

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
ERNAKULAM**
Dated this the 26th day of March, 2024.

Filed On: 02.04.2022

PRESENT

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

President
Member
Member

C.C. No.197/2022

COMPLAINANT

Sanjukumar.T.S, S/o Sasidharan.T.K, Thenkuzhy Veedu, House No.406,
Muppathadom P.O, Pin-683110.

Vs

Opposite Party

SWISS TIME HOUSE, S-16, Ground Floor, GCDA Complex, Marine Drive,
Cochin.

(Rep. by Adv. Joy Joseph, Govt. press Road, Cochin 11)

FINAL ORDER

D.B. Binu, President.

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

The complainant lodged a claim under Section 35 of the Consumer Protection Act, 2019, after purchasing a smartwatch from the opposite party on July 11, 2021. The watch, originally priced at Rs. 9,999, was acquired for Rs. 4,999.50, availed under a Diwali promotion with an assumed comprehensive warranty for defects. On February 13, 2022, the watch sustained damage to its glass. Subsequent communication attempts with the service department, initiated by the complainant on February 15, 2022, via email, went unanswered. A text message received by the complainant on March 22, 2022, indicated that the watch would be ready after 48 hours. However, upon inquiring at the store on March 27, 2022, the complainant was informed about the impossibility of repairing physical damages and was told to expect a managerial visit within two days. On March 30, 2022, it was conveyed that replacement was not feasible.

Despite the complainant's readiness to cover the repair expenses, no constructive feedback was provided. As a result, the complainant is requesting recompense for the endured mental anguish and time wastage, in addition to seeking either a replacement or financial restitution.

2) Notice

The Commission sent notice to the opposite party involved in the case. The opposite party responded by filing their version.

3) THE VERSION OF THE OPPOSITE PARTY

The claim brought by the Complainant is entirely unfounded, and baseless, and should be dismissed immediately. They accuse the Complainant of filing the complaint with malicious intent to extort and trouble the Opposite Party, noting also that the complaint lacks legal verification and fails to include the watch's manufacturer, whom they consider an essential party to the case.

The document refutes the Complainant's claim of being offered a full replacement for the watch regardless of damage type, emphasizing that the damage to the watch's glass on February 4, 2022, was a result of the Complainant's own carelessness and improper handling. The Opposite Party denies responsibility for the damage, pointing out that their warranty does not cover damages caused by the user's negligence.

Furthermore, it details that upon receiving the damaged watch, the Opposite Party assessed the situation and informed the Complainant that the glass could only be replaced for a fee, counteracting the Complainant's assertion of willingness to pay for the repair and highlighting his unreasonable demand for a free repair. The Complainant has yet to retrieve the watch, and the Opposite Party stated that the service deficiency allegations are baseless and fabricated. Therefore, they request the complaint be dismissed with costs, criticizing the Complainant's demand for watch replacement and Rs. 50,000 in compensation as driven by bad faith.

4) . Evidence

The complainant provided a proof affidavit and was examined as PW-1, presenting three documents as evidence, marked as **Exhibit-A-1 to A-3**.

- **Exhibit-A-1:** This is a copy of the invoice for the purchase of the smartwatch, dated November 7, 2021. This document serves as proof of the transaction between the complainant and the Opposite Party, detailing the purchase price, the date of purchase, and the product specifications.
- **Exhibit-A-2:** A copy of the service record form, which documents the interaction between the complainant and the Opposite Party's service department regarding the reported issue with the smartwatch.
- **Exhibit-A-3:** A copy of the SMS message sent by the Opposite Party to the complainant.
- The opposite party submitted a proof affidavit and one document, marked as **Exhibit-B-1**.
- **Exhibit-A-1:** The special power of attorney.

4) The main points to be analysed in this case are as follows:

- i) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- ii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- III) Costs of the proceedings if any?

5) The issues mentioned above are considered together and are answered as follows:

We have heard Sri. Joy Joseph, the learned counsel appearing for the Opposite Party, submitted that the defense against a compensation claim of Rs. 50,000 by the Complainant, who alleges improper service after purchasing a discounted smartwatch from the Opposite Party's store. The Complainant asserts that the watch, bought under a Diwali promotional scheme, came with a complete replacement guarantee in case of defects. However, after the watch's glass broke, the Opposite Party allegedly refused replacement or repair, prompting the complaint.

The Opposite Party counters by denying the allegations, highlighting that the watch damage resulted from the Complainant's negligence, a fact admitted during cross-examination and previously undisclosed. Despite this, the Opposite Party reportedly offered a compromise to replace the watch at half its price, an offer the Complainant refused. They argue that smartwatches are not repairable

and that they attempted to maintain customer satisfaction through their replacement offer, asserting that there was no lapse in service. They further argue that the complaint lacks grounds for compensation since the damage was due to the Complainant's negligence and not a pre-existing defect, accusing the Complainant of seeking unjust enrichment. Consequently, the Opposite Party requests the dismissal of the complaint with costs, asserting they fulfilled their service obligations and should not be held liable for the Complainant's actions.

In the matter before us, the complainant has approached the Commission, seeking compensation for what he alleges to be a deficiency in service and unfair trade practice by the opposite party, following the purchase and subsequent damage of a smartwatch. Upon careful consideration of the submissions made by both parties, the evidence presented, and in accordance with the legal framework provided by the Consumer Protection Act, 2019, we render the following judgment:

- A. Deficiency of Service and Unfair Trade Practice:** The core issue hinges on whether the opposite party failed in its service obligations towards the complainant. The opposite party's contention that the damage was due to the complainant's negligence, and not a result of any inherent defect or deficiency in service, stands substantiated by the admissions made by the complainant during cross-examination.
- B. Entitlement of the Complainant:** The claim for a replacement or compensation by the complainant overlooks the fact that the warranty terms, as argued by the opposite party, do not cover damages caused by the user's negligence. The offer made by the opposite party to replace the watch at half the cost, despite the damage being caused by the complainant's own actions, reflects an attempt to go beyond the strict terms of the warranty, which the complainant refused.
- C. Costs of the Proceedings:** Given the conclusion that the complaint lacks merit, the question of awarding costs against the opposite party does not arise.

Legal Analysis and Reasoning:

In accordance with established principles, a warranty's scope is defined by its terms. The Consumer Protection Act, 2019, under Section 2(42), defines "unfair trade practice" in a manner that does not encompass a seller's refusal to service a product damaged due to consumer negligence. Further, Section 2(47) defines "warranty" as a guarantee made by a seller or manufacturer, primarily

concerning the condition of a product, which, in this case, explicitly excludes damage caused by the user.

We find guidance in the landmark decision of the Honorable Telangana State Consumer Disputes Redressal Commission, "**I (2024) CPJ 187 (Telan.)** regarding a consumer complaint against Samsung India Electronics Pvt. Ltd. The case, designated as FA. No. 392/2018, was decided on November 21, 2023. The core issue revolved around the sale of a defective mobile phone, with the complainant, alleging deficiencies in service under the Consumer Protection Act, 2019 (section 13(1)(c)). The complainants argued that the mobile phone they purchased was defective, citing problems like overheating, display issues, and battery drainage, and claimed that these defects were due to manufacturing errors.

The State Commission found that the complainants had not sufficiently proven a manufacturing defect existed. It highlighted that merely because Samsung had offered to cover 70% of the repair costs did not automatically indicate a manufacturing defect.

Crucially, the State Commission pointed out that the District Commission had not followed proper procedure under section 13(1)(c) of the Consumer Protection Act by not seeking expert opinion to ascertain the manufacturing defect, instead basing its decision on assumptions and presumptions. The State Commission emphasized that only a technical expert or engineer is qualified to determine such defects conclusively.

Based on the lack of substantial proof of a manufacturing defect and the procedural oversight by the District Commission, the State Commission set aside the previous order, indicating a significant emphasis on the need for concrete evidence and expert testimony in disputes over alleged manufacturing defects in consumer goods.

The exhibits presented by the complainant, notably the invoice and service record, do not incontrovertibly prove a deficiency in service on part of the opposite party. The SMS communication from the opposite party, viewed in the light of their offer, does not constitute an admission of liability but rather an attempt to amicably resolve the dispute.

In light of the above analysis and observations, the Commission finds the complaint to be without merit, primarily due to the lack of a proven deficiency in service or unfair trade practice on the part of the opposite party. The damage to the smartwatch, as admitted by the complainant, resulted from his own negligence, a situation not covered by the warranty offered. The opposite party's offer for a resolution, despite no legal obligation to do so, further negates the claim of a deficiency in service.

Therefore, the complaint is dismissed, with no order as to costs. This decision is rendered in the hope that it will encourage parties to resolve such disputes

amicably in the future, considering the specific terms of sale and warranty agreements.

Upon examining the invoice provided by the complainant, dated November 7, 2021, which serves as evidence of the purchase transaction for the smartwatch with the Opposite Party, we note the presence of a declaration, terms, and conditions clause stating, "Goods once sold will not be taken back or exchanged" (**Exhibit-A-1**). This condition raises significant legal considerations in the context of consumer protection and fair-trade practices.

It is pertinent to refer to a precedent set by **the Hon able Kerala State Consumer Dispute Redressal Commission in Appeal No. 924/2012, with the judgment dated June 29, 2013**, against the order in CC.432/12 on the file of CDRC, Ernakulam. The Commission upheld the decision of the Ernakulam Consumer Dispute Redressal Commission, which ruled that such declarations on cash memos and bills are not only objectionable but constitute an unfair trade practice under the Consumer Protection Act. The reasoning provided was that such terms might mislead customers into believing they have no recourse for defective goods, thereby unfairly limiting their rights.

Furthermore, **Government Order (P) No. 60/07/F, CS and CA, dated November 3, 2007**, explicitly mandates that cash memos and bills should not include any terms that goods once sold will not be taken back or exchanged. Non-compliance with this directive constitutes a violation punishable under the Consumer Protection Act.

In light of these legal frameworks and precedents, the Commission directs the following actions:

- I. The Registry of the Commission is directed to forward a copy of this order to the Controller of the Legal Metrology Department, State of Kerala, and the Commissioner of Kerala GST - State Goods and Services Tax Department for appropriate action. This includes conducting periodic inspections in shops to ensure compliance in this connection.
- II. The Opposite Party is hereby ordered to immediately remove the illegal condition, "**Goods once sold will not be taken back or exchanged,**" from their cash memos, invoices, and bills, as this constitutes an unfair trade practice under the Consumer Protection Act.

This directive serves to reinforce the principles of fairness and transparency in commercial transactions and underscores the rights of consumers to seek redressal for defective goods, thus aligning with the objectives of the Consumer Protection Act to protect consumer interests and prevent unfair trade practices.

ORDER

Based on the aforementioned circumstances, the Commission has determined that the contentions raised by the complainant lack merit. As a result, the complaint is dismissed. No cost.

Pronounced in the Open Commission this is the 26th day of March, 2024.

D.B.Binu, President

V.Ramachandran, Member

Sreevidhia, Member

Appendix

Complainant's Evidence

Exhibit-A-1: This is a copy of the invoice for the purchase of the smartwatch, dated November 7, 2021.

Exhibit-A-2: A copy of the service record form.

Exhibit-A-3: A copy of the SMS message sent by the Opposite Party to the complainant.

Opposite party's Exhibits

Exhibit-B-1: The special power of attorney Despatch date:

By hand: By post

kp/

CC No. 197/2022

Order Date: 26/03/2024