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Date of Complaint Filed : 09.12.2019

Date of Reservation : 10.11.2022

Date of Order : 01.12.2022

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,**  
**CHENNAI (SOUTH), CHENNAI-3.**

**PRESENT: TMT. B. JIJAA, M.L., : PRESIDENT**  
**THIRU. T.R. SIVAKUMHAR, B.A., B.L., : MEMBER I**  
**THIRU. S. NANDAGOPALAN., B.Sc., MBA., : MEMBER II**

**CONSUMER COMPLAINT No. 313/2019**  
**THURSDAY, THE 1<sup>st</sup> DAY OF DECEMBER 2022**

Dr. Anand Gnanaraj,  
No.61, Natesan Nagar, Ayanambakkam,  
Chennai - 600 095.

... Complainant

-Vs-

Floor N Dector,  
(A Division of Natural Exports)  
Represented by its Proprietor,  
P.S. Towers, 10, Chamiers Road,  
(Opp Venkateswara Hospital),  
Nandanam,  
Chennai - 600 035.

... Opposite Party

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Counsel for the Complainant : M/s. Sanjay Pinto

Counsel for the Opposite Party : M/s. K.R. Ramesh Kumar

On perusal of records and having heard the oral argument of the Counsel for the Complainant, we delivered the following:

**ORDER**

**Pronounced by the President Tmt. B. Jijaa, M.L.,**

1. The Complainant has filed this complaint as against the Opposite Party under section 12 of the Consumer Protection Act, 1986 and prays to replace the defective tiles in 2144 sq.ft of the Complainants's house or refund the cost of the tiles @Rs.195/- per sq.ft amounting to Rs.4,18,080/- and to pay

the material costs to the Complainant @Rs.90/- per sq.ft of Rs.1,92,960/- and to pay a sum of Rs.5,00,000/- towards mental agony, inconvenience and loss caused to the Complainant.

**2. The averments of Complaint in brief are as follows:-**

The Complainant submitted that he is a Cardiologist at Apollo Hospital, Vanagaram. The Complainant had purchased tiles from the Opposite Party on payment of Rs.7,61,300/- as per the Opposite Parties estimate sheet dated 25.10.2017 in two tranches. The 1<sup>st</sup> payment was Rs.3,80,650/- by cheque No.000039 dated 08.12.2017 drawn on HDFC Bank and the 2<sup>nd</sup> payment of Rs.3,80,650/- by cheque No.00004 dated 26.12.2017 drawn on HDFC Bank. Both the cheques were duly credited into the Opposite Parties bank account. The tiles purchased from the Opposite Party were laid at the house of the Complainant in March 2018 but to his shock the Complainant noticed that the tiles delivered vide code No.FND 02769 in 134 boxes measuring 120X60 cms at the rate 195 per sq.ft costing Rs.4,18,080/- were not of the same quality as ordered. There were bends, corroded veneer and sheer lack of smooth top layer in the flooring of the hall and the south west bed room, which defects were not conspicuous before they were laid. It was submitted that despite spending a substantial amount for flooring in his new home, flooring looked shabby constituting not merely an aesthetic issue but a veritable health hazard making himself and his family susceptible to infection and disease. It is pertinent to note that the batch of tiles nailed on his north



east bed room laid by the same worker had a proper smooth layer with significant bends. There were several communication between the Complainant and the Opposite Party for replacement of defective tiles purchased from the Opposite Party. Even after repeated follow ups the Opposite Party failed to cure the defects and hence the Complainant was constrained to issue a legal notice dated 28.08.2019, which was received by the Opposite Party on 30.08.2019. The Opposite Party by his reply dated 30.10.2019 refused to accept the claim of the Complainant. Hence the complaint.

**3. Written Version filed by the Opposite Party in brief is as follows:-**

The Opposite Party submitted that the Complaint is not maintainable as the Opposite Party is not the manufacturer of the tiles and the tiles were manufacture by AGI. Panaria Group having Head Office at Ahmadabad and the manufacturer not being the party to the proceedings the complaint deserves to be dismissed for non joinder of the necessary parties. It was submitted that during 2<sup>nd</sup> week of October 2017 an estimate for the purchase of tiles specifying the description of the quality was provided by the Opposite Party. Accordingly, an email was sent the Complainant on 26.10.2017, specifically advising the Complainant, his architect and the builder that for all the tiles minimum spacer of 3 mm is compulsorily required. Thereafter on 22.11.2017,

06.12.2017 this Opposite Party once again assured about the spacing. Being fully satisfied the Complainant, architect, had recommended for payment. After making certain changes on 18.12.2017 by the Complainant, which was entertained by this Opposite Party and duly communicated by them on 19.12.2017. The Opposite Party on 25.12.2017 informed about the time schedule and payment of balance amount. After discount the amount payable by the Complainant was fixed at Rs.7,61,300/- and the said payment was effected through negotiable instrument. The tax invoices dated 01.01.2018 and 29.01.2018 were raised on the Complainant stipulates that the responsibility of the Opposite Party ceases the movement the goods are delivered or acknowledged. Further the materials are to be checked out on the same date of delivery. Any complaint after laying of the tiles cannot be entertained. The tiles were dispatched during January 2018 and once again additional supply was made on 08.03.2018. It is pertinent to mention that the tiles were delivered on 01.01.2018 and 29.01.2018 and the same was duly acknowledged. The Opposite Parties submitted that the Complainant would have used acids while cleaning the tiles after laying as a result a smooth surface of the tiles could have been corroded. The Complainant being at fault cannot pass on the improper act on this Opposite Party and no prudent person would proceed to lay the tiles if there were any inherent defect in the tiles. In fact prior to the purchase



the Complainant was well advised and the manner in which the tiles was to be laid with minimum space of 2 to 3 mm. When the Complainant complained about the defects in the materials supplied, the representative of the Opposite Party inspected the place and noticed that adequate spacing between the 2 tiles were absent and more over the base flooring is not at an uniform level. If poor quality of base materials are used for base flooring, the tiles which were laid could have suffered defects purely on account of lack of space or inferior quality materials used in base floor. As far as the allegations regard hygiene is concerned it is for the Complainant to make his own hygiene in all aspects and cannot pass on the same to any other person. Only after lapse of 8 months after laying of the tiles the Complainant has come up with the stories subsequent to the laying of the tiles. Hence no deficiency of service or unfair trade practice as alleged by the Complainant. Hence the complaint is to be dismissed.

4. The Complainant submitted his Proof Affidavit and Written Arguments. On the side of the Complainant, documents Ex.A-1 to Ex.A-20 were marked. The Proof Affidavit of Opposite Parties was closed and no document was marked, on the side of Opposite Party.

### **Points for Consideration**

1. Whether there is deficiency in service on the part of the Opposite Party?

2. Whether the Complainant is entitled for reliefs claimed?
3. To what other reliefs the Complainant is entitled to?

**Point No.1:-**

The admitted facts are that the Complainant had purchased tiles from the Opposite Party for a sum of Rs.7,61,000/-, which was delivered to the Complainant in January 2018 and that the tiles were laid at the Complainant's house in the month of March 2018.

The dispute arose when the Complainant noticed certain defects supplied by the Opposite Parties and when complained of such defects to the Opposite Party, the Opposite Party had failed to cure the defects.

Upon perusal of Ex.A-1 it is clear that the total estimate for the purchase of tiles by the Complainant was quoted at Rs.7,61,300/- after discount, which was duly paid by the Complainant as seen in Ex.A-2 and Ex.A-3. The contention of the Complainant was that the tiles laid at his house in March 2018 were defective and the defects ranged from bends, a corroded veneer and the sheer lack of smooth top layer in the flooring of the hall and the south west bed room. It was contended that the defects were not conspicuous before they were laid. The Complainant had sent an email dated 29.10.2018, Ex.A-4 regarding the defects in tiles which was purchased from the Opposite Party. The Opposite Party vide email dated 29.10.2018, Ex.A-5 had agreed that there was no issue in the tiles other than Batch Variation and bend in tile. There after there was series of mail



communication between the Complainant and the Opposite Party which were marked as Ex.A-6 to Ex.A-14 about the defective tiles and its replacement. The contractor who laid tiles for the Complainant had reported that there were bends in floor tiles with lack of surface coating.

The Opposite Party has averred that the complaint has to be dismissed on the ground of non joinder of necessary party as the manufacturer of AGL Panaria Group was not made a party to the complaint. Further it was averred that the Complainant was specifically advised for minimum spacer of 2 to 3 mm for all the tiles, which was not adhered to by the Complainant. Moreover the responsibilities of the Opposite Party will cease once the tiles are delivered and the material are to be checked on the same date. Further it was averred that the laying of tiles was not proper and the Complainant's could have used inferior quality materials in base floor and the Complainant cannot shift their own improper act to the Opposite Party.

As regards the contention that the manufacturer of the tiles is not made as a party the Complainant had relied upon the Judgement of the Hon'ble National Consumer Disputes Redressal Commission reported in 2006 SCC Online NCDRC 154, Blue chip India Vs. R. Chandrashekara Patial, wherein it was held that the Respondent did not have any privity of contract with the manufacturer of the computer and therefore joinder of the manufacturer as party was not at all necessary. The said judgement is applicable to the present case as the contract is only with the complainant

and the Opposite Party for the purchase of tiles and the Complainant did not have any contract with the manufacturer of the tiles. Hence the manufacturer is not a necessary party to the complaint.

The Complainant had also placed reliance on the order dated 22.03.2007, decided by the Hon'ble NCDRC reported in 2007 SCC Online SCC, M.Subba Rao Prop. M/s. Sri Krishna Seeds, Vs. Avula Vekata Reddy wherein it was held that " in our view, no doubt, the manufacturer would have been a proper party but at the same time the Petitioner is a person who has supplied and sold the seeds to the Complainant, therefore, complaint was maintainable against the Petitioner. If Petitioner has any grievance, it is open to the Petitioner to recover the amount ordered from the manufacturer by filing appropriate proceedings, but it cannot be said that the Petitioner, a dealer, who has sold the seeds, is not liable", which case also applicable to the present case in hand as it is the Opposite Party who had supplied and sold the tiles to the Complainant and therefore the complaint was maintainable against the Opposite Party.

Further reliance was placed on the Judgement passed by the Hon'ble Supreme Court reported in 2010 7 SCC 417, Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited Ltd, wherein it was observed that in regard to impleadment of parties the plaintiff in a suit, being dominus litis, may choose the person against whom he wishes to litigate. In the present case the Complainant cannot be





compelled to file a case against the manufacturer when he has purchased goods from the Opposite Party.

The Complainant had placed reliance on the order passed by the Hon'ble National Consumer Disputes Redressal Commission 2019 Online 686, Sunshine Tiles Ltd Vs. Dinesh D. Chodankar and others wherein the Opposite Party who had sold defective floor tiles to the Complainant were held liable and compensation was ordered. In the instant case the Opposite Party having agreed that the tiles supplied by them had certain bends is liable to compensate the Complainant. Further reliance was placed on the Judgement of Supreme Court reported in (2016) SCC 286, Lourdes Society Snehanjali Girls Hostel Vs. H&R Johnson (India) Ltd wherein the Respondents who supplied defective tiles were held liable, which is applicable to the present case at hand.

Further the Complainant relied upon the Judgement of the Kerala Redressal commission, Thiruvananthapuram, FA.No.A/12/924 vide Judgement dated 29.06.2013 in the case of the Officer In charge, Cochin Beauty shop Vs. Manohar and others, where it was observed that printing conditions such as "Goods once sold will not be taken back or exchanged" amounts to unfair trade practice . A customer who buys goods could be under the impression that even if the goods are defective he may not be in a position to replace. In the present case the Opposite Party in written version has averred that the invoice dated 25.10.2017 issued to the Complainant

contains clause stating that after laying complaint cannot be accepted , which unilateral condition cannot be accepted.

On careful consideration of the facts and circumstances of the case when the Complainant, who purchased tiles from the Opposite Party, had informed about the defects in tiles to the Opposite Party, the Opposite Party had accepted the batch variation and bend in tiles and suggested to use spacers, which suggestion is only to cover up the bends in the tiles. The unilateral condition on the Invoice, that goods sold will not be taken back or exchanged and after laying Complaint can't be accepted are not binding on the Complainant and cannot be accepted. In view of the above discussions we hold that the Opposite Party had committed deficiency of service in supplying defective tiles to the Complainant, which is to be compensated. Accordingly, Point No.1 is answered.

**Point No.2:-**

As discussed and decided in Point No.1 the Opposite Party is liable to replace the defective tiles laid in 2144 sq.ft of the Complainant's house or in the alternative to pay a sum of Rs.4,18,080/- being the cost of the tiles @195 per sq.ft for an area of 2144 sq.ft and to pay a sum of Rs.1,00,000/- as compensation for the deficiency in service and mental agony caused to the Complainant.

**In the result the Complaint is allowed in part. The Opposite Party is directed to replace the defective tiles in 2144 sq.ft of the**



Complainant's house or in the alternative to pay a sum of Rs.4,18,080/- (Rupees Four Lakhs Eighteen Thousand and Eighty Only) being the cost of the tiles @195 per sq.ft for an area of 2144 sq.ft and to pay a sum of Rs.50,000/- (Rupees Fifty Thousand Only) as compensation for the deficiency in service and mental agony caused to the Complainant, along with Cost of Rs.5,000/- (Rupees Five Thousand Only), within 8 weeks from the date of receipt of this order, failing which the above amount of Rs.4,18,080/- shall carry interest @6% p.a from the date of receipt of this Order till the date of realization.

**In the result the Complaint is allowed.**

Dictated to Steno-Typist, transcribed and typed by her, corrected and pronounced by us in the Open Commission, on 1<sup>st</sup> of December 2022.

**S. NANDAGOPALAN**  
**MEMBER II**

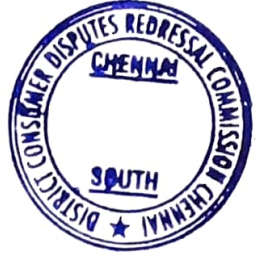
**T.R. SIVAKUMHAR**  
**MEMBER I**

**B.JIJAA**  
**PRESIDENT**

**List of documents filed on the side of the Complainant:-**

|       |                                |  |
|-------|--------------------------------|--|
| Ex.A1 | 25.10.2017                     | Estimate sheet of the Opposite Party   |
| Ex.A2 | 01.12.2017<br>to<br>31.03.2018 | Bank statement of the Complainant showing payment made to the Opposite Party |
| Ex.A3 | 01.12.2017<br>to<br>31.03.2018 | Bank statement of the Complainant showing payment made to the Opposite Party |

|        |            |  |
|--------|------------|--|
| Ex.A4  | 29.10.2018 | Email from the Complainants' consultant to the Opposite Party about the defective tiles                    |
| Ex.A5  | 29.10.2018 | Email from the Opposite Party to the Complainant's consultant admitting that there were bends in the tiles |
| Ex.A6  | 30.10.2018 | Email from the Complainant to the Opposite Party enumerating the defects in the tiles                      |
| Ex.A7  | 12.12.2018 | Follow up email from the Complainant's consultant to the Opposite Party                                    |
| Ex.A8  | 19.12.2018 | Follow up email from the Complainant's consultant to the Opposite Party                                    |
| Ex.A9  | 23.12.2018 | Follow up email from the Complainant's consultant to the Opposite Party                                    |
| Ex.A10 | 25.12.2018 | Email from the Opposite Party on Joint Inspection of flooring  |
| Ex.A11 | 28.12.2018 | Email from the Opposite Party on Joint Inspection of flooring  |
| Ex.A12 | 06.03.2019 | Follow up email from the Complainant's consultant to the Opposite Party                                    |
| Ex.A13 | 20.03.2019 | Follow up email from the Complainant's consultant to the Opposite Party                                    |
| Ex.A14 | 05.04.2019 | Follow up email from the Complainant's consultant to the Opposite Party                                    |
| Ex.A15 | 28.08.2019 | Legal notice sent on behalf of the Complainant to the Opposite Party                                       |
| Ex.A16 | 30.08.2019 | Proof of Delivery of the Legal Notice to the Opposite Party  |
| Ex.A17 | 16.10.2019 | Statement from the Complainants' Tiles laying contractor   |
| Ex.A18 | 30.10.2019 | Reply to the Legal Notice from the Opposite Party  |
| Ex.A19 | 07.11.2019 | Expert opinion - Affidavit of Dr. Benny Kuriakose  |
| Ex.A20 | -          | Photographs of the defective tiles   |



List of documents filed on the side of the Opposite Party:-

NIL

S. NANDAGOPALAN  
MEMBER II

T.R. SIVAKUMHAR  
MEMBER I

B. JIJAA  
PRESIDENT

**DISTRICT CONSUMER DISPUTES  
REDRESSAL COMMISSION CHENNAI (SOUTH)**

Free certified copy

Serial No. of the Application.....

Date of receipt of Application.....

Name of the applicant.....

Date of disposal..... 01/12/2022.....

Date of Preparation of copy... 31/11/2023.....

Date of dispatch of free certified copy of order

By Hand..... 02/12/23.....

By Post.....

S. Kalavani  
HEAD CLERK 31/11/23

TD  
31/11/2023