

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM
ERNAKULAM**

**Complaint Case No. CC/21/516
(Date of Filing : 27 Dec 2021)**

1. Dr. THIRUMENY M.J
NAZRATH NAGAR 186, ANGAMALY P.O, ERNAKULAMComplainant(s)
Versus
1. SAMSUNG INDIA ELECTRONICS PVT LTD
SECTOR 46 DLF PH-V, GURGAON, HARYANAOpp.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 : 05 Oct 2023

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM

Dated this the 5th day of October,
2023.

Filed on: 27/12/2021

PRESENT

Shri.D.B.Binu	President
Shri.V.Ramachandran	Member Smt.Sreevidhia.T.N

C.C NO.516 OF 2021

COMPLAINANT

Dr.Thirumeny M.J , Mannamkudy House , Nazrath Nagar 186, Angamaly P.O., Ernakulam
Dist.-686665.

(Rep. by Adv. Tom Joseph, Court Road, Muvattupuzha 686661)

VS

OPPOSITE PARTIES

1. M/s Samsung India Electronics Pvt. Ltd, 20th to 24th Floor, Two Horizon Centre, Golf Course Road, Sector-43 DLF PH-V, Gurgaon, Haryana-122202. Represented by its Managing Director.

(Rep. by Adv. K.S. Arundas, #35, DD Oceana Mall, Near Taj Gate Way Hotel, Marine Drive, Ernakulam 682031)
2. M/s Pittapillil Agencies Digi Park, Opp. Madonna Hospital, NH 47, Aluva-683572, Represented by its Managing Director.

FINAL ORDER

D.B. Binu, President:

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

The complaint has been filed under Section 35 of the Consumer Protection Act, 2019. The complainant purchased a Samsung refrigerator model BS 604 liters (RS55K5010SL) from the 2nd opposite party on January 6, 2018, for a total of Rs. 72,000, with a ten-year warranty for the compressor. However, the refrigerator experienced multiple issues right from the beginning and was repaired on three separate occasions. In November 2021, the freezer stopped working, and a technician informed the complainant that the compressor was the problem, but no action was taken by the opposite parties to rectify it.

Subsequently, the complainant's lawyer served a notice on the opposite parties. The 1st opposite party, the manufacturer of the refrigerator, stated that they no longer had the necessary part for this model and offered a minimal compensation amount. The complainant rejected this offer, citing the refrigerator's persistent defects. Due to the ongoing issues with the refrigerator, the complainant had to buy a new one.

The complainant argues that the manufacturer is obligated to provide spare parts for the product for at least ten years as per licensing conditions, and their failure to do so constitutes a deficiency in service. As a remedy, the complainant requests a refund of the refrigerator's price (Rs. 72,000) along with interest from the date of the complaint until the realization. Additionally, the complainant seeks Rs. 50,000 as compensation for the mental distress, financial losses, and hardships endured due to the prolonged absence of a functional refrigerator. The complaint requests that these reliefs be granted along with any associated costs.

Top of Form

2) Notice

The commission issued notices to the opposite parties. The first opposite party received the notice and subsequently submitted their version. However, in a contrasting scenario, even though the second opposite party acknowledged receipt of the notices, they failed to appear, leading to their being set ex-parte.

3) THE VERSION OF THE FIRST OPPOSITE PARTY

The complaint filed against the first opposite party is without due diligence, asserting their reputation and large customer base in the electronics and mobile handset industry. The first opposite party assert that just because a defect is noticed in their product (in this case, a Samsung refrigerator), it doesn't necessarily mean it's a manufacturing defect. The defect could have resulted from mishandling or other external factors. The Consumer Protection Act, requires expert opinion on such matters when the defect is not clearly visible.

The first opposite party mentions that when the complainant raised concerns about cooling issues in the refrigerator, they sent a service engineer who replaced the heater and compressor within the warranty. However, after the repair, the customer reported more cooling issues due to internal leakage. Out of goodwill, in response to the complainant's legal notice, the service center offered a 65% depreciated refund, but the complainant refused this and demanded commercial solutions. The first opposite party stresses that the refrigerator's issues were not manufacturing defects and occurred outside the warranty period, partly due to physical damage and mishandling by the complainant. Such damages and mishandling, they emphasize, are not covered by the warranty.

They allege that the complainant suppressed facts and did not approach the Commission with honesty. They point out the specifics of the refrigerator purchase, highlighting that the complainant received support from the OP, but this was not acknowledged.

The first opposite party acted according to the warranty's terms and conditions and that there was no deficiency in their service. The first opposite party ask the Commission to dismiss the complaint, emphasizing that the complainant is not entitled to any relief against the Opposite Parties based

In summary, the Opposite Party is strongly contesting the complainant's allegations and asserting that they have fulfilled their obligations under the warranty, with the complainant's claims being baseless and driven by ulterior motives. They request the complaint be dismissed with costs awarded to them.

4) . Evidence

The complainant had filed a proof affidavit and 2 document that was marked as Exhibits-A-1 to A-2.

Exhibit-A-1: A Copy of the retail invoice dated 6.1.2018

Exhibit-A-2: Copy of the lawyer's notice

The first Opposite Party had filed a proof affidavit and 8 document that was marked as Exhibits-A-1 to A-8.

Exhibit-B-1: A copy of the POA dated 01.1.2021

Exhibit-B-2: A copy of Customer service records.

Exhibit-B-3: A copy of the installation check list.

Exhibit-B-4: A copy of the Meter Reading.

Exhibit-B-5: A copy of the legal notice.

Exhibit-B-6: A copy of the reply letter.

Exhibit-B-7: A Copy of the POD.

Exhibit-B-8: A copy of the warranty terms and conditions.

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 party to the complainant?
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- 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. A copy of the retail invoice dated 6.1.2018 was issued by the opposite party acknowledging the deposit made by the complainant. The receipt evidencing payment to the opposite parties (**Exhibits A-1**). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 2019.

The complainant has filed a case against the opposite parties for not providing spare parts as stipulated by licensing conditions. The manufacturer is obligated to supply spare parts for a decade. As a result of this oversight, the complainant seeks a refund of the refrigerator's price and compensations.

We have been apprised by Sri. Tom Joseph, the learned counsel appearing for the complainant, that the grievance pertains to a Samsung refrigerator provided by the opposite parties. The date of purchase was January 6, 2018, with a price tag of Rs. 72,000, and it came bundled with a ten-year warranty. Pertinently, exhibits A1 to A2 have been produced from the side of the complainant, while **Exhibits B1 to B8** have been produced on behalf of the opposite party.

Upon scrutinizing **Exhibit B2**, it becomes evident that the refrigerator ceased functioning on February 10, 2020. Despite multiple attempts at repair on February 10, 2020, November 4, 2021,

and November 16, 2021, which included the replacement of the compressor on the latter date, the machine continued to malfunction. Notably, a customer service record dated November 20, 2021, explicitly states that the defect of internal leakage is beyond repair.

Crucially, the opposite party has admitted in paragraph 6 of their version that the defect is irremediable. Consequently, they have proffered a 65% depreciated refund as a resolution. Given the irrevocable nature of the defect, the complainant contends that the opposite parties are obligated to refund the entire purchase price of the refrigerator, in addition to compensation and costs. In light of these circumstances, the complainant prays for the complaint to be granted.

We have also heard Sri. K.S.Arundas, the learned counsel appearing for the first opposite party, The complainant is accused of suppressing facts and not approaching the Commission with honesty. The first opposite party states that they acted in line with the warranty terms and did not have a service deficiency. Multiple legal cases are cited to emphasize the need for expert opinions to determine manufacturing defects, the necessity for complainants to prove manufacturing defects, and the binding nature of contractual terms.

The mere existence of a defect in the product does not automatically indicate a manufacturing defect; external factors like mishandling could be the cause. The Consumer Protection Act necessitates expert opinions when the defect isn't evident.

When issues were initially raised, they addressed it within the warranty by replacing the heater and compressor. Subsequent problems post-repair is attributed to the complainant's mishandling, which falls outside the warranty. The first opposite party offered a goodwill depreciated refund after the complainant's legal notice.

In essence, the first opposite party believes they've acted correctly, emphasizing that the complainant's grievances are unsubstantiated, and hence, requests the Commission to dismiss the complaint and possibly award costs in their favour.

The first opposite party also references multiple judgements to underscore their position, particularly focusing on the need for proving a manufacturing defect through expert opinion.

The referenced cases in the provided passage are:

- A. **C. N. Anantharam vs. Fiat India Ltd. & Ors., AIR 2011 SC 523, (2011) 1 SCC 460:** This case references the proposition that if there is no major or inherent manufacturing defect in a vehicle, and the problem complained of has been addressed, the manufacturing company or agent isn't obliged to replace the item.
- B. **M. J. Abraham vs. Angel Agencies & Ors., III (2000) CPJ 544:** The holding in this case is that for the replacement of a product, the defect must be a manufacturing defect, and expert opinion is essential to establish such a defect.
- C. **Classic Automobiles vs. Lila Nand Mishra & Anr., 1 (2010) CPJ 235 (NC):** The emphasis in this case was on the complainant's burden to prove a manufacturing defect and the necessity of obtaining an expert opinion before claiming the existence of manufacturing defects.

- D. **Bharathi Knitting vs. D.H.L. Worldwide, (1996) 4 SCC 704:** The court in this case held that if there's a specific term in a contract, the parties are bound by that term.
- E. **Om Prabha Malviya vs Godrej Photo Me. Ltd., FA/126/2006 on 9 September, 2011:** This case dealt with the failure of the appellant to prove that a photo imager machine had a manufacturing defect and that there was a deficiency in the service rendered by the opposite party. The complaint was dismissed, and the dismissal was upheld on appeal.

These cases, as mentioned in the passage, are employed to bolster the defense of the Opposite Party and emphasize various points, such as the importance of expert opinion in proving manufacturing defects, the binding nature of contractual terms, and the necessity for a complainant to prove a manufacturing defect.

Nachiket P. Shirgaonkar v/s Pandit Automotive Ltd. & Another, Revision Petition No. 3519 of 2006 in Appeal No. 1953 of 2005, Decided On, 25 February 2008, At, National Consumer Disputes Redressal Commission. AIR 2008 (NOC)2260(NCC)

“In this case, from day one onwards the vehicle was found to be defective which was admitted by the dealer himself through his letters. Naturally, encountered with these problems the consumer must have been shell shocked compelling him to knock at the doors of the Consumer Forum. Even before the Consumer Forum in the written submissions filed by OP 1, there is a clear admission of the manufacturing defects. Hence, we are convinced that the vehicle did suffer from manufacturing defects. **This is a clear case of res ipsa loquitur i.e. facts speak themselves hence there is no need to refer the vehicle to a third party for giving an opinion.**”

In the present case, the refrigerator was purchased on January 6, 2018, and included a ten-year warranty. The appliance malfunctioned on February 10, 2020, within the warranty period. Despite repairs, recurring issues indicated potential inherent manufacturing defects making the refrigerator unworthy of use. Evidence was presented from both the complainant (**Exhibits A1 to A2**) and the first opposite party (**Exhibits B1 to B8**). According to **Exhibit B2**, the refrigerator malfunctioned multiple times, with repair attempts on several dates. The compressor was replaced on one of these dates. A customer service record dated November 20, 2021, highlights that the internal leakage defect was beyond repair.

The opposite party acknowledged in their statement that the defect was irremediable. The complainant emphasizes that, based on licensing conditions, the manufacturer must provide spare parts for ten years, and failing to do so is a service deficiency. Although the refrigerator came with a ten-year compressor warranty, it faced repeated issues. By November 2021, the freezer stopped functioning, and despite the technician identifying the compressor as the issue, the opposite parties took no corrective action. The above cited case provides a precedent where manufacturing defects were acknowledged. This gives weight to the consumer's stance, especially when a product malfunctions multiple times within a short span of its purchase.

In essence, the Commission has taken note of the product's recurring failures, the evidence presented by both parties, and the unaddressed issues despite being under warranty.

India doesn't have a dedicated Right to Repair law, but the issue has surfaced in legal discussions. For instance, in the case of **Shri Shamsheer Kataria v. Honda SIEL Cars Limited & Ors.**, the Competition Commission of India (CCI) firmly declared that the automobile sector must stop any anti-competitive activities hidden behind Intellectual Property Rights (IPRs). This case particularly dealt with the unfair practice of limiting consumers to buying goods/services solely from a car's authorized dealer. Another notable case is **Sanjeev Nirwani v. HCL**, where the court decided that companies must supply spare parts beyond the warranty period. Not doing so would be considered an unfair trade practice.

The second opposite party conscious failure to file their written version in spite of having received the Commission's notice to that effect amounts to an admission of the allegations levelled against them. Here, the case of the complainant stands unchallenged by the 1st opposite party. We have no reason to disbelieve the words of the complainant as against the 1st opposite party. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

It has become a practice for manufacturing companies to lure people with advertisements to purchase their products and thereafter fleece them of their hard-earned money by denying their liability to provide spare parts and consumable parts to their consumers that are essential for the product's functioning during its average lifespan. This situation impacts the wider consumer community, regardless of the specific product they use. If manufacturers deny their liability to provide spare parts after the sale, they compel consumers to abandon products that are otherwise in proper working condition. This equates to unfair trade practices, as manufacturers aim to increase their sales and profit by urging consumers to abandon their current product and buy a new one.

In conclusion, this scenario highlights the importance of robust post-purchase services and the responsibility brands hold towards consumers, even after the initial sale. It also emphasizes the empowerment of consumers to seek redressal when their rights are violated. The manufacturer's inability to provide spare parts for a product shortly after its purchase brings into question their commitment to post-purchase service and customer care.

In view of the above facts and circumstances of the case, we are of the opinion that the opposite parties are liable to compensate the complainant.

We find the issue Nos. (ii) and (iv) are also found in favour of the complainant for the serious deficiency in service and unfair trade practices happened on the side of the opposite parties. 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 parties.

Hence the prayer is partly allowed as follows:

- I. The Opposite Parties shall pay Rs. 57,600/- to the complainant (after deducting 20% depreciation from Rs. 72,000).
- II. The Opposite Parties shall pay Rs. 30,000/- to the complainant as compensation for the deficiency in service and the unfair trade practices they committed, and for the mental agony and physical hardships sustained by the complainant.
- III. The Opposite Parties shall also pay the complainant Rs. 10, 000/- towards the cost of the proceedings.

The Opposite Parties be jointly and severally liable for the above-mentioned directions which shall be complied with by the Opposite Parties within 30 days from the date of the receipt of a copy of this order. Failing which the amount ordered vide (i) and (ii) above shall attract interest @9.5% from the date of compliant 27.12.2021 till the date of realization.

Pronounced in the open Commission on this the 5th day of October, 2023.

Sd/-

D.B.Binu, President

Sd/-

V. Ramachandran, Member

Sd/-

Sreevidhia.T.N, Member

Forwarded/By Order

Assistant Registrar

Appendix

Complainant's evidence

Exhibit-A-1: A Copy of the retail invoice dated 6.1.2018

Exhibit-A-2: Copy of the lawyer's notice

Opposite parties Evidence

Exhibit-B-1: A copy of the POA dated 01.1.2021

Exhibit-B-2: A copy of Customer service records.

Exhibit-B-3: A copy of the installation check list.

Exhibit-B-4: A copy of the Meter Reading.

Exhibit-B-5: A copy of the legal notice.

Exhibit-B-6: A copy of the reply letter.

Exhibit-B-7: A Copy of the POD.

Exhibit-B-8: A copy of the warranty terms and conditions.

kp/

Despatch date:

By hand:

by post:

C.C. No. 516/2021

Order date: 05/10/2023

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

[HON'BLE MR. RAMACHANDRAN .V]

MEMBER

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