

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-II,

U.T. CHANDIGARH

Consumer Complaint No : 398 of 2020
Date of Institution : 25.08.2020
Date of Decision : 01.09.2023

Inderjit Kaur w/o Sh.Shaleen Singh, R/o H.No.508, Sector 33-B, Chandigarh

.....Complainant

Versus

1] FCA (Fiat Chrysler Automobiles) India Automobiles Pvt. Ltd., Registered Office:-

1st Address: 11601 (III), 16th Floor, B Wing, The Capital, Plot #C-70, G Block, Bandra Kurla Complex, Bandra (East), Mumbai PIN 400051 through its Managing Director/Authorised Person

2nd Address: Office No.401 A, Giga Space IT Park, Delta-I, Viman Nagar, Pune Nagar Road, Pune 411014

2] KAS Cars Pvt. Ltd., Plot NO.171, Industrial Area, Phase-I, Chandigarh through its Managing Director/Authorized Person

3] M/s WSL Automobiles Pvt. Ltd., Plot No.171, Industrial Area, Phase-I, Chandigarh through its Managing Director/Authorized Person

..... Opposite Parties

BEFORE: MR.AMRINDER SINGH SIDHU, PRESIDENT

MR.B.M.SHARMA

MEMBER

Argued by:- Sh.Rohit Rana, Counsel of complainant

Sh.Naveen Sharma, Counsel of OP No.1

Sh.Jagvir Sharma, Counsel of OP No.2

Sh.Harsh Nagra, Counsel of OP No.3

PER B. M. SHARMA, MEMBER

The case of the complainant precisely is that she was approached by the official of the OP NO.2 with an offer to sell car – Jeep Grand Cherokee of Billet Silver Metallic colour on discount of Rs.17 lacs against its Ex-Showroom price of Rs.80 lacs it being a Demo Car, manufacturing date as Nov., 2016 and mileage covered about 960 kms only. It was also assured at the time of sale that the car is brand new vehicle and has no defects, issues etc. of any sorts and also carries standard warranty. It is submitted that being allured by the offer & assurance of the OP No.2 as well as considering the reputation of the brand, the complainant purchased the said Car-Jeep Grand Cherokee from the OP No.2 on 14.9.2018 for an amount of Rs.61,61,000/- after getting it financed with HDFC bank (Ann.C-1). Thereafter, the vehicle was got registered vide Regd. No.CH-01-BU-0025 (Ann.C-3).

It is submitted that soon after its purchase, the car in question started giving very serious problem of getting suddenly and automatically jammed/stopped in the mid of the road while being driven irrespective of the speed, causing danger of serious accident. It is also submitted that first time on 3.12.2018, the vehicle had to be towed to the workshop because it had stopped/jammed on the road while the vehicle had run only 2386 kms.; second time on 13.4.2019, the vehicle again got jammed/stopped and it was towed to workshop while it had covered only 4544 kms.; third time on 10.7.2019, the vehicle again jammed/stopped while it had run only 7075 kms. and it was again towed to the workshop and repairs were done which cost about Rs.1.5 lacs out of which Rs.98,000/- was covered under insurance and Rs.48,000/- was paid by the complainant; fourth time on 21.9.2019 with odometer reading at 10601 kms the vehicle again breakdown on the road and towed to the OPs. It is stated that lastly on 08.11.2019, the vehicle again stopped/jammed on the road, while 9 year old son of the complainant was in the car with complainant, it was taken to OPs and there also it did not start despite many attempts and since then the car is lying with the OPs. It is also stated that due to sudden stopping/jamming of the car in mid of the road because of serious defect the complainant and her son could have met with some untoward occurrence. It is submitted that every time the OPs assured that this will not happen again and the issue has been resolved and the complainant kept on believing their assurance and took the car, but finally it has been left with OPs. It is also submitted that the complainant requested the OPs to replace the car with new one for which she also offered to pay differential amount, but the OPs refused to do so nor refunded the cost/price of the car so paid by the complainant at the time of purchase. A legal notice was also sent to the OPs vide Ann.C-4 but they did not pay any heed. It is pleaded that the complainant's faith has totally shattered towards the OPs Company as she has been put to a helpless position and the complainant has suffered financial loss and mental trauma, agony and harassment due to manufacturing defect in the vehicle in question. Hence, this complaint has been preferred.

2] The OP NO.1 has filed written version stating that the complaint qua it is not maintainable as FAC India Automobiles Private Limited sells vehicle with manufacturer's warranty to its authorized dealer under principal-to-principal relationship on whole sale basis, after pre-delivery inspection and once the vehicles are sold by it to authorized dealer, its contractual obligations are limited to the reimbursement of parts under warranty (Ann.OP1/2). While admitting the purchase of the vehicle in question by the complainant carrying 2 years warranty or unlimited kilometers, it is stated that on 3.12.2018 @2386 km as per odometer reading, the subject vehicle was towed to the workshop and on post inspection by the technician it was found that the wires were chewed by rats, therefore, gear shift lever was not working and after repairing the same, the subject vehicle was delivered to the Complainant on 05.12.2018. It is stated that on 13.02.2019 @ 4544 km as per the odometer reading, the subject vehicle was reported to the workshop for general repairs post which the same was delivered to the complainant on 22.02.2019. It is also stated that on 21.06.2019 @ 7073 km as per the odometer reading, the subject vehicle was reported at the workshop for starting issue and post inspection, repairs were carried

under Insurance Claim. Thereafter, on 10.07.2019 @ 7075 km as per the odometer reading, the second free service of the subject vehicle was conducted and then it was delivered to the Complainant. It is submitted that on 21.09.2019 @ 10601 km as per the odometer reading, the vehicle was reported to the workshop for sudden stoppage while driving and post inspection, it was found that a starting problem had occurred due to non-genuine accessory fitment i.e. GPRS done by the Complainant and the same was rectified and the subject vehicle was delivered to the Complainant. It is also submitted that on 13.11.2019 @ 12280 km as per the odometer reading, the vehicle was reported to the workshop for ignition issue and post inspection, it was found that fuel pump had failed and the same was replaced under warranty. It is pleaded that as the parts were to be ordered from abroad, the same were stuck at customs and the delivery of the same got delayed and the complainant was informed of the repairs being conducted in the subject vehicle vide e-mail dated 16.12.2019 (Ann.OP-1/3). It is also pleaded that post repairs, a test drive and joint trail of the subject vehicle was conducted wherein the performance of the subject vehicle was found satisfactory and thereafter, the Complainant was informed by the OP No.1 about vehicle readiness via e-mail dated 02.01.2020 assuring the Complainant that the subject vehicle is completely roadworthy (Ann.OP-1/4).

It is asserted that the subject vehicle has been kept ready for delivery since 04.01.2020 and the Complainant has been requested several times by the OP No.1 & 2 to take the delivery of the subject vehicle via calls and emails and that the Complainant was assured that the vehicle was completely roadworthy but she did not intend to take the delivery of the subject vehicle (Ann.OP-1/5). It is also asserted that the OP Nos. 1 & 2 have replaced the part under warranty and the replacement of the part does not mean that there was/is a manufacturing defect in the vehicle (Ann.OP-1/6). It is stated that the subject vehicle has covered more than 12280 km till date which is suffice to prove that there is no manufacturing defect in it. It is also stated that since the operations of OP No.2 were closing on 23.10.2020, so OP No.1 vide email dated 19.8.2020 (Ann.C-6) requested the complainant to take delivery of the subject vehicle but no response was received from her. Denying all other allegations, OP No.1 prayed for dismissal of the complaint.

The OP No.2 has also filed written version and while admitting factual matrix of the case, stated that the vehicle is not suffering from any manufacturing defect as alleged by the complainant and that in case the allegations in the complaint are taken on its face value, the vehicle could not have covered more than 12,000kms. It is stated that for the first time the vehicle was towed to the workshop on 03.12.2018 (at the odometer reading of 2386 km) wherein post inspection by the technician it was found that the wires had been chewed by rats, therefore, gear shift lever was not working. After repairing the same, the subject vehicle was delivered to the complainant on 05.12.2018; second time the subject vehicle was reported to the workshop On 13.02.2019 (at the odometer reading 4544 km) for general repairs and thereafter the subject vehicle was delivered to the complainant on 22.02.2019; third time the subject vehicle was towed to the workshop on 10.07.2019 (at the odometer reading 7075 km) for starting issue, post inspection certain parts were replaced along with wiring (bills to the insurance company were raised for replacing the wiring) and the second free service was done and the subject vehicle was delivered to the complainant; fourth time the vehicle was reported to the workshop on 21.09.2019 (at the odometer reading 10601 km) for sudden stoppage while driving and post inspection, it was found that the starting problem had occurred due to GPRS wiring which was an outside fitment done by the complainant. And the same was rectified and the subject vehicle was delivered to the complainant. It is submitted that lastly the vehicle was reported to the workshop on 13.11.2019 (at the odometer reading 12280 km) for ignition issue wherein certain required parts were replaced under warranty and the vehicle was ready for delivery since 04.01.2020. It is submitted that the complainant was informed about the readiness of the vehicle vide email dated 02.01.2020 with request and on telephone as well by the OP No.2 several times to take the delivery but the complainant failed to take the delivery. It is stated that test drive was taken by the technicians of OP and the complainant was assured by the dealership that the vehicle is roadworthy and she may take the delivery, but she did not turn up and instead file the present complaint alleging manufacturing defects in the vehicle. It is submitted that the problem of sudden stoppage was due to the reason

that the vehicle was fitted with outside fitments instead of company approved fitments which resulted in interfering with the other fitments thereby causing issues in the vehicle functioning.

It is pleaded that needful had been done and the vehicle is free from any problem and was ready for delivery on 04.01.2020 and the complainant is at liberty to take the delivery as and when she so desires. It is also pleaded that the question of vehicle being examined by some expert arises only in case some defect is not curable in the vehicle, whereas the subject vehicle is perfectly alright and roadworthy, therefore, neither the OPs are negligent in service nor have adopted any unfair trade practice. Denying all other allegations, it is prayed by OP No.2 that the complaint be dismissed.

The OP No.3 has also filed its written version stating that the OP No. 2 was erstwhile authorized dealer of vehicles of OP No.1 and ceased to be the authorized dealer of OP No.1 as it surrendered its dealership to OP No.1 and thereafter the answering OP No.3 was appointed as the authorized dealer for dealing in vehicles of OP No.1 vide Letter of Intent dated 25.08.2020 issued by OP No.1 (Ann.OP-3/1). It is stated that the vehicle in question i.e Jeep Grand Cherokee has been sold by OP No.2 to the complainant on 14.09.2018 vide invoice Ann.C-1, so it is clear that the answering OP was not involved in the said transaction and the entire profit/margin has been consumed by OP No.2 by selling the vehicle in question to the complainant and due to this reason, if there is any deficiency in services or in the vehicle, the same can be attributed to OP No.1 & 2 and not the answering OP No.3 as the complainant is not the consumer of the answering OP. It is submitted that the present complaint was filed on 03.09.2020 and the dealership was allotted to the answering OP on 25.08.2020 by OP No.1 and it took the premises i.e. Plot no. 171, Indl. Area, Ph-1, Chandigarh on lease from the landlord vide lease deed dated 10.08.2020 and entered into possession Ann.OP-3/2. It is also submitted that per complaint, the complainant had left her vehicle with OP No.2 on 13.11.2019 and OP No.1 had requested the complainant to take her vehicle back vide e-mail dated 19.08.2020 as OP No.2 was closing their operations by 23.10.2020 (Ann.C-6). It is pleaded that when the answering OP came into possession of the dealership, it requested OP No. 2 to get the vehicle in question either delivered to the complainant or it shall be removed from the dealership, to which OP No. 2 requested the answering respondent to let the vehicle remain parked in the dealership till the same is picked by the complainant as complainant had filed a consumer complaint and only as a goodwill gesture, the answering OP allowed OP No.2 to let the vehicle remain parked at the dealership. It is also pleaded that the OPs No. 1 & 2 are estopped from transferring their negligence and responsibility on the answering OP. It is further pleaded that answering OP No.3 has purchased only the unsold stock of OP No.2 and it is not responsible for any manufacturing defect or any other defect in the vehicles earlier sold by OP No.2. It is submitted that answering OP undertakes to repair and maintain the vehicle in question in case the complainant requests for the same on her expenditure. It is also submitted that no express or implied or written or verbal agreement has been executed between OP No.2 and answering OP NO.3 that the OP No.3 shall be responsible for any ongoing litigation against OP No.2 or any liability of OP No.2 before the dealership of OP No.1 was allotted to it. Lastly it is prayed that the complaint qua OP NO.3 be dismissed.

3] Replication has also been filed by the complainant thereby controverting the assertions made by OP No.1 in its reply.

4] Parties led evidence in support of their contentions.

5] We have heard the Id.Counsel for the parties and thoroughly perused entire evidence & documents on record.

6] The record reveals that the Car in question i.e. Jeep Grand Cherokee (manufactured by OP No.1), a Demo Car, which had done 960 kms., was sold by OP No.2 to the complainant for an amount of Rs.61,61,000/- on 14.9.2018, with standard warranty of 2 years or unlimited kilometers, whichever is earlier. Undisputedly, the subject vehicle which had covered only 12280 kms., was reported to the OPs for repairs regularly for 5 times during the its first year period i.e. warranty period of its purchase.

7] The complainant claimed that the vehicle in question suddenly stopped in the mid of the road and every time it was towed to the OPs for repairs and when the same problem occurred time & again i.e. fifth time, ultimately she left it with OPs alleging it to be suffering from manufacturing defect, whereas the stand of the

OPs No.1 & 2, while admitting the reporting of the vehicle with them, as alleged by complainant, stated that that on first occasion wires were found chewed by rats; second time it was general repairs; third time starting problem issue was there and repairs were carried under insurance claim; fourth time it was found that problem occurred due to non-genuine accessory fitment i.e. GPRS done by complainant which was rectified and lastly it was reported for ignition issue and it was found that fuel pump had failed and the same was replaced under warranty.

8] The OPs No.1 & 2 while denying any manufacturing/serious defect in the subject vehicle, specifically stated that the subject vehicle has been kept ready for delivery since 4.1.2020 and the complainant was assured that the vehicle is completely roadworthy but she did not come forward to take its delivery.

9] It is important to mention that the subject vehicle was got inspected for Expert Opinion/Report from Punjab Engineering College (Deemed to be University), Chandigarh and the said Expert Opinion, received vide Memo No.PEC/MED/2824, dated 10.10.2022, states as under:-

In Reference to Memo no. PEC/MED/2692-2695 dated 21.09.2022 on the subject cited above the vehicle in question was brought before the committee for inspection on 06.10.2022 at 10.30 AM in the Mechanical Engineering Department of the Institute by Sh. Sushil Thakur (Jeep-ASM), Sh. Nawin Surya VM (Jeep-TS), Sh. Ravi Kumar (WSL-CHD), and Sh. Harman Singh (WSL-CHD), Mrs. Inderjit Kaur (Complainant), was present during the inspection and test drive.

The vehicle having registration no. CH01BU0025, Engine No. M*HC722351, Chassis No. 1C4RJFFM5HC722351*BG was presented for inspection. The vehicle in question was brought in towed condition and inspected visually.

After going through the material available on record and visual inspection, the committee is of the opinion that the vehicle in question is having the problems since the purchase of the vehicle. The service provider was not able to rectify it timely and completely. So the same may be attributed to a manufacturing defect.”

The said Expert Report/Opinion establishes that the vehicle is having manufacturing defect as a result service provider was not able to rectify.

10] The objections to the said Expert Report has been filed by the OPs but the same are not supported by any Expert Opinion of any other Government Organization/Institute or Statutory Body at par or above the said Institute i.e. Punjab Engineering College (Deemed to be University), Chandigarh, hence not tenable.

11] Otherwise also, the OPs No.1 & 2 have failed to explain & justify that when the subject vehicle, as stated in their reply, is ready for delivery since 4.1.2020 and that the vehicle is completely roadworthy but the complainant did not come forwards to take its delivery, then why they needed to tow the vehicle to the Punjab Engineering College (Deemed to be University), Chandigarh for inspection & expert opinion. It appears very surprising that when the vehicle is roadworthy and ready for delivery, then why it has not been driven instead of towed, for inspection by Punjab Engineering College (Deemed to be University), Chandigarh, which itself proves that the vehicle is suffering from inherent manufacturing defect, as a result it could not be made roadworthy by the OPs No.1 & 2, who are the manufacturer and seller/dealer/service centre of the subject vehicle.

12] The sudden stoppage of vehicle in question in the mid of road entails the danger of being hit or run-over by other vehicle which is coming from behind and can also prove absolutely fatal in case the speed of vehicle coming from behind is high.

13] The complainant has spent a huge amount of Rs.61,61,000/- (Sixty One Lakh & Sixty One Thousand) in Sept., 2018 to buy the Car in question for her & her family members happiness and also for the popular brand name of this Car – Jeep Grand Cherokee, which have been shattered and instead of enjoying the subject vehicle,

she has been made to firstly struggled with OPs to rectifying the defects in the vehicle and then fighting litigation against them till date.

14] The frequent breaking-down of the Car in question just within first year of its purchase and covering only 12000 kms., is totally contrary to the reputation of the OP Car Company and their claims about its unmatched quality and performance. The joy of owning a world class & famous car i.e. subject vehicle is totally destroyed.

15] Even if the major parts of the car is being replaced with new one, the anxiety and uncertainly about the efficiency & quality of the vehicle may always remains in the mind of the customer/complainant. Further the act & conduct of the OPs No.1 & 2 in raising one & another plea, instead of clearly admitting the manufacturing defect in the subject vehicle, which was repaired 5 times in first year of its purchase and still being towed to Expert Committee for inspection, is nothing more than adding insult to injury of complainant and amounts to shunning away from the responsibility with regard to the product that is helping this company making huge profits, which has enabled it to expand worldwide. Therefore, the deficiency in service as well as unfair trade practice resorted to by OPs No.1 & 2 is clearly established.

16] Taking into consideration the above discussion & findings, the present complaint of the Complainant is allowed against the Opposite Parties No.1 & 2. The Opposite Parties No.1 & 2 are directed to refund the cost of vehicle i.e. Rs.61,61,000/- jointly & severally within 45 days from the date of receipt of copy of this order, failing which they shall be liable to pay interest on the refund amount @6% per annum from the date of order till its actual realization. The Opposite Parties No.1 & 2 are also directed to pay a compensation amount of Rs.50,000/- to the complainant for causing her immense mental agony & harassment due to supply of a defective car, apart from payment of Rs.15000/- towards litigation expenses.

17] Since the vehicle undisputedly is lying with OP No.3, an authorized agency/dealer/centre of OP No.1, so the OPs No.1 or OP No.2, as the case may be, may collect it from OP No.3 or manage it at their own level.

18] The pending applications, if any, also stands disposed off accordingly.

Certified copy of this order be sent to the parties, free of charge. After compliance, file be consigned to record room.

Announced

01.09.2023

Sd/-

(AMRINDER SINGH SIDHU)

PRESIDENT

Sd/-

(B.M.SHARMA)

MEMBER