

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM
ERNAKULAM**

**Complaint Case No. CC/20/250
(Date of Filing : 11 Sep 2020)**

1. KRISHNARAJ . S
NANDANAM EERAVELIL HOUSE, KUMBALAM P.O
ERNAKULAM

.....Complainant(s)

Versus

1. DWANI HEARING AID CENTRE
NH 47 BYEPASS ROAD , VYTTILS POWER HOUSE KOCI-
682019

.....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 : 31 Jul 2023

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM

Dated this the 31st day of July, 2023.

Filed on: 11/09/2020

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member Smt.Sreevidhia.T.N

Member

CCNO: 250/2020

COMPLAINANT

Krishnaraj, S/o. Nandhanan, Eeravelil House, Kumbalam P.O., Kumbalam, Ernakulam- 682506.

(Rep. by Adv. Amarnath K.G., 2nd Floor, IS Press Building, Banerji Road, Ernakulam)

VS

OPPOSITE PARTY

The Proprietor/ Manager, DWANI HEARING AID CENTRE, NH-47 Bypass Road, Vyttila Powerhouse, Kochi-682019

(Rep. by Adv.s N. Satheesh, K. Janardhana Shenoy, Vimal Dev)

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 complainant approached the opposite party's establishment, Dwani Hearing Aid Centre, to purchase a hearing aid for his mother who has a severe hearing impairment. The complainant purchased a hearing aid for Rs.14,900 on November 8, 2019, and received a bill for the purchase.

However, the hearing aid turned out to be defective and not working properly. The complainant informed the opposite party about the issue and returned the hearing aid for replacement on November 18, 2019, as per their instructions. After a week, when the complainant inquired about the replacement, the opposite party agreed to refund the money instead.

Despite several attempts to get the refund, the opposite party denied the refund without any valid reason and even verbally abused the complainant at their office. This caused the complainant and his mother severe mental agony and financial losses. The complainant served a legal notice to the opposite party, but they took no favorable action.

As a result, the complainant decided to initiate legal actions against the opposite party establishment to secure justice. The complainant claims that the opposite party's actions amount to a deficiency in services and unfair trade practices and seeks a refund of the entire amount of Rs. 14,900, along with interest at the market rate and Rs. 10,000 as compensation. Additionally, the complainant claims compensation for physical pain, mental agony, and trauma caused by the opposite party's actions.

2). Notice

The Commission issued a notice to the opposite party, which was duly received by them. In response, the opposite party submitted their version.

3). THE VERSION OF THE OPPOSITE PARTY.

The complaint is not maintainable as the complainant does not fall under the definition of a consumer as per the Consumer Protection Act, 2019. They claim that the complainant did not purchase any product from them; instead, it was purchased by someone named Sukumari. The opposite party asserts that they are only authorized to fit and dispense products from Starkey Laboratories Pvt. Ltd. and are not responsible for servicing or maintenance.

The opposite party denies all the allegations made by the complainant, including the claims that the hearing aid was defective and that they refused a refund. They state that the hearing aid was functioning correctly, and they are willing to produce it for expert analysis.

The opposite party further contends that the complainant suppressed material facts and did not issue any legal notice. They request the commission to dismiss the complaint with compensatory costs.

4) . Evidence

The complainant had produced a proof affidavit and 8 documents that were marked as Exhibits-A-1 and A-2.

Exhibit A-1: The copies of the bill issued by the opposite party, the Warranty Card issued by Starkey Laboratories India Pvt Ltd. in favour of 'Sukumari' dated 08.11.2019, and the Bank Statement.

Exhibit A-2: The Certificate of authorization was issued by Starkey Laboratories India Pvt Ltd. in favour of the opposite party.

5) 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 parties to the complainant?
 - iii) If so, whether the complainant is entitled to get any relief from the side of the opposite parties?
- iv) Costs of the proceedings if any?

6) 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. The complainant had produced copies of the bill issued by the opposite party and the Bank Statement (**Exhibit A-1**). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 2019 (Point No. i) goes against the opposite party.

The learned counsel for the complainant submitted that the complainant has approached the commission against the opposite party's deficiency of services and unfair trade practices. The complainant and his mother, Sukumari, visited the opposite party's establishment, Dwani Hearing Aid Centre, to purchase a hearing aid for Sukumari due to her severe hearing impairment. They purchased a hearing aid on November 8, 2019, for Rs. 14,900, and a bill was issued by the opposite party. However, the hearing aid turned out to be defective, and after informing the opposite party via telephone, it was returned for replacement on November 18, 2019. After a week, the opposite party agreed to refund the money.

The counsel claims that the opposite party denied the refund without any valid reason and caused severe mental agony and financial losses to the complainant and his mother. The complainant served a legal notice, but no favourable action was taken by the opposite party. Thus, the complainant had no choice but to initiate legal action against the opposite party.

The counsel rejects the opposite party's version, stating that the complainant, is the legal heir and representative of Sukumari, his mother, who is unable to attend proceedings due to old age and physical limitations. The opposite party's attempt to evade responsibility by blaming unknown parties is unethical and constitutes a deficiency of service and unfair trade practices. The counsel presents relevant exhibits, including the bill, certificate of authorization, and warranty card, as evidence.

The counsel requests the commission to direct the opposite party to refund the Rs.14,900 amount along with proper interest. Additionally, they seek Rs. 100,000 as compensation for mental agony and harassment suffered and request the cost of legal proceedings to be borne by the opposite party.

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The learned counsel for the opposite party submitted that the complaint is not valid under the Consumer Protection Act, 2019, as the complainant does not meet the definition of a consumer. They claimed that the complainant did not personally purchase the product in question; instead, it was bought by someone named Sukumari. The opposite party stated that they are only authorized to fit and dispense products from Starkey Laboratories Pvt. Ltd. and are not responsible for servicing or maintenance.

The opposite party denied all the allegations made by the complainant, including the assertion that the hearing aid they provided was defective and that they refused a refund. They argued that the hearing aid was functioning properly and was willing to present it for expert analysis.

Additionally, the opposite party accused the complainant of suppressing material facts and failing to issue any legal notice. They requested the commission to dismiss the complaint and demanded compensatory costs.

In this case, the complainant approached the commission alleging deficiency in services and unfair trade practices by the opposite party. The complainant, acting on behalf of his mother Sukumari, who has a severe hearing impairment, purchased a hearing aid for Rs. 14,900 on November 8, 2019, from the opposite party.

However, the hearing aid turned out to be defective and not working properly. The complainant informed the opposite party about the issue and returned the hearing aid for replacement on November 18, 2019, following their instructions. Despite several attempts to get a replacement, the opposite party eventually agreed to refund the money instead.

The opposite party, in their response, denied the allegations and claimed that the complainant was not a consumer as per the definition in the Consumer Protection Act. They alleged that the hearing aid was functioning correctly and that they are only authorized to fit and dispense products from Starkey Laboratories Pvt. Ltd., not responsible for servicing or maintenance.

In analyzing the case, the commission considered the definition of a consumer under Section 2(7) of the Consumer Protection Act, 2019, which includes a person who buys goods for consideration that has been paid or promised. The complainant produced copies of the bill issued by the opposite party and the Bank Statement, supporting their status as a consumer. Hence, the commission found in favour of the complainant regarding the maintainability of the complaint.

The commission also took into account the complainant's claim of deficiency in services and unfair trade practices. The complainant's counsel argued that the opposite party's attempt to evade responsibility by blaming unknown parties was unethical and amounted to a deficiency in service and unfair trade practices.

In contrast, the opposite party denied the allegations, stating that the hearing aid was not defective and was willing to present it for expert analysis. They also accused the complainant of suppressing material facts and not issuing a legal notice.

After carefully examining the facts, arguments, and evidence presented by both parties, the commission finds in Favor of the complainant and rules in his favour for the following reasons:

The complainant provided relevant exhibits (Exhibit A-1 and A-2) in the form of bills, warranty card, and certificate of authorization, which support his version of events. On the other hand, the opposite party failed to provide compelling evidence to refute the complainant's claims.

The commission notes the opposite party's attempt to evade responsibility by disputing the complainant's status as a consumer and putting the blame on others. This act is unethical and constitutes a deficiency in service and unfair trade practices.

The complainant convincingly demonstrated that he purchased a defective hearing aid, and after returning it for replacement as per the opposite party's instructions, the opposite party agreed to refund the money instead. However, despite several attempts, the opposite party denied the refund without any valid reason. The commission finds this conduct to be a clear case of deficiency in services and unfair trade practices by the opposite party.

In conclusion, adherence to consumer protection laws and ethical business practices is not only a legal requirement but also an essential step toward creating an inclusive and fair marketplace. By adopting a proactive approach to understanding and meeting the unique needs of disabled individuals, businesses contribute to a more accessible, diverse, and socially responsible environment that benefits society as a whole.

We find the issue Nos. (II) to (IV) are found in favour of the complainant for the serious deficiency in service that happened on the side of the opposite party. Naturally, the complainant had suffered a lot of inconvenience, mental agony, hardships, financial loss, etc. due to the negligence on the part 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.14,900 to the complainant due to the deficiency in services and unfair trade practices.
- ii. The Opposite Party shall pay Rs. 50,000 as compensation for the mental agony and physical hardships suffered by the complainant.
- iii. The Opposite Party shall also pay the complainant Rs. 10,000/- towards the cost of the proceedings.

The Opposite Party shall be jointly and severally liable for the above-mentioned directions, which shall be complied with by the Opposite Party within 30 days from the date of the receipt of a copy of this order. Failure to do so shall result in the amount ordered vide (i) and (ii) above attracting interest @9% from the date of the amount paid till realization.

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Pronounced in the Open Commission on this 31st day of July 2023

Sd/-

D.B.Binu, President

Sd/-

V. Ramachandran, Member

Sd/-

Sreevidhia.T.N, Member

Forwarded/By Order

Assistant Registrar

Assistant Registrar

Appendix

Complainant's evidence

Exhibit A-1: The copies of the bill issued by the opposite party, the Warranty Card issued by Starkey Laboratories India Pvt Ltd. in favour of 'Sukumari' dated 08.11.2019, and the Bank Statement.

Exhibit A-2: The Certificate of authorization was issued by Starkey Laboratories India Pvt Ltd. in favour of the opposite party.

Opposite party's evidence

Nil

Despatch date:

By hand: By post

kp/

C.C. 250/2020

Order Dated: 31/07/2023

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

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

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