

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-II UDYOG SADAN C 22 23
QUTUB INSTITUTIONAL AREA BEHIND QUTUB HOTEL NEW DELHI 110016**

**Complaint Case No. CC/267/2021
(Date of Filing : 12 Sep 2021)**

1. RAJESH SHARMA

HNO. A 304 2ND FLOOR STREET NO 33 JALAN FARMS
CHATTARPUR ENCLAVE PHASE 2 MAIDAN GARHI
ROAD CHATTARPUR
SOUTH
DELHI

.....Complainant(s)

Versus

1. CARDEKHO.COM

11TH FLOOR, TOWER B, EMAAR DIGITAL GREENS,
GOLF COURSE EXT, ROAD, SEC-61, GURUGRAM,
HARYANA
GURUGRAM
HARYANA

.....Opp.Party(s)

BEFORE:

**MONIKA A. SRIVASTAVA PRESIDENT
KIRAN KAUSHAL MEMBER
UMESH KUMAR TYAGI MEMBER**

PRESENT:

Dated : 06 Dec 2023

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-II

Udyog Sadan, C-22 & 23, Qutub Institutional Area

(Behind Qutub Hotel), New Delhi- 110016

Case No.267/21

Shri Rajesh Sharma

S/o Baldev Chand

R/o A-304, II Floor

St. No.33, Jalan Farms

Maidangarhi Road

Chhattarpur Enclave Phase-II

New Delhi-110074.

....Complainant

VERSUS

Girnar Software Pvt. Ltd.11th Floor, Tower-B

Emaar Digital Greens

Golf Course Ext. Road

Sec.-61, Gurugram, Haryana.

....Opposite Party

Coram:**Ms. Monika A Srivastava, President****Ms. Kiran Kaushal, Member****Sh. U.K. Tyagi, Member****ORDER**

Date of Institution:20.09.2021

Date of Order :06.12.2023

Member: Shri U.K.Tyagi

Complainant has requested to pass an award directing M/s Car Dekho.com & Anr. (hereinafter referred to as OP) (i) to allow the same booked car at the same price at which it was booked M/s Girnar Software Pvt. Ltd. owns the above mentioned website i.e. Cardekho.com.

Brief facts of the case are as under:-

The complainant booked a used car on the website of OP online portal on 10.07.2021 vide Id – e24b16, Model Swift Dezire VDI-2017 and total cost shown against this used car was INR 41,576/-. After paying booking amount of INR 999/- online and the complainant received confirmation message on his mobile phone and was requested to complete KYC. Accordingly, the complainant uploaded all the necessary documents. On completion of all formalities, the OP

refused to deliver the product (car) and pressuring the complainant to cancel the said order on the pretext that the price of the car had increased. The complainant wrote to Cardekho Customer Care many times but no positive response was received. The OP had not only removed this particular car from portal but also removed order from cardekho website. The complainant further stated that he was being continuously harassed and forcefully persuaded to cancel the said order whereas the complainant insisted on getting the booked car at price it was booked at.

The act and conduct of OP was extremely unprofessional and deceitful. The same amount to unfair trade practice. Hence the complaint.

The OP's right to file written statement was closed vide order dated 18.07.2022. It was submitted that the complainant vide e-mail dated 30.07.2021 regarding booking of a vehicle bearing registration No.DL-12CM4212, Make and Model - Maruti Swift Dzire under Trust mark Programme by paying an amount of INR999/-. It was noticed that the said vehicle was listed for sale on website of Girnar Software Private Ltd. The said website of the company interalia provides a facility to its users to display classified listings pertaining to the sale of pre-owned cars of the users, which can be viewed and interacted with by other users who are desirous of purchasing a pre-owned vehicle. The users who are interested in purchasing the cars (prospective buyers) can identify the vehicles listed on the website. By browsing/interacting through the website, the prospective buyers also agrees to the user agreement of the website in the form of Terms & Conditions. The same can be accessed through website.

The complainant filed written submissions and evidence in affidavit. OP's right to file written statement was closed. Oral arguments of both the parties were heard and concluded.

This Commission has gone into the entire gamut of issues. Due consideration was given to the arguments. The complainant also filed judgments to buttress his case. During the arguments attention of the Commission towards various terms and conditions and more particularly Clause 24.2 was drawn.

These terms and conditions clearly stipulates the terms for usage of the website. It was also contended that the website of OP merely acts as a facilitator/conduit to connect the seller of pre-owned vehicle with the perspective buyers. Any transaction happens between sellers and prospective buyer is purely a bi-partite transaction. OP also argued that clause 24.2 of the terms and conditions of Trust mark programme which postulates that the OP plays the role of facilitator only. The Commission also tried to ponder the clause 24.2 of the terms.

24.2 Clause is reproduced as under:-

(d) Customer understands and agrees that Company is playing the role of a facilitator and coordinator in the sale-purchase transaction of Trustmark Certified Cards between Customer and respective Dealer under the Programme. The sale-purchase transaction, token amount and all other commercial terms such as balance payment, delivery of car., shall be as per the bipartite contractual obligations agreed between the Customer and respective Dealer only”.

Further it was seen from the documents available on record that the prospective buyers visits the website of OP for purchasing the product solely at their own discretion, risk and responsibility. Op does not make any recommendations nor gives any warranty, guarantee or otherwise with respect to quality, functionality, fitness for a particular purpose. The OP shall not be responsible for any consequences including delivery of product, cancellation of transaction etc. It may be submitted that the right to file written statement was closed vide this

Commission's order dated 08.07.2022. In view of this, the application u/s 151 CPC to lead evidence was declined.

As stated above, the complainant had paid the amount of Rs.999/-. The same was not denied specifically during the oral arguments as the OP's right to file written statement was denied. It is assumed that the said amount was paid either to OP or subsequently forwarded to the owner of the used car. It was noticed from the WhatsApp message that the complainant was asked to upload KYC documents on the link provided <http://cel.cardk.in/97in7> by the team Dekho. It implies that the OP was aware of the development and active partner in the said transaction with the help of terms mentioned above, the OP cannot escape its responsibility towards the customers who visit his web-site with the purpose of transaction. Since OP's written statement is not being considered, hence, it is further assumed that there was no "caveat" at the beginning of website so that the visitor may get himself aware of the fact that real-owner of any used car which is placed for sale, shall be responsible for the sale and its after-effects. On such circumstances where written statement is not to be perused, the Commission has to consider the record available to be allowed legally.

In view of the facts and circumstances mentioned above, this Commission is of the considered view that OP is deficient in service and negligent. From the record available the used car under reference had been sold. As such, in such circumstances OP is directed to pay Rs.20,000/- in all, as compensation and litigation cost within three months from the date of the receipt of this order failing which interest @6% per annum shall be levied till its realization.

File be consigned to the record room after giving copy of the order to the parties as per rules.

[MONIKA A. SRIVASTAVA]
PRESIDENT

[KIRAN KAUSHAL]
MEMBER

[UMESH KUMAR TYAGI]
MEMBER