

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
ERNAKULAM**

Dated this the 29th day of November, 2023

Filed on: 19/04/2018

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member

Smt.Sreevidhia.T.N

Member

C.C. No. 173/2018

COMPLAINANT

Aravind G. John,
585.

(Rep. by Adv. George Cherian Karippaparambil, Karippaparambil Associates.

VS

THE OPPOSITE PARTY

M/s Arya Bhangy Motors, Near Kothakulangara Temple, NH 47, Angamaly, Pin-683572 Rep.
by its Managing Director.

(Rep. by Adv. T.A. Rajan,

FINAL ORDER

D.B.Binu, President:

1) A brief statement of facts of this complaint is as stated below:

The complaint is filed under Section 12 (1) of the Consumer Protection Act, 1986. The complainant purchased a new Honda CB Unicorn DISC 149 CC Motorcycle from an authorized Honda dealer in Aluva, Ernakulam for Rs. 85,660 on March 5, 2018, after making a booking on February 22, 2018. The customer specifically requested a 2018 model. The vehicle was delivered on March 7, 2018, after registration, and the insurance certificate dated March 6, 2018, indicated it as a 2018 model.

However, upon receiving the RC book on April 2, 2018, the customer discovered that the motorcycle was a 2017 model. Additional issues such as a bent chassis and instability while riding was noticed, raising concerns that the bike might have been used for demonstration or was a previously used vehicle. The customer accused the dealer of unfair trade practices and service deficiencies, leading to severe loss and damages. The complaint was filed within the territorial jurisdiction of the District Consumer Disputes Redressal

Commission, Ernakulam, accompanied by a court fee. The customer is seeking a refund of Rs.85,660/- with 12% interest from March 5, 2018, and Rs.20,000/- for the cost of the proceedings as compensation for the losses and damages caused by the unfair trade practices and negligence of the dealer.

2) Notice

The Commission sent a notice to the opposite party. Although they confirmed receiving the notice, they did not provide their version within the statutory period. As a result, they have been set ex-parte. The opposite party filed a Revision petition against this commission's order before the Honorable State Commission, requesting acceptance of their version submitted on 21.10.2020. However, the Honorable State Commission dismissed the petition.

3) . Evidence

The complainant, in this case, has submitted a proof affidavit and five documents that were marked as Exhibits A-1 to A-5.

Exhibit A1: Copy of receipt no. 223 dated 22.02.2018 for Rs. 2,000/- issued by opposite party.

Exhibit A2: Copy of receipt - ANK Voucher no. 1803 dated 05.03.2018 - for Rs. 83,660/- issued by opposite party.

Exhibit A3: Copy of Motor Insurance Certificate cum policy schedule of Oriental Insurance company Ltd issued by the opposite party.

Exhibit A4: Copy of RC Book of Two-Wheeler bearing Registration No. KL - 63 - E - 8262.

Exhibit A5: Authorization letter dated 02-04-2-21

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

- i) Whether the complaint is 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?

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

As per Section 2 (1) (d) of the Consumer Protection Act, 1986, 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. The complainant had produced a Copy

of receipts issued by opposite party. (EXHIBITS A-1 and A-2). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 1986 (Point No. i) goes against the opposite parties.

We have heard the counsel representing the complainant. The complainant purchased a Honda CB Unicorn DISC 149 CC Motorcycle from an authorized dealer in Aluva, Ernakulam, for personal use on March 5, 2018, for Rs. 85,660. During the booking on February 22, 2018, and the final payment on March 5, 2018, they specifically requested a 2018 model.

The motorcycle was delivered on March 7, 2018, after registration at Sub RTO, Angamaly. The motor insurance certificate, dated March 6, 2018, issued by Oriental Insurance Company Ltd, Aluva branch, indicated the manufacture year as 2018, leading the complainant to accept the vehicle believing it to be the 2018 model.

However, upon receiving the RC book on April 2, 2018, the complainant was shocked to discover that the motorcycle was a 2017 model. Further inspection revealed a bent chassis and instability while riding, raising concerns that the bike might have been used for demonstration purposes or was a previously used, unregistered vehicle. The complainant alleges unfair trade practices and service deficiencies by the dealer, leading to severe loss and damages, and seeks a refund for the motorcycle.

Four documents have been submitted along with the consumer complaint, requested to be marked as Exhibits A1 to A5. The counsel for the opposite party submitted that the complainant bought a Honda CB Unicorn Disc 149 CC Motorcycle on March 5, 2018, for Rs.85,600. The complainant's allegation is that instead of a 2018 model, a 2017 model with a bent chassis and instability issues was delivered, constituting unfair trade practices and negligence by the opposite party, leading to significant losses and damages.

The counsel counters this by stating that the vehicle, along with 39 others, was delivered to them by the manufacturer on February 21, 2018, with an invoice

dated February 7, 2018. The complainant booked the vehicle on February 22, 2018, after verifying its model, color, and condition, and the same was delivered on March 7, 2018. The counsel emphasizes that the RC Book correctly shows the manufacturing date as November 2017, and the complainant had no objection to the vehicle he selected and booked.

The vehicle's service history shows it was serviced multiple times without any complaints till January 20, 2020, indicating regular use by the complainant. The counsel argues that this disproves the claim of loss or damage due to the vehicle's usage.

Regarding the price difference, the counsel submits that the variation between the resale price of 2017 and 2018 models ranges from Rs.5000 to Rs.7000, as evidenced by OLX market prices. Therefore, any potential loss to the complainant is less than Rs.7000 and is only relevant if the vehicle is sold.

The counsel concludes that there was no unfair trade practice or service deficiency, as the vehicle was delivered to them on February 21, 2018, and the complainant continues to use the vehicle without any significant loss or damages. Therefore, they requested the Commission to dismiss the complaint.

The evidence presented included an ex-parte proof affidavit filed by the complainant, and it was unchallenged by the opposite parties. Therefore, the complainant's claims were considered credible and supported by the evidence. Therefore, the complainant requests the commission to grant the relief sought, including compensation for mental agony and unfair trade practices.

The opposite parties' conscious failure to file their written version in spite of having received the Commission's notice to that effect amounts to an admission of the allegations levelled against them. Here, the case of the complainant stands unchallenged by the opposite party. We have no reason to disbelieve the words of the complainant as against the opposite party. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

In the matter before us, the complainant has filed a complaint under Section 12(1) of the Consumer Protection Act, 1986, against the authorized Honda dealer in Aluva, Ernakulam for alleged unfair trade practices and service deficiencies in the sale of a Honda CB Unicorn DISC 149 CC Motorcycle.

Upon careful consideration of the evidence presented, including the affidavits and exhibits A1 to A5, and hearing the counsel for the parties, we find the following:

- A. Deficiency in Service and Unfair Trade Practice:** The complainant has provided evidence that they specifically requested a 2018 model of the motorcycle at the time of booking and final payment. However, the motorcycle delivered was a 2017 model, as later discovered through the RC book (**Exhibit A4**). The presence of a bent chassis and instability issues further support the claim of unfair trade practice and service deficiency. The opposite party's failure to respond to the Commission's notice is tantamount to an admission of the allegations.
- B. Precedents and Legal Position:** In line with the ruling of the Hon'ble National Commission in its order dated 2017 (4) CPR page 590 (NC), the silence or non-response of the opposite party in the face of serious allegations is viewed as an implicit admission. This precedent supports the complainant's position.

We determine that Issues I to IV are resolved in the complainant's favour due to the significant service deficiency and the unfair trade practices on the part of the opposite party. Consequently, the complainant has endured considerable inconvenience, mental distress, hardship, and financial loss as a result of the negligence of the opposite party.

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

Hence the prayer is partly allowed as follows:

- I. The Opposite Party shall refund Rs. 85,660/- (Rupees eighty-five thousand six hundred sixty only) to the complainant as the invoice price of the vehicle in question.
- II. The Opposite Party shall pay Rs Rs.10,000/- (Rupees ten thousand only) towards compensation for the losses and damages caused by the unfair trade practices and negligence of the dealer, as there is a clear deficiency in service and unfair trade practice on the part of the opposite party.
- III. The Opposite Party shall also pay the complainant Rs.10,000/- (Rupees ten thousand only) towards the cost of the proceedings.

The Opposite Party is liable for complying with the directions specified in this judgment. This compliance shall be executed by the Opposite Party within 30 days from the date of receiving a copy of this order. Failing this, the amounts ordered according to points (i) and (ii) above shall attract interest at 9% per annum, accruing from the date of payment (March 5, 2018) until the date of realization.

The Opposite Party shall have the liberty to take back the vehicle in question from the complainant within 30 days of complying with the above direction.

Pronounced in the Open Commission on this the 29th day of November 2023

D.B.Binu, President

V.Ramachandran, Member

Sreevidhya.T.N. Member