

**BEFORE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION, MANDI (H.P.)**

Complaint No.: 160/2017
Date of Institution: 06.06.2017
Decided on : 03.10.2023

Shri Hira Lal S/O Shri Rattan Lal Thakur,
VPO Jalpehar, Tehsil Joginder Nagar,
District Mandi, HP.

.....Complainant

Versus

1. Tata Motors Limited One Indiabulls Centre,
Tower 2A & B, 20th Floor, 841, Senapati Bapat
Marg, Jupiter Mills Compound, Elphinstone
Road (West), Mumbai-400 013.
2. Hi-Tech Satluj Motors Pvt. Ltd., NH-21,
Lunapani, District Mandi, HP.

.....Opposite parties.

**Complaint under Section 12 of the
Consumer Protection Act, 1986.**

Coram:

Sh.Purender Vaidya, President.
Sh. Yashwant Singh, Member.
Ms. Manchali, Member.

For the complainant: Sh. Abhishek Lakhanpal, Adv.
For the opposite party No.1: Already Ex-parte.
For the opposite party No.2: Sh. Dinesh Kumar Sharma, Adv.

ORDER:

This complaint under Section 12 of the Consumer Protection Act, 1986 has been filed by one Shri Hira Lal (hereinafter referred to as the complainant) against the opposite parties stating that 29.06.2016, he purchased a vehicle (Tata Tiago car) from the opposite party No.2, an authorized dealer of the opposite party No.1 (manufacturer). The car was purchased for a sum of ₹4,88,732/- and thereafter, the complainant spent ₹20,676/- on insurance and ₹13,940/- for registration of vehicle and ₹356/- for security number plate. The complainant spent a sum of ₹5,23,462/- for the said vehicle. Before purchase of car, sales representatives of the opposite party No.1 told him that the vehicle would give the mileage

of 23.84 kilometers per litre. Keeping in view the aforesaid fuel consumption, the complainant purchased the said vehicle. After taking delivery of car, the complainant was surprised and shocked to notice that he was misled by the opposite parties. The vehicle was having poor pick-up and the mileage was between 12 to 15 kilometers per litre. There were so many shortcomings in the vehicle. The rain water used to come inside all doors of the vehicle. The said problem was reported to the opposite party No.1 by the complainant and he was assured to remove the said shortcomings. After first free service of the vehicle, the aforesaid problem remained same. It was not rectified by the opposite parties despite repeated request of the complainant. A legal notice was served upon the opposite parties, but in vain. So, as per complainant, he was misrepresented by the opposite parties to sell the car. Hence, the opposite parties indulged in unfair trade practice and there was deficiency in service on the part of the opposite parties. As a result, the present complaint has been filed by the complainant with the prayer that opposite parties be directed to refund a sum of ₹5,23,462/- along with interest @ 18% per annum. The complainant also prayed for compensation to the tune of ₹4,00,000/- and litigation cost.

2. The opposite party No.1 was served, but did not put in appearance. Hence, it (OP No.1) was proceeded against ex-parte.

3. The opposite party No.2 contested the complaint by filing a reply, wherein, preliminary objections as to maintainability, complainant not coming with clean hands and no deficiency in service were raised. On merits, it is not disputed that the complainant had purchased the car in question from the opposite party No.2. The other allegations of the complainant were denied. It was denied that the sale representative of opposite party No.1 had assured the complainant regarding the fuel efficiency of the vehicle. The complainant was never told that the vehicle would give mileage to the extent of 23.84 kilometers per litre. The other allegations of the complainant regarding the deposit of water inside the car

through doors of were also denied. The opposite party No.2 has stated that the fuel efficiency of the vehicle would depend upon so many factors. The opposite party No.2 had seriously dealt with the complaint of the complainant and Chief Manager himself had conducted the test drive of the vehicle and the complaint was proved to be bogus. There was no deficiency in service or unfair trade practice on the part of the opposite party No.2. Consequently, the opposite party No.2 prayed for dismissal of the complaint.

4. The complainant filed rejoinder to the reply filed by the opposite party No.2, wherein he denied the preliminary objections taken by the opposite party No.2 and further reasserted the averments already made in the complaint.

5. Both the parties have led evidence in support of their contentions.

6. It is relevant to state here that earlier the complaint was decided by my learned predecessor vide order dated 01.06.2019. However, the opposite party No.1 i.e. Tata Motors Limited, manufacturer of the car in question, preferred an appeal before the Hon'ble HP State Consumer Commission, Shimla vide First Appeal No.242/2019 as it was challenged before the Hon'ble HP State Commission that opposite party No.1 was wrongly proceeded against ex-parte. The appeal was decided by the Hon'ble HP State Consumer Commission vide order dated 24.07.2023 and the order dated 01.06.2019 passed by my learned predecessor was set aside as the ex-parte order against the opposite party No.1 was also set aside and it was ordered to give opportunity of being heard to opposite party No.1. The case was remanded back to this Commission with the direction to decide the matter afresh after giving an opportunity to opposite party No.1 to file reply and to decide the complaint afresh in accordance with law.

7. Consequently, the complaint was received by this Commission and notices were issued to the parties. The complainant as well as opposite party No.2 put in appearance before this Commission, whereas, the opposite party No.1 was duly served

through registered post, but it (OP No.1) did not put in appearance before this Commission. As a result, vide order dated 18.09.2023 the opposite party No.1 was against proceeded against ex-parte.

8. We have heard learned counsel for the parties and have gone through the record of the case carefully.

9. After due consideration, we find substance in the plea taken by the complainant that he was misled by the opposite parties regarding the vehicle and as a result, he got allured to purchase the vehicle. So, there is unfair trade practice on the part of opposite parties. Hence, the complainant is entitled to the relief, for the reasons to be recorded herein after.

10. There is no dispute that the complainant purchased a vehicle (Tata Tiago car) from the opposite party No.2, an authorized dealer of the opposite party No.1 (manufacturer). The complainant has filed on record the tax invoice in evidence. The complainant has filed his affidavit in support of his plea, wherein, he has deposed all the facts as stated in the complaint that he was given assurance regarding the mileage of vehicle that the vehicle would give the mileage of 23.84 kilometers per litre, but after purchasing, he found that the vehicle used to give mileage between 12 to 15 kilometers per litre. The complainant has also deposed in his affidavit that after free service, the aforesaid fault remained same and there was no improvement in the mileage of the vehicle. He has also deposed that there was another inherent manufacturing defect in the vehicle that water used to deposit and come inside the car from the doors of the vehicle. The said defects were reported to the opposite party No.2, but those defects were not removed.

11. On behalf of the opposite party No.2 Shri Bhopal Singh Jamwal, General Manager has filed his affidavit stating that there was no unfair trade practice on the part of the opposite party No.2 and no assurance was given that the vehicle would give the mileage of 23.84 kilometers per litre. His affidavit is further revealing that on checking and test drive, the complaint was proved to be bogus, but there is nothing specific in this affidavit that on test drive what

mileage was noticed and how the allegations of the complainant were proved to be bogus. So, this self-serving affidavit of Shri Bhopal Singh Jamwal, General Manager of opposite party No.2 is not sufficient to rebut the evidence of the complainant.

12. It is relevant to state here that the complainant has filed the pamphlet of Tiago cars and this pamphlet is revealing that the opposite parties have claimed the mileage of 23.84 kilometers per litre. So, we find substance in the plea of the complainant that he got allured from the aforesaid advertisement and accordingly, he preferred to purchase the vehicle in question from the opposite party No.2.

13. In this case, an expert Shri Durga Dass, Works Manager, HRTC Mandi was appointed as a Local Commissioner, who checked and inspected the vehicle. His report is on record, which is revealing that in the presence of complainant Shri Hira Lal and Shri Ajay Kumar, Job Controller from opposite party No.2 on 21.11.2018 he conducted the road test of vehicle on Mandi-Manali NH for 51 kilometers and he found that the vehicle had given the average of 15.45 kilometers per litre. We agree that fuel efficiency depends upon so many factors i.e. quality of fuel, road condition, terrain (hill/plain), driving habits, traffic congestion, maintenance of vehicle, air pressure of tyre etc., but we are of the opinion that there is huge difference between mileage of 23.84 kilometers per litre as claimed by the opposite parties and actual mileage as noticed by the expert, which was 15.45 kilometers per litre. The expert has also noticed the water entering from both rear doors window glass panes.

14. The opposite party No.2 has filed objection to the said report of Local Commissioner alleging that in the report itself the Local Commissioner has pointed out that no testing facilities with the workshop were available and it has been further stated that the average of the vehicle depends upon so many factors. It was further stated that there could be so many reasons for entering the water through rear doors and window glass panes. After due consideration, we do not find any substance in the said objection as the report of

local commissioner itself is revealing that the test drive was conducted and average was found much below the claimed average of 23.84 kilometers per litre. The Local commissioner found the average of vehicle to be 15.45 kilometers per litre. The vehicle was driven for test drive on Mandi-Manali NH. So, the condition of road was good enough to check the average. As regards the entering of water through rear doors and window glass pains, there is no specific objection and it has got no substance. Consequently, the objections filed by the learned counsel for opposite party No.2 are hereby rejected and the report of Local Commissioner is affirmed and admitted in evidence.

15. The aforesaid defects as pleaded by the complainant have been duly proved and it also stands established that those defects have not been removed by the opposite parties.

16. Accordingly, in the light of our aforesaid discussion, we are satisfied that there was unfair trade practice on the part of the opposite parties as the expert opinion placed on record has duly corroborated and proved the plea of the complainant and complainant himself has categorically deposed in support of his plea. Thus, we are satisfied that the complainant was misled by advertisement of the opposite parties and he got allured to purchase the vehicle from the opposite party No.2. The defects of the vehicle stood proved and those were not removed by the opposite parties. Hence, we conclude that the car/vehicle purchased from the opposite party No.2 and manufactured by the opposite party No.1 suffers from inherent manufacturing defect.

17. Consequently, in the light of our aforesaid discussion, the present complaint is allowed to the effect that opposite parties are jointly and severally directed to refund ₹5,23,462/- to the complainant along with interest @ 6% per annum from the date of complaint till payment/deposit. The opposite parties are further directed to pay compensation to the tune of ₹20,000/- and litigation cost to the tune of ₹10,000/- to the complainant.

18. It is further clarified that that the complainant shall take requisite steps for cancellation of registration certificate of vehicle and thereafter, hand over the vehicle to opposite party No.2. It would be a condition precedent to enforce this final order. With these observations, the present complaint stands disposed of.

19. Copy of this order be supplied to the parties free of cost as per Rules.

20. File, after due completion be consigned to the Record Room.

Announced on this the 3rd day of October, 2023.

(Purender Vaidya)
President

(Yashwant Singh) (Manchali) Members

Ramesh