

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM
ERNAKULAM**

**Complaint Case No. CC/21/426
(Date of Filing : 15 Nov 2021)**

1. SAM SREEDHARAN

54/2856, PENIYEL HOUSE MUTTATHIL LANE,
KADAVANTHRA, KOCHI

.....Complainant(s)

Versus

1. BATA SHOWROOM

NEAR PADMA THEATRE, ERNAKULAM, KOCHI

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. D.B BINU PRESIDENT
HON'BLE MR. RAMACHANDRAN .V MEMBER
HON'BLE MRS. SREEVIDHIA T.N MEMBER**

PRESENT:

Dated : 27 Mar 2024

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM

Dated this the 27th day of March 2024

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Filed on: 15/11/2021

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member

Smt.Sreevidhia.T.N

Member

C C. No. 426/2021

COMPLAINANT

Sam Sreedharan, S/o.late Dr.P I Seedharan, 54/2856, Peniyel House, Muttathil Lane,
Kadavanthra, Kochi-682 020

Vs.

OPPOSITE PARTIES

1. Centre Manager, BATA Showroom, 40/9648, MG Road North Near Padma Theatre, Ernakulam, Kochi, Pin-682 035
2. Managing Director, BATA India Ltd., 418/02, BATA House, Sector-17, Opposite MDI, Gurugram, Haryana -122 001

(By Mohammed Faisel A., N.Krishnaprasad, Sajith K R

Chamber No.329, Near High Court of Kerala, Ernakulam)

FINAL ORDER

Sreevidhia T.N., Member

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

The complainant had purchased two pairs of Sandals for the usage of his children from the showroom of the opposite party on 07.11.2021. The complainant's son, who went to the newly joined school wearing the said shoes bought the day before, the sole of the sandals broke into two pieces right in the school compound. This incident caused much mental agony and pain to the complainant's family. The complainant states that the opposite party had sold the sandals which were 3 years and 6 months old. The matter was informed to the opposite party. When the complainant approached the opposite party for getting replacement of the product the opposite party had insulted the complainant and abused the complainant in front of other customers. This has caused much mental agony, pain and stress to the complainant. Hence the complainant approached this Commission seeking redressal of his grievances directing the opposite party to give a compensation of Rs.500000/- along with cost of proceedings Rs.2000/- and such other reliefs to the complainant.

2. Notice

When the case was taken on file, notice was issued to the 1st and 2nd opposite parties. Opposite party 1 and 2 appeared before the Commission and filed their version jointly.

3. Version of the 1st and 2nd opposite parties.

The complaint is bad for misjoinder and non-joinder of necessary parties as such the present complaint is liable to be dismissed. The complainant has wrongly made the Bata outlet as a party which is not a legal entity. As per details on the packaging and the invoice as well as the provisions of CPC, the proper and necessary party being the legal entity in the present matter is M/s.Bata India Limited, having its registered office at 27B, Camac street, 1st Floor, Kolkotta 700016 and Corporate office at Bata House, 418/02, M.G.Road, Sector 17 Gurugram, Haryana, Pin-122 001 which has not been made a party to the present complaint.

In view of the customer care policy, opposite party binds itself to the terms and conditions as stipulated on the cash memo, guaranteeing even exchange of any merchandise bought from Bata Shoe store or otherwise within 15 days from the original date of purchase, provided that the article (s) being returned for exchange is unused, clean and in their original state and packaging.

No guarantee/warranty/exchange of articles purchased on discount during sale period.

The opposite party provides 100% replacement for major manufacturing defects, if the concerned product is brought to the opposite parties store within 90 days from the date of purchase.

Claims are entertained within the above period against manufacturing defects and admissible when shoes have been appropriately used. All minor defects are to be considered for repair first and not replaced.

Replacement against exchange/claim is subject to availability of the same product. In case the same product is not available at the store then replacement shall be adjusted against subsequent purchase at the same store.

For redressal of grievance of customers, a customer care department has been established by the opposite party.

There is no manufacturing defect in the alleged shoes purchased by the complainant.

There is no deficiency in service or unfair trade practice from the part of the opposite party. The opposite party is still willing to either replace the shoe in question or provide the complainant gift voucher for the full costs of the said shoe Rs.350/- or to refund the full costs of the said shoes (sandals) to the complainant i.e., Rs.350/- to maintain good consumer relations and harmony.

4. Evidence.

Evidence in this case consists of the proof affidavit filed by the complainant and the documentary evidence filed by the complainant which were marked as Exbt.A1 to A5.

The opposite party has no oral or documentary evidence. Evidence closed and heard the complainant on 05.02.2024.

5. The issues came up for consideration in this case are as follows.

1. Whether any deficiency in service or unfair trade practice is proved from the side of the opposite parties towards the complainant?

2. If so, reliefs and costs?

6. **Point Nos. (1) and (2)**

For the sake of convenience we have considered issue No. (i) and (2) together. Exbt.A1 is the tax invoice for Rs.906/- dated 07.11.2021. Exbt.A2 is the reward details advertised by the opposite party in their website stating that 100 % off on minimum shopping of Rs.999/-. Exbt.A3 is the copy of the details of the shoes showing the manufacturing date, name of manufactures etc. Exbt.A4 is a copy of the photo of the shoes' box showing the barcode of the product. Exbt.A5 is a copy of the photo of the sandals' and CD including the conversation between the complainant and the opposite party.

We have analysed the facts of the case, version filed by the opposite party and the evidence filed by the complainant in details.

The case of the complainant is that the sandals purchased by the complainant on 07.11.2021 for the usage of his children became damaged on its first use itself. The complainant states that the children of the complainant have been using uniform sandals of 'Bata Company' since 2015. As per the instruction of the opposite party, the complainant had bought 2 pairs of socks to complete the billing amount as Rs.1000/- for redeeming rupees 100/-. A sticker was also affixed on the tag and on the box of the sandals. From this it was understood that the sandals was manufactured in the month of May 2018.

The complainant alleges that the opposite party had sold the sandals to the complainant which was 3 years and 5 months old. The complainant states that the act of selling old sandals to the complainant is an act of unfair trade practice from the part of the opposite party and it is illegal. It is said that the breaking of the newly bought sandals of the complainant's son at the school compound has hurt the complainant's son's mind and the complainant and his family had to suffer a lot of mental agony and pain due to this incident.

The opposite party's contention is that the complaint is bad for misjoinder and non-joinder of necessary parties. The opposite party states that the complainant has wrongly made the Bata outlet as a party which is not a legal entity. As per the details on the packaging and as per the invoice the proper and necessary party in the present matter is M/s.Bata India Ltd having its registered office at 27 B, Camac Street, 1st Floor, Kolkatta-700 016 and the corporate office at Bata House 418/02, MG Road, Sector 17 Gurugram, Haryana-122 001.

We have verified Exbt.A3 and A4 in details. As per Exbt.A3 the complainant had purchased one pair footwear size 25.4 cm from the opposite party, which is manufactured by Shyam Plastic Industries, 25/14/1-2, Haryana and marketed by Bata India Ltd, 27B, Camac Street, 1st Floor, Kolkatta-700 016. The complainant has not made the said necessary parties in the party array of the instant complaint. The complaint states that the sandals are purchased on 07.11.2021 from the opposite party as evidenced by Exbt.A1. The complainant states that the sandals purchased

by the complainant on 07.11.2021 became damaged on 09.11.2021 itself and normally these sandals could be used for a year. In Exbt.A3 the manufacturing month and year is shown as '05/2018'. As per the bill issued

by the opposite party the date of purchase was on 07.11.2021. From this it is evident that the opposite party 1 had sold the sandals to the complainant which were '3 years 6 months old'. Hence deficiency in service and unfair trade practice is proved from the side of the 1st opposite party and hence the complainant is entitled to get compensation from the 1st opposite party. Eventhough the manufacturer of the product is not impleaded in this case, the seller is also liable to compensate the complainant for the deficient service. Selling an out of date product to the complainant can be regarded as an unfair trade practice from the part of the opposite party No.1.

In the light of the above observations made by the Commission issue No. (i) and (2) are found in favour of the complainant and the following orders are hereby passed.

1. The 1st opposite party shall refund Rs.314/- (Rupees Three hundred and fourteen only) to the complainant as per Exbt.A1 invoice (Eventhough the MRP of the sandal is shown as Rs.349/- the invoice price is shown as Rs.314/-).

2. The 1st opposite party shall pay an amount of Rs.2000/- (Rupees two thousand only) as compensation to the complainant.

3. The 1st opposite party shall pay an amount of Rs.2000/- (Rupees Two thousand only) as cost of the proceedings to the complainant.

The above order shall be comply with within 45 days from the date of receipt of a copy of this order. If the order is not complied with within 45 days the amount ordered in (1), (2) and (3) above shall attract interest @ of 9% per annum from the date of orders till the date of realization.

Pronounced in the open commission on this 27th day of March 2024.

Sd/-

Sreevidhia.T.N, Member

Sd/-

D.B.Binu, President

Sd/-

V.Ramachandran, Member

Forwarded by Order

Assistant Registrar

APPENDIX

Complainant's evidence

Exbt.A1 is the tax invoice for Rs.906/- dated 07.11.2021.

Exbt.A2 is the rewards details advertised by the opposite party in their website stating that 100 % off on minimum shopping of Rs.999/-.

Exbt.A3 is the copy of the details of the shoes showing the manufacturing date, name of manufactures etc.

Exbt.A4 is a copy of the photo of the shoes' box showing the barcode of the product.

Exbt.A5 is a copy of the photo of the sandals' and CD.

Date of Despatch ::

By Hand ::

By Post

**[HON'BLE MR. D.B BINU]
PRESIDENT**

**[HON'BLE MR. RAMACHANDRAN .V]
MEMBER**

**[HON'BLE MRS. SREEVIDHIA T.N]
MEMBER**