

Date of Filing: 09.02.2022
 Date of Order: 04.09.2023

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
 COMMISSION – I, HYDERABAD
P r e s e n t

HON'BLE MRS. B. UMA VENKATA SUBBA LAKSHMI, PRESIDENT
 HON'BLE MRS. C. LAKSHMI PRASANNA, MEMBER

On this the Monday, the 04th day of September, 2023

C.C.No. 87/2022

Between:-

Sri. Sachin Pohar, S/o Sri. Pohar Shekar,
 Aged about 24 years, Occ: Interior Designer,
 R/o: 401, Sai Nilayam,
 Pragathi Nagar, KPHB Colony,
 Hyderabad – 500072.

....Complainant

AND

1. Volkswagen India Pvt Ltd,
 Registered office at,
 401-402, 4th Floor,
 B-Wing Silver Utopia,
 Cardinal Gracious Road,
 Chakala, Andheri Eat,
 Mumbai, Maharashtra State – 400099
 Rep. by its Managing Director,
 Sri. Gurpratap Boparai.
2. Volkswagen India Group Sales Pvt Ltd,
 Registered office at,
 Silver Utopia,
 Cardinal Gracious Road,
 Chakala, Andheri Eat,
 Mumbai, Maharashtra State – 400099
 Rep. by its Director,
 Sri. Steffen Knap.
3. PPS Motors Pvt Ltd,
 Registered office at
 Lilam Villa, 3-6-239,
 Himayat Nagar, Hyderabad,
 Telangana – 500029,
 Rep. by its Managing Director,
 Sri Rajiv Mahesh Sanghvi.
4. PPS Motors Volkswagen Dealers Secunderabad,
 rep. by its authorized signatory,
 # 160, Sardar Patel Road,
 Viman Nagar, Rasoolpura,
 Secunderabad, Telangana – 500003.

....Opposite Parties

| | |
|---|---------------------------------|
| Counsel for the Complainant | : K. Venkateshwarulu |
| Counsel for the Opposite party Nos. 1 & 2 | : Lanka Jagannadham |
| Counsel for the Opposite Party Nos. 3 & 4 | : M/s. P.V. Janani & Associates |

O R D E R

(By HON'BLE MRS. B. UMA VENKATA SUBBA LAKSHMI, PRESIDENT on behalf of the bench)

- 1.** The present complaint is filed under Section 35 of the Consumer Protection Act, 2019 alleging deficiency of service and unfair trade practice on the part of opposite parties No. 1, 2 ,3 & 4, with a prayer which reads as under:
 - i.** Directing the opposite parties to refund the amounts collected from the complainant to the tune of Rs. 4,94,000/- (Rupees Four Lakhs Ninety-Four Thousand Only) towards sale of the "VOLKSWAGEN" of the category of "POLO" in the model of "GT" Car together with interest at the rate of 24% (Twenty-Four percentage) from the date of their receipt till the date of this complaint;
 - ii.** Awarding the compensation of Rs. 10,00,000/- (Rupees Ten Lakhs Only) directing to be paid by the Opposite parties to the complainant;
 - iii.** Award further interest on the compensation awarded at the rate of 24% per annum from the date of this complaint till the date of realization;
 - iv.** Award cost of the present complaint in favour of the complainants and against the opposite parties and
 - v.** Pass such other relief or reliefs for which the complainants may be found entitled and the opposite parties No.1 to 4 may be found entitled.
- 2.** Brief facts as averred in the complaint and necessary for adjudication are that the complainant approached opposite parties No. 3 and 4, dealers of opposite parties No.1 and 2, with a view to purchase Volkswagen Polo GT. It is further averred that Mr. Abdul Shaheed, the then Manager and Mr. T. Deepak, the Executive of opposite party No.4, explained, negotiated and received the token

advance of Rs. 5,000/- (Rupees Five Thousand Only) from the complainant in the showroom premises of opposite party No.4. The complainant paid the said token amount of Rs. 5,000/- (Rupees Five Thousand Only) through credit card. Thereafter, the opposite party No.4 issued receipt in the name of complainant and registered the booking for the said car. The opposite party No.4 assured the complainant that the car would be delivered after receiving the balance amount. It is stated that, due to second wave of Covid-19 pandemic, the two representatives of opposite party no.4 suggested the complainant that they would personally come to his residence to collect the balance amount. It is further stated that the two representatives of opposite party No.4 collected an amount of Rs.4,94,000/- (Rupees Four Lakhs Ninety-Four Thousand Only) in cash from the complainant towards the balance amount of the cost of the vehicle. The representatives also issued receipts in the name of opposite party No.3. It is contended that, when the complainant requested for delivery of the car, the representatives of opposite party No. 4 kept on postponing the delivery. Suspecting foul play on the delay, the complainant personally visited the showroom premises and enquired about the delivery of the car. The representatives, then, informed the complainant that they had used the money paid by the complainant and they were unable to deliver the car registered in the name of the complainant. It is further contended that the complainant was shocked and surprised when he received a reply from opposite parties No.3 and 4 stating that opposite parties No. 1 to 4 were not responsible for the amount misappropriated by the representatives of opposite party No.4. It is submitted that a legal notice dated 25.06.2021 was issued to the opposite parties. Except opposite party No.3, none of the opposite parties replied to the legal notice. It is further submitted that the amounts were paid to the representatives of opposite party no.4 towards the purchase of the car upon the brand image of opposite parties No.1 and 2, therefore, the opposite parties are vicariously liable to return the amounts received from the complainant. Hence, alleging negligence and deficiency of service on the part of opposite parties, the complainant filed the present complaint with a prayer to grant the reliefs as stated above.

- 3.** In the written version filed by the opposite party No.2 on behalf of opposite parties No.1 and 2, while denying the averments made in the complaint unless specifically admitted, it is contended that they are merged into a new legal entity by name “Skoda Auto Volkswagen India Pvt Ltd” and opposite party No. 3 and 4 are their dealers. It is further contended that the answering opposite party is situated outside the territorial jurisdiction of the Commission, hence, the Commission does not have the territorial jurisdiction to try the present complaint. It is averred that the complainant is trying to enrich himself, unjustly and unfairly at the cost of answering opposite parties. It is further averred that the opposite parties No. 1 & 2 invoices cars to authorized dealers on wholesale basis and against the full payment. It is stated that, once the car is delivered to the dealer, the entire retail process viz, explanation of car features, specifications and sales are carried out by the representatives of the dealers. It is further stated that, as per the dealer agreement, the dealer is an independent entrepreneur and the relation between the answering opposite parties and their dealers is that of principal to principal, hence, the answering opposite party cannot be vicariously liable for the acts and omissions of opposite parties No. 3 and 4. It is submitted that the answering opposite party was never a party to the alleged transaction that transpired between the complainant and the dealer i.e. opposite parties No. 3 and 4. There is no privity of contract between the complainant and the opposite party No.1. It is further submitted that the complaint suffers from misjoinder of parties and is liable to be dismissed in so far as the answering opposite parties are concerned. Hence, denying the allegations of deficiency of service and negligence on their part, the opposite parties No.1 and 2 prayed the Commission to dismiss the complaint with exemplary costs.
- 4.** In the written version filed by the opposite parties No. 3 and 4, while denying the allegations made in the complaint except those that are specifically admitted in the version, it is contended that the complaint is neither maintainable in law nor on facts and is liable to be dismissed in limini. It is further contended that the complainant, when he visited the opposite parties for purchase of the vehicle, was made aware of the payment terms for effective delivery of the vehicle. An advance of Rs. 5,000/- (Rupees Five Thousand Only) (card payment) was paid as booking amount by the

complainant to the showroom of the opposite party No.4. It is averred that, except receiving cheque and demand drafts in the name of the opposite party, there is no door step service with regard to cash payments from the customers. For integrity issues, the management of opposite parties No. 3 and 4 did not entertain cash payments. It is further averred that as per Sec. 269ST of Income Tax Act, an amount of Rs. 2,00,000/- (Rupees Two Lakhs Only) or more in cash cannot be accepted in respect of a single transaction. It is stated that the averment of complainant paying Rs. 4,89,000/- (Rupees Four Lakhs Eighty Nine Thousand Only) in cash under a single transaction speaks volumes of personal relationship and confidence of complainant and the employees of the answering opposite parties, Mr. Abdul Shahid and Mr. T. Deepak. It is further stated that the showroom of opposite parties, during Covid-19, was running in a full-fledged manner by complying with the Covid-19 protocols. It is submitted that the question of paying the amounts to Mr. Abdul Shahid and Mr. T. Deepak as representatives of opposite party No.4 does not arise as the showroom does not accept cash payments from the customers. The answering opposite parties denied any knowledge of alleged payments to the said representatives. The complainant, who is well educated and working as an interior designer, should have exercised his due diligence before entertaining the two representatives at his place of residence. The answering opposite parties were not aware of the alleged payment of Rs. 4,94,000/- (Rupees Four Lakhs Ninety Four Thousand Only) made on 10.04.2021, 17.04.2021 and 20.04.2021. After the answering opposite parties came to know about the police complaint (Crime No.186/2021 before the Begumpet Police Station) lodged by the complainant, the company issued show cause notice to both the representatives for misusing the stationary and forging the documents. The services of both the representatives were terminated after conducting disciplinary enquiry against them. It is submitted that the answering opposite parties were not responsible for the fraudulent acts of its employees who entered into any transactions in their personal capacity by playing fraud and outside the limits of opposite party No.4. The complainant, after learning about the true facts, paid full amount of Rs. 10,88,091/- (Rupees Ten Lakhs Eighty Eight Thousand and Ninety One Only) and took the delivery of the vehicle on 30.05.2021. The complainant even

signed a ‘satisfaction note’ stating that he was satisfied with the delivery and services of opposite party No.4. Hence, denying the allegations of negligence and deficiency of service on their part, the answering opposite parties prayed the Commission to dismiss the complaint with exemplary costs.

- 5.** During the course of enquiry, the complainant (PW-1) filed evidence affidavit and got marked the documents at Ex.A1 to Ex.A14. Mr. A. Srinivas Reddy as PW-2 and Mr. Kotturu Vishal as PW-3 filed their respective evidence affidavits. Mr. Sailesh Bhadrwaj, Chief Manager-Legal (RW-1) with opposite party No.1 filed evidence affidavit on behalf of opposite parties No. 1 and 2 and got marked their documents at Ex.B17 and Ex.B18. Mr. T. R. Ganesh Aiyer, authorized representative (RW-2), filed evidence affidavit on behalf of opposite parties No. 3 and 4 and got marked their documents at Ex.B1 to B16. Thereafter, the complainant and opposite parties No. 3 and 4 filed written arguments. Despite affording adequate opportunities, opposite parties No. 1 and 2 failed to file written arguments. The matter was reserved for orders after hearing the learned counsel of the complainant and opposite parties No.3 and 4.

- 6.** Based on the facts and material available on the record and written / oral arguments of complainant and opposite parties No. 3 and 4, the following points have emerged for consideration:
 - a.** Whether the complainant could establish deficiency of service and negligence on the part of opposite parties No. 1, 2, 3 & 4?
 - b.** Whether the complainant is entitled for the reliefs prayed in the complaint? If so, to what extent?

- 7. Point ‘a’:**
 - 7.1.** The undisputed facts are the purchase of the vehicle (manufactured by opposite parties No.1 and 2) from opposite parties No. 3 and 4, payment of advance amount of Rs. 5,000/- (Rupees Five Thousand Only) for booking of the said vehicle (Ex.A1-Ex.B1), confession of receipt of amounts to the tune of Rs. 4,89,000/- (Rupees Four Lakhs Eighty Nine Thousand Only) by the representatives of opposite party No. 4 (Ex.A2, Ex.A3 & Ex.A4-Ex.B2, Ex.B3 & Ex.B4)) and lodging criminal complaint against Mr. T. Deepak and Mr. Abdul

Shahid, the representatives of opposite parties No. 3 and 4 (Ex.A5).

- 7.2.** The oral submissions of the learned counsel of the complainant and opposite parties No. 3 & 4 were in line with their respective averments and pleadings.
- 7.3.** It is the case of the complainant that he interacted with Mr. Abdul Shahid, the then manager and Mr. T. Deepak, the Executive of opposite party No.4 for purchasing the car from the showroom of opposite party No.4 and paid the token advance. It is also the case of the complainant that, due to second wave effect of Covid -19 pandemic, the representatives had suggested the complainant that they would personally visit the residence of the complainant for collecting the balance amounts. Further, the representatives issued receipts for the amounts received by them in cash. When the complainant visited the showroom premises for enquiring about the delay in delivering the car, he was informed by the representatives in the showroom of opposite party No.4 that they had used the money received from the complainant.
- 7.4.** It is the version of the opposite parties No. 1 and 2 that they were wrongly made parties in the compliant and the complaint suffers from vice of misjoinder of parties. It is also the version of opposite parties No. 1 and 2 that once the car was delivered to the dealer, the entire process would be carried by the representatives of the dealers and the agreement between the opposite parties No. 1, 2 and opposite parties No. 3, 4 was purely on principal-to-principal basis.
- 7.5.** It is the version of opposite parties No. 3 and 4 that they accept cheques and demand drafts and there is no door step service with regard to cash payments from the customers. It is also the version of the opposite parties No. 3 and 4 that the UTR (Unique Transaction Reference) No. mentioned in the fake receipt vouchers speak about the transaction being done through RTGS transfer. Moreover, the opposite parties No. 3 and 4 are not responsible for the transaction / payment done by the complainant without exercising his due diligence before

entertaining the representatives of the opposite parties No. 3 and 4.

- 7.6.** It is evident from Ex.B1 (sale contract form) that an amount of Rs.5,000/- (Rupees Five Thousand Only) was paid as booking amount towards the purchase of the Polo vehicle-petrol version. It is also evident from delivery acknowledgement note dated 30.05.2021 (Ex.B10) that the car was delivered to the complainant and the note was signed by the sales manager, Mr. Saheed and other representatives of the dealer of opposite parties No. 1 & 2. It is also evident from e-mail dated 24.06.2021 (Ex.B14) that the opposite party No. 4 came to know that the representatives of opposite party No. 4 mis-utilized the internal stationery while collecting / receiving the balance payments from the residence of the complainant. Further, the representatives of opposite party No. 4 confessed that the amounts received from the complainant were utilized by them for their personal use (Ex.A9). The complainant wrote e-mails to the opposite parties and the opposite parties replied to the e-mails (Ex.A6, Ex.A7 & Ex.A9). and also issued legal notice dated 25.06.2021 (Ex.A10, Ex.A11, Ex.A12 & Ex.A13).
- 7.7.** In the oral submissions, it is the contention of the learned counsel of the complainant that he had no personal relationship with either of the opposite parties or their representatives (as alleged by the opposite parties No. 3 & 4) and the amounts were paid towards the balance payment for the purchase of the car, hence, the opposite parties were directly and vicariously liable to return the amounts received by their representatives.
- 7.8.** Per contra, it is the contention of the opposite parties No. 3 & 4 that the opposite party No. 4 show room does not have door step service with regard to cash payments from the customers and they cannot be held responsible for any action of Mr. Abdul Shahid and Mr. T. Deepak acting in their personal capacity. It is also the contention of the learned counsel of the opposite parties No. 3 & 4 that they are not responsible for the fraudulent acts of its employees. Moreover, in the enquiry, it

was witnesses by the complainant that both the representatives confessed that they utilized the amounts (that were received by them at the residence of the complainant) for their personal needs.

- 7.9.** On perusal of the documents / receipts at Ex.A2-Ex.B2, Ex.A3-Ex.B3 & Ex.A4-Ex.B4, it is apparent that the amount of Rs. 4,94,000/- was received by the representatives of the opposite parties No. 3 & 4 in three transactions on 10.04.2021, 17.04.2021 & 20.04.2021 (subsequent to the date of payment of booking amount). Except bald averments that the amounts were paid by the complainant to the representatives of the opposite party No. 4 in the personal capacity, there is no cogent documentary evidence to substantiate the same.

- 7.10.** The documents coupled with the admission as reflected from the concerned authorities of the opposite parties No. 3 & 4 led us to come to the conclusion that the representatives, by mis-using their status and mis-utilizing the stationery, influenced the complainant / consumer and acknowledged the receipt of payments made by the complainant. Though there were discrepancies with regard to the mode of payment, receipt of amounts was not denied by the representatives. On scrutiny of documents, it is apparent that the receipts of Ex.A1, Ex.A2, Ex.A3 and Ex.A4 look alike and had the seal and logo of opposite parties No. 3 & 4. Therefore, opposite parties No. 3 & 4 cannot be absolved from their liability rather they are vicariously liable for the acts, omissions and commissions of their representatives. Hence, point 'a' is answered in favour of the complainant.

8. Point 'b':

- 8.1.** The liability of the master for the acts of his servants is based on the maxim 'Qui Facit per Alium Facit per se' which means he who does an act through another is deemed in law to do it himself. In the present case, it is not denied that the said two representatives were the employees of opposite party No. 4. Admittedly, the two representatives received the payments from the complainant.

- 8.2.** In the present case, the opposite parties No. 3 & 4 did not place any documentary evidence to show that an action was taken against their representatives after coming to know about their fraudulent acts. Although, the opposite parties stated that the services of the two representatives were terminated, no cogent documentary evidence was placed on the record to substantiate the same. Further, there is nothing on the record to show what action was taken by the opposite party No. 4 for recovering the amounts from their representatives / employees that were collected from the complainant. It is pertinent to mention here that the wrongful act of the said representatives was done in the course of their employment.
- 8.3.** In the case at hand, the representatives were using the stationery, seal etc. of the opposite parties No. 3 & 4 on the employer's behalf as their agents. It is the rule that an employer, though guilty of no fault himself, is liable for the damage done by the fault or negligence of his servant acting in the course of his employment. Further, a master is liable even for acts which he has not authorized, provided they are so connected with acts which he has been so authorized. As per Ex.B1, the payments column included cash payments also (below 'booking details'). Therefore, on the basis of the material on record, we conclude that the opposite parties No. 3 & 4 are jointly and severally liable for refund and compensation for negligence & deficiency of service.
- 8.4.** In the result, the complaint is allowed in part and the opposite parties No. 3 & 4 are jointly and severally directed to
- (i) Refund the amount of Rs. 4,94,000/- (Rupees Four Lakhs Ninety-Four Thousand Only) towards sale of the "VOLKSWAGEN" of the category of "POLO" in the model of "GT";
 - (ii) Pay an amount of Rs. 15,000/- (Rupees Fifteen Thousand Only) toward compensation for the financial loss and mental agony suffered by the complainant;

(iii) Pay an amount of Rs. 10,000/- (Rupees Ten Thousand Only) towards costs.

9. The complaint is dismissed against opposite parties No. 1 & 2 as there is nothing on the record to show that there was negligence and deficiency of service on the part of opposite parties No. 1 & 2. Moreover, as per Ex.B18, the relation between opposite parties No. 1, 2 (manufacturers) and opposite parties No. 3, 4 (dealers) is that of principal to principal.

Time for compliance: 45 days from the date of receipt of the order. In case of non-compliance, the amount mentioned in Sr. No. (i) shall attract an interest @6% p.a. from the date of the order till its actual payment.

Dictated to steno, transcribed and typed by him, pronounced by us on this the 04th day of September, 2023.

MEMBER

PRESIDENT

APPENDIX OF EVIDENCE

WITNESS EXAMINED FOR THE COMPLAINANT:

(PW1) Sri. Sachin Pohar, S/o Sri. Pohar Shekar,
 (PW2) Sri. Anugu Srinivas Reddy S/o Sri. Anugu Ramanujam.
 (PW3) Sri. Kottur Vishal S/o Sri. Kottur Vinod.

WITNESS EXAMINED FOR THE OPPOSITE PARTIES

(DW1) Shailesh Bhardwaj S/o Rajendra Bhardwaj.
 (DW2) Mr. T. R. Ganesh Aiyer

EXHIBITS FILED ON BEHALF OF THE COMPLAINANT:

- Ex.A1 Copy of Receipt of advance payment of Rs. 5,000/- dated 31.03.2021.
- Ex.A2 Copy of receipt voucher part payment of Rs. 1,50,000/- dated 10.04.2021.
- Ex.A3 Copy of receipt of voucher of part payment of Rs. 3,00,000/- dated 17.04.2021.
- Ex.A4 Copy of receipt of voucher of part payment of Rs. 39,027/- dated 20.04.2021.
- Ex.A5 Copy of FIR No 186/2021 on the file of Begumpet Police Station House dated 18.05.2021.
- Ex.A6 Copy of Email complaint made by the complainant to the opposite parties dated 22.05.2021.
- Ex.A7 Copy of reply email by the opposite parties to the complainant dated 24.05.2021.

- Ex.A8 Copy of Grievance complaint filed by the complainant dated 14.06.2021.
- Ex.A9 Copy of reply email from the opposite parties to the complainant dated 24.06.2021.
- Ex.A10 Office copy of legal notice got issued by complainant to the opposite parties dated 25.06.2021.
- Ex.A11 Copy of postal receipts dated 26.06.2021 and 05.07.2021.
- Ex.A12 Copy of postal track consignment dated 29.06.2021 and 06.07.2021.
- Ex.A13 Copy of acknowledgments.
- Ex.A14 Copy of reply notice got issued by the opposite parties to the complainant dated 14.07.2021.

EXHIBITS FILED ON BEHALF OF THE OPPOSITE PARTY Nos. 3 & 4

- Ex.B1 Copy of Sale contract form.
- Ex.B2 Copy of receipt voucher on dated 10.04.2021.
- Ex.B3 Copy of receipt voucher dated 17.04.2021.
- Ex.B4 Copy of receipt voucher dated 20.04.2021.
- Ex.B5 Copy of maintenance list.
- Ex.B6 Copy of policy schedule cum tax invoice.
- Ex.B7 Copy of mail dated 24.05.2021.
- Ex.B8 Copy of satisfaction note.
- Ex.B9 Copy of tax receipt.
- Ex.B10 Copy of delivery acknowledgment note.
- Ex.B11 Copy of customer new car quality inspection.
- Ex.B12 Copy of tax invoice.
- Ex.B13 Copy of extended warranty certificate.
- Ex.B14 Copy of mail dated 24.06.2021.
- Ex.B15 Copy of legal notice dated 26.06.2021.
- Ex.B16 Copy of temporary certificate of registration.

EXHIBITS FILED ON BEHALF OF THE OPPOSITE PARTY Nos. 1 & 2

- Ex.B17 Copy of Warranty policy.
- Ex.B18 Copy of Dealer Agreement.

MEMBER

PRESIDENT

PSK
READ BY:-
COMPARED BY :-