt indicates that the gas was topped up and a relay was replaced. The complainant questions why Samsung would only fill up the gas, knowing there is a gas leak, without performing the necessary repairs, and then charge for the purported repairs. They also inquire about the discrepancy between a 10-year compressor warranty and a 1-year warranty for the pipes containing the cooling gas, suggesting this indicates an unfair trade practice and deficiency in service.

The complainant refers to Samsung's statements in their written response, asserting that their complaint is misconceived and groundless. They express confusion about whether filing a complaint about a household product's defects with the DCDRC renders it wholly misconceived, groundless, and unsustainable in law, as Samsung suggests.

The complainant disputes 1<sup>st</sup> opposite party's claim that they attempted to contact the complainant multiple times but were unable to reach them, providing evidence to the contrary through WhatsApp chat records with 1<sup>st</sup> opposite party's executive and Samsung Support.

The complainant requested the appointment of an Independent Expert Commissioner to investigate the allegations of physical damages and mishandling. The findings of the Independent Expert Commissioner confirm that the refrigerator was not repairable due to concealed condenser coils, suggesting that the defects did not result from normal customer usage.

The complainant expresses frustration with the accusations made by 1<sup>st</sup> opposite party against their character and emphasizes that they approached a judicial authority for the redressal of a genuine grievance. They contend that Samsung's accusations are baseless and an abuse of the legal process for harassment, blackmail, illegal gains, and malicious intentions.

In conclusion, the complainant asserts that their complaint is justified, and they should receive the relief requested in their initial complaint.

Sri. K.S.Arundas, the learned counsel appearing for the 1<sup>st</sup> Opposite Party, submitted that The complainant's allegations regarding deficiency in service and unfair trade practices were directed at a service centre for home appliances authorized by the first Opposite Party (OP No. 1) to provide after-sale service on a principal-to-principal basis. The complainant purposefully excluded the service centre from the list of parties to extort unjustified gains from the 1<sup>st</sup> opposite party. Due to the non-joinder of the necessary party, the complaint should be dismissed.

**The Supreme Court's Tata Motors Ltd v Anonio Paulo Vaz case** has established that a manufacturer will not be liable for the dealer's faults unless it is proven that the manufacturer was aware of the dealer's deficiencies when the relationship is on a "principal-to-principal" basis. Similarly, the Indian Oil Corporation vs Consumer Protection Council case emphasized the importance of examining the circumstances, documents, and conduct of parties to determine their relationship. In this case, it was concluded that the relationship between the parties is on a "principal-to-



principal" basis, and thus, one Opposite Party cannot be held vicariously liable for the actions of another.

The complainant's product was out of warranty at the time of the alleged complaint. The warranty terms and conditions specified that the product would be free from manufacturing defects for only one year from the date of purchase. Therefore, the complaint is not valid based on the expired warranty.

The expert appointed by the Commission did not report any manufacturing defects in the subject product. **In line with the Hon'ble National Commission's decision in the case of Dr. K. Kumar Advisor (engineering), Maruti Udyog Ltd. vs Dr. A.S. Narayana Rao & Anr.,** which emphasized the necessity of expert evidence to prove manufacturing defects, the Commission should have directed the complainant to produce expert evidence in support of the allegations. The absence of such evidence means that the complainant's allegations cannot be established, and the complaint should be dismissed with costs in the interest of justice.

We have also heard Sri. T.J. Lakshmanan, the learned counsel appearing for the 2<sup>nd</sup> Opposite Party, submitted that the complainant's case is not maintainable in law or on facts, lacking a cause of action and being barred by limitation. The complainant voluntarily purchased a Samsung refrigerator from the 2<sup>nd</sup> opposite party after inspecting the product and expressing a preference for Samsung products due to familiarity with the brand's quality, performance, and after-sales service.

After the sale, warranty and after-sales service are the responsibility of the manufacturer (1<sup>st</sup> opposite party), a fact known to the complainant. The 2<sup>nd</sup> opposite party, as a dealer, does not provide or promise such services.

The complainant's grievances primarily target the 1<sup>st</sup> opposite party, as evidenced by allegations of improper after-sales service, deductions in the settlement, and actions related to the manufacturer.

The complainant did not seek after-sales service from the 2<sup>nd</sup> opposite party, and there is no evidence of deficiency in service or unfair trade practices on their part.

The burden of proving deficiency in service lies with the complainant, who has failed to provide reliable evidence to support their claims.

Legal precedents, including Supreme Court decisions, establish that in cases of manufacturing defects, the dealer is not liable. The Commission report also indicates a manufacturing defect.

The complainant used the product for five years without issues, and their claim for a full refund is legally unsustainable. The complaint appears to be an attempt to obtain a new refrigerator without payment.

The Commission report does not support the complainant's claim for total replacement.

The complainant has not clearly specified from which opposite party they seek relief, indicating that the case was filed on an experimental basis.

In the absence of a dedicated '**Right to Repair**' law in India, instances exist where the judiciary has intervened to address related concerns. In the case of **Shri Shamsher Kataria v. Honda Siel Cars Limited & Ors.**, the Competition Commission of India (CCI) emphatically affirmed that any anti-competitive actions taken by the automobile industry under the pretext of Intellectual Property Rights (IPRs) would be terminated and declared void. This specific case revolved around the issue of restricting consumers from purchasing goods or services exclusively from authorized car dealers. Another noteworthy case, **Sanjeev Nirwani v. HCL**, established the obligation for companies to provide spare parts beyond the warranty period. Failure to do so was deemed an unfair trade practice.

The complainant has submitted (**Exhibits A-7 and A-8**) as documentary evidence to substantiate the damage to the product

Additionally, the complainant has endured mental agony and harassment at the hands of the first Opposite Party.

In the present case, it has been noted that the argument put forth by the second opposite party holds merit. Post-sale, it is clearly understood that the obligations pertaining to warranty and after-sales services lie with the manufacturer, who is the 1st opposite party, a detail of which the complainant is aware. The 2nd opposite party, acting in the capacity of a dealer, has not made any commitments or provided any such services. Existing legal references, inclusive of rulings by the Honourable Supreme Court, confirm that a dealer is not held accountable for such issues. **The findings of the Independent Expert Commissioner further confirm that the refrigerator was not repairable due to concealed condenser coils, suggesting that the defects did not result from normal customer usage (Exhibit A-7).**

The complainant contended that the opposite parties bear the responsibility of ensuring the availability of components in the market for a minimum period from the introduction of their products. We are inclined to accept the aforementioned argument put forth by the complainant. In light of the circumstances, the first opposite party failed to provide the necessary spare parts for the product to address the defects, thereby exhibiting a deficiency in service and engaging in unfair trade practices. Under the Consumer Protection Act of 2019, Section 2(41) defines a "**restricted trade practice**" as any trade behavior that is seen as restrictive, unfair, or deceptive and is clearly outlined in that section. In the given situation, the complainant claims that the manufacturer used specific tactics to pressure the consumer into purchasing an additional product from them, which is essentially a "**restricted trade practice**".

*Manufacturers frequently employ enticing advertising strategies to persuade consumers to purchase their products. However, a recurring problem arises when these companies fail in their duty to provide necessary*

*spare and consumable parts required for the product's proper functioning throughout its anticipated lifespan. This widespread issue affects consumers across various product categories. When manufacturers decline to furnish these vital components, it effectively compels consumers to discard still-functional products. Such conduct constitutes an unfair trade practice, as it coerces consumers into procuring replacements, thereby artificially inflating the manufacturer's sales and profits.*

*Intentional withholding of essential spare and consumable parts by manufacturers leaves consumers with limited options, compelling them to abandon functional products and acquire replacements. This not only imposes financial burdens on consumers but also contributes to environmental degradation through an increase in electronic waste.*

We find that issues (ii) to (iv) also favour the complainant, as they are a result of the serious deficiency in service on the part of the first Opposite Party. Naturally, the complainant has experienced a significant amount of inconvenience, mental distress, hardships, financial losses, etc., due to the deficiency of service and unfair trade practices by the first Opposite Party.

The commission expresses its appreciation for the complainant, who is a senior retired Indian Naval Officer. He has gone to great lengths to approach this commission seeking justice for his legitimate rights against a multinational company. This is a commendable act, as he is creating a model for other suffering consumers against deficiency in service and unfair trade practices committed by traders.

In view of the above facts and circumstances of the case, we are of the opinion that the first Opposite Party is liable to compensate the complainant.

Hence the prayer is partly allowed as follows:

- I. The first Opposite Party shall refund Rs. 36,000/- to the complainant, taking into account the depreciation of the refrigerator due to its age from the date of purchase in 2016 to the year 2021 when the

refrigerator began experiencing cooling issues. This depreciation is calculated at a rate of 50% over 5 years.

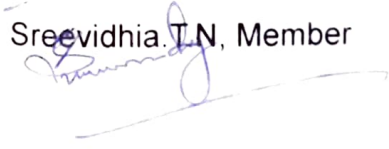
- II. The first Opposite Party shall pay Rs. 40,000/- as compensation for the deficiency in service and unfair trade practices they committed. This amount covers the mental distress, physical inconvenience, financial losses, and the extended period during which the complainant endured without a working refrigerator.
- III. The first Opposite Party shall also pay the complainant Rs. 20,000/- towards the cost of the proceedings.

The Opposite Party is liable for the above-mentioned directions. They must comply within 30 days from the date of receiving a copy of this order. If they fail to do so, the amounts ordered in points (i) and (ii) above will attract interest at a rate of 9% per annum from the date of the complaint (17.09.2021) until the date of realization.

Pronounced in the Open Commission on this 30<sup>th</sup> day of October 2023.

  
D.B. Binu, President

  
V. Ramachandran, Member

  
Sreevidhia T.N, Member

### **Appendix**

#### **Complainant's Evidence**

Exhibit-A-1: A copy of the Invoice.