

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM
Dated this the 15th day of September 2023

PRESENT

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

Filed on 20 08 2020

President
Member
Member

C.C. No. 226/2020

COMPLAINANT

K K Joy S/o Late K.J Kuriakose, aged 67 years, Koomullil House, Vettikkal P.O," Mulanthuruthy, Ernakulam-682314

Vs.

OPPOSITE PARTY

J.S Cube Metals Kadungamangalam, Thiruvankulam, Ernakulam-682305
rep. by its Proprietor/Authorized person.

FINAL ORDER

D.B. Binu, President.

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

The complaint was filed under Section 35 of the Consumer Protection Act, 2019. The brief facts, as averred in the complaint, are that the complainant, a senior citizen, purchased various items from the opposite party, including Trafford sheets, Ridge, Pathy, Clamb, Screws, and pathy fittings, for installing a terrace roof on his house for Rs. 72,000/-. During the purchase of the mentioned items, the opposite party's staff persuaded the complainant that the Trafford sheet they sold to him was their own product, and they provided a guarantee of 15 years for it. Additionally, the opposite party's staff claimed that the Trafford sheet was waterproof and resistant to rust. Based on these assurances from the staff, the complainant went ahead and bought the products. The complainant installed the roof at a total cost of Rs. 2,00,000/-.

However, in 2019, the Trafford sheet began rusting, leading to damp patches on the roof and leakage during rainy seasons. The complainant contacted the opposite party for a replacement as per the initial guarantee

The opposite party admitted issues with the Trafford sheet batch but failed to replace the defective sheets, offering excuses.

Despite the complainant's repeated requests for replacements or refunds, the opposite party did not take any action, causing financial loss, mental agony, and emotional stress to the complainant. The complainant sent a legal notice, and the opposite party denied the demands in their response.

The complainant alleges that the opposite party engaged in unfair trade practices by selling substandard Trafford sheets with false claims. The complainant seeks relief from the Consumer Commission, requesting either replacement of the defective sheets with high-quality ones or a refund of the Rs. 2,00,000/- spent on the roof installation, along with interest, compensation, and costs of the legal proceedings.

In summary, the complainant purchased roofing materials with guarantees from the opposite party, but the products turned out to be substandard, causing financial losses. The complainant seeks legal intervention to either obtain replacements or refunds and to hold the opposite party accountable for their actions.

2). Notice

The Commission has issued a notice to the opposite party, informing them of the complaint. In response to this notice, the opposite party have provided their version.

3). THE VERSION OF THE OPPOSITE PARTY.

The opposite party claim that the complaint is baseless, frivolous, and lacks legal merit due to the complainant's apparent suppression of material facts. They allege that the complaint has been filed with a sinister motive to harass and damage the opposite party's goodwill. The opposite party also alleges that the complaint is flawed for not involving necessary parties.

While admitting that the complainant purchased certain items from them on a specific date, the opposite party denies most other allegations. They reject the claim that they assured a 15-year guarantee on the Trafford sheets or promoted them as waterproof and rust-free. The opposite party asserts that they are a small retail shop and not the manufacturer of the products they sell, including the Trafford sheets. They state that the sheets were purchased from a wholesale dealer and manufactured by a different company.

The opposite party maintains that the complainant knowingly purchased the Trafford sheet without any guarantee, seeking the cheapest option. They contend that the claims of rusting and leakage are exaggerated and normal wear and tear. They deny any prior approach by the complainant for replacement, asserting that the complainant's allegations lack substance.

The opposite party rejects the complainant's assertion of monetary loss due to their product and dismisses claims of unfair trade practices. They argue that the complainant's case lacks a valid cause of action and is an attempt to unjustly enrich themselves. The opposite party asserts that they are not responsible for replacing or refunding the product cost.

In conclusion, the opposite party requests that the commission dismiss the case on grounds of lack of merit, absence of valid cause of action, and an attempt to unjustly enrich the complainant.

4) . Evidence

The complainant had filed a proof affidavit and 5 documents that were marked **Exhibits A-1 to A-5**. Expert Commission report also marked as **C-1**.

Exhibit A1: True copy of Invoice No. B-5930/15-16 issued by the opposite party, dated 10-03-2016.

Exhibit A2: True copy of photographs depicting the condition of the roof

Exhibit A3: True copy of the legal notice dated 01-06-2020 issued by the complainant.

Exhibit A4: True copy of postal receipts issued by the Postal Department

Exhibit A5: True copies of the reply notice issued by the opposite party, dated 10-06-2020.

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 parties to the complainant?
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite parties?
- 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 35 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. The complainant produced copy of Invoice No. B-5930/15-16 issued by the opposite party, dated 10-03-2016. The receipt evidencing payment to the opposite party (**Exhibits A-1**). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 2019

The complainant filed the above case seeking compensation for the deficiency in service caused by the opposite party. The complainant acquired roofing materials with guaranteed quality; however, the substandard products caused financial losses. Seeking legal intervention, the complainant aims to secure replacements, refunds, and hold the opposite party accountable for failing to fulfil their obligation to return the money, thereby causing a service deficiency.

We have heard Sri. Rajeesh K.G, the learned counsel appearing for the complainant, submitted that no documents or evidences adduced by opposite party to prove its case that the sheet was supplied to opposite party by M/s Mirones Boulders and developers Pvt Ltd. what prevented opposite party to highlight names of either M/S Mirones or M/s Bushan Power and Steel Pvt Ltd, Odissa in the bill/invoice issued to the complainant.

The complainant purchased various roofing materials, including a Trafford sheet, Ridge, Pathy, Clamb, Screws, and pathy fittings from the opposite party for Rs. 72,000 (**Exhibit A-1**). The opposite party's staff assured the complainant that the Trafford sheet was their own product with a 15-year guarantee, waterproof and rust-free. The complainant noticed that the specific Trafford sheet they purchased was the only one available at the opposite party's shop at the time. The opposite party spent a total of Rs. 2,00,000, including installation costs, to install the terrace roof. However, in 2019, the Trafford sheet rusted, causing damp patches and leakage during rainy seasons. The complainant asked the opposite party for a replacement, which they initially agreed to but later evaded.

Despite multiple requests, the opposite party did not replace the sheets, causing the complainant financial loss. The complainant demanded a refund or replacement, but the opposite party did not take action. An expert commissioner inspected the premises and confirmed the issues. The opposite party did not file a version or object to the commission's report.

The opposite party's defense claims that the complainant sought a low-quality sheet at purchase, yet their proof affidavit states that only one variety of sheet was available. The opposite party did not provide evidence of their claim that M/s.Mirones supplied the sheets. The complainant argues that the opposite party misled them about the product's origin

The complainant requests the Commission to grant their sought-after reliefs in the interest of justice.

The report from the expert commissioner (EXHIBIT C-1) is of paramount importance in reaching a decision in this case. Below, we have extracted the relevant portion of the report:

“Bhoosham എന്ന ബ്രാൻഡ് നെയിമിലുള്ള 0.30 mm കനത്തിലുള്ള ഗാൽവനൈസ്ഡ് അയേൺ റൂഫിങ്ങ് ഷീറ്റുകൾ വീടിനും കാർഷെഡിനും യൂട്ടിലിറ്റി ഏരിയയിലുമായി 2530 sq.ft (235 ചതുരശ്ര മീറ്റർ) വിസ്തീർണത്തിൽ ട്രസ്സ് ചെയ്ത് വിരിച്ചിട്ടുള്ളതായി കമ്മീഷൻ നിരീക്ഷിച്ചിട്ടുണ്ട്. എന്നാൽ കാർഷെഡിന്റെ മുകളിൽ വിരിച്ചിട്ടുള്ള ഷീറ്റുകൾ മുഴുനീളത്തിൽ അരികുകൾ തുരുമ്പെടുത്ത് ദ്രവിച്ച നിലയിലാണ്. യൂട്ടിലിറ്റിയിൽ വിരിച്ചിട്ടുള്ള ഷീറ്റുകൾ അരിക് ദ്രവിച്ചും രണ്ടിടങ്ങളിൽ തുരുമ്പെടുത്ത് തുള വീണ് ചോർന്നൊലിക്കുന്ന വിധത്തിലാണ്. 128 ചതുരശ്ര മീറ്റർ വരുന്ന വീടിനുമുകളിലെ ഷീറ്റുകൾ ആറിടങ്ങളിലായി ഫോട്ടോയിൽ കാണും വിധം ഷീറ്റിന്റെ മധ്യഭാഗങ്ങളിൽ തന്നെ ദ്രവിച്ച് തുള വീണ് മഴ വെള്ളം താഴേക്ക് ഇറങ്ങി ടെറസ്സിന്റെ നാലിടങ്ങളിൽ വെള്ളം കെട്ടിക്കിടന്ന് പുപ്പൽ പിടിച്ചിരിക്കുന്ന അവസ്ഥയിലാണ്. ഈ അവസ്ഥ തുടർന്നാൽ വീടിന്റെ വാർക്കപ്പുറത്ത് വെള്ളം കെട്ടി നിന്ന് വാർക്കയിൽ ചോർച്ചയുണ്ടാകുന്നതിനും ഇടയാകുന്നതാണ്. എത്രയും വേഗം ഈ ഷീറ്റുകൾ മുഴുവനും മാറ്റി പുതിയവ സ്ഥാപിച്ചില്ലെങ്കിൽ തുരുമ്പ് പടർന്ന് ട്രസ്സ് വർക്ക് നശിക്കാൻ സാധ്യതയുണ്ട്. ഇത്തരം ഷീറ്റിനു മാത്രമായി ഏകദേശം 90,000/- രൂപ ചിലവ് കണക്കാക്കാം. ഷീറ്റ് മാറ്റുന്നതിനും പുതിയത് ഉറപ്പിക്കുന്നതിനും ചിലവ് വേറെ കണക്കാക്കേണ്ടതാണ്.

പരാതിക്കാരന്റെ വർക്ക് മെമ്മോയിൽ പറയുന്ന കാര്യങ്ങൾക്ക് താഴെ പറയുന്ന വിശദാംശങ്ങൾ ഇതോടൊപ്പം സമർപ്പിക്കുന്നു.

- 1. Whether the Trafford Sheet in the terrace roof is rusted in many places.

അതെ. ട്രാഫോർഡ് ഷീറ്റുകൾ മേൽക്കൂരയുടെ 8 ഇടങ്ങളിൽ തുരുമ്പെടുത്ത് തുള വീണ അവസ്ഥയിലാണ്.

- 2. Due to rusting of Trafford sheet damp patches on the roof ceiling

അതെ. ട്രാഫോർഡ് ഷീറ്റുകളിലെ തുളകളിലൂടെ മഴവെള്ളം ഒഴുകി വീണ് കോൺക്രീറ്റ് ബ്ലാബ് റൂഫിങ്ങിന്റെ നാലിടങ്ങളിൽ വെള്ളം കെട്ടിക്കിടക്കുന്ന പാടുകളും പുപ്പൽ പിടിച്ച അവസ്ഥയിലും കാണുവാൻ കഴിഞ്ഞു.

3. To ascertain weather in rainy seasons, water seeps down and results in leakage through the roof of the terrace.

അതെ. ട്രാഫോർഡ് ഷീറ്റുകളിലെ തുള്ളുകളിൽ നിന്നും ഒഴുകി വീഴുന്ന മഴവെള്ളം താഴെ കോൺക്രീറ്റ് സ്ലാബിൽ കെട്ടിനിൽക്കുകയും അത് താഴേക്ക് seepage വഴി ഒലിച്ചിറങ്ങി വീടിന്റെ കോൺക്രീറ്റിന് ചോർച്ച യുണ്ടാകാൻ സാധ്യതയുണ്ട്.

4. പരാതിക്കാരൻ സ്ഥലത്തു ആവശ്യപ്പെട്ട മറ്റു കാര്യങ്ങൾ
- വിരിച്ചിട്ടുള്ള റൂഫിങ് ഷീറ്റിന്റെ അളവ്
വിരിച്ചിട്ടുള്ള Bhooshan brand GI roofing sheet 2530 Sq.ft.
 - വിരിച്ചിട്ടുള്ള റൂഫിങ് ഷീറ്റിന്റെ ഷീറ്റിന്റെ കനം
ഷീറ്റിന്റെ കനം 0.30 mm without coating.
 - തുരുമ്പ് ട്രസ് വർക്കിലേക്ക് വ്യാപിക്കാൻ സാധ്യതയുണ്ടോ

ഈ വിധം ഷീറ്റുകൾ ദ്രവിക്കുകയാണെങ്കിൽ വളരെ വേഗം തുരുമ്പ് ട്രസ് വർക്കിലേക്ക് പടരാൻ സാധ്യതയുണ്ട്”

In the matter at hand, the complainant, a senior citizen, has alleged that they purchased various roofing materials, including a Trafford sheet, from the opposite party for the purpose of installing a terrace roof on their house, for which they paid a total of Rs. 72,000/-. During the transaction, the opposite party's staff made several assurances to the complainant, including a 15-year guarantee on the Trafford sheet, as well as claims that the sheet was waterproof and resistant to rust. Relying on these representations, the complainant proceeded with the purchase and incurred additional costs of Rs. 2,00,000/- for roof installation.

However, in 2019, the Trafford sheet began to rust, causing damp patches and leakage during rainy seasons. Subsequently, the complainant approached the opposite party for a replacement in accordance with the initial guarantee, but the opposite party admitted issues with the Trafford sheet batch and failed to provide the promised replacement. Despite repeated requests, the opposite party did not take any remedial action, resulting in financial loss, mental anguish, and emotional distress for the complainant. In response, the complainant sent a legal notice, to which the opposite party responded by denying the demands

The complainant alleges that the opposite party engaged in unfair trade practices by selling substandard Trafford sheets with false claims. Consequently, the complainant seeks relief from this Commission.

After careful consideration of the evidence and arguments presented, the following conclusions are made:

Section 2(47) of the Consumer Protection Act, 2019 defines an unfair trade practice as:

"unfair trade practice" means a trade practice which, for the purpose of gaining advantage over other traders or consumers or for restricting competition in any market, adopts any unfair method or practice including any of the following practices, namely: -

(vii) not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;

The rules for issuing bill or cash memo are prescribed by **the Consumer Protection (General) Rules, 2020**. These rules state that:

(1) Every invoice, bill, cash memo or receipt for goods sold or services rendered, issued by a seller shall have the following minimum particulars, namely:

5. Manner of issuing invoice or bill or cash memo or receipt for goods sold or services rendered. -(1) Every invoice, bill, cash memo or receipt for goods sold or services rendered, by a seller shall have the following minimum particulars, namely. -

(a) The name and address of the seller;

(b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing letters or numerals or special characters (hyphen or dash, and slash, symbolised as "-" "and "/" respectively) and any combination thereof, unique for a financial year;

- (c) the date of its issue;
- (d) the name of the consumer;
- (e) the description of goods or services;
- (f) the quantity, in case of goods;
- (g) the shipping address, where applicable;
- (h) the taxable value and discounts;
- (i) the rate of tax;
- (j) the signature of the seller or his authorized representative;
- k) the customer care number or e-mail ID, where available, and
- (1) the total price in single figure, along with the breakup price showing all the compulsory and voluntary charges, such as delivery charges, postage and handling charges, conveyance charges and the applicable tax:

PROVIDED that where such invoice, bill, cash memo, or receipt is issued by a seller in electronic form, the signature of the seller is not required.

(2) The serial number on the invoice, bill, cash memo, or receipt to be issued by a seller shall not be altered, removed, replaced, or erased under any circumstances."

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It was a new insertion in the new CP ACT, 2019. Incorporating this clause holds significant importance since it safeguards the consumer's entitlement to receive comprehensive information regarding the product or service, encompassing crucial details such as the associated price. Furthermore, a well-structured invoice serves as invaluable documentary evidence for the consumer, allowing them to substantiate their procurement of the product or utilization of the services from the specific vendor or service provider when needed, particularly in interactions with Consumer Commissions. If a seller fails to issue a bill or cash memo in the prescribed manner, it would be considered an unfair trade practice. This is because it would deny the consumer the right to know the details of the transaction, which could be used to protect their interests in case of any dispute.

"The description of the goods or services sold or provided" name and address of the manufacturer of the product and services has to include in the invoice, bill, cash memo or receipt for goods sold by the opposite party.

The complainant produced a true copy of Invoice No B-5930/15-16 issued by the opposite party, dated 10-03-2016. (**Exhibit A-1**). not mentioned the name manufacturer of the product. The opposite party failed to mention the manufacturer's name in their reply notice (**Exhibit A-1**). If they had done so, the complainant could have sought recourse with the product's manufacturer to address their concerns. This constitutes an unfair trade practice on the part of the opposite party. The trader's action of not mentioning the name of the manufacturer in the bill is an unfair trade practice. This is because it prevents the consumer from knowing who to contact in case of a problem with the manufacturing product.

Consumer rights are a crucial shield aimed at ensuring fairness and integrity in market practices, thereby alleviating the plight of consumers who may lack awareness of their legally guaranteed protections. The Consumer Protection Act, 2019, enumerates six fundamental rights designed to safeguard consumers:

These six consumer rights are explicitly outlined in Section 2(9) of the Act. They encompass the "**right to be informed**" and the "**right to seek redressal**." These rights grant consumers access to comprehensive information concerning the quality, quantity, potency, purity, standard, and price of goods, products, or services. This empowerment serves as a safeguard against unscrupulous trade practices. The Act, is a reflection of the evolution of these rights, underlining the collective efforts of various stakeholders, including the government, consumer awareness NGOs, traders, and merchants. These entities play a pivotal role in disseminating knowledge about consumer rights through their awareness initiatives. The effectiveness

of consumer protection hinges on the level of awareness among consumers regarding their rights, a key objective of the Act

Consumer rights, as enshrined in the Act, are a critical instrument in levelling the playing field between consumers and businesses, enabling consumers to make informed decisions and seek redressal when their rights are violated. These rights stand as a testament to the commitment of the legal system to safeguard the interests of consumers and ensure ethical conduct in the marketplace.

The opposite party's assertion that the Trafford sheet was supplied by M/s Mirones Boulders and Developers Pvt. Ltd. lacks substantiated evidence. Their failure to mention the manufacturer's name on the invoice (Exhibit A-1) is a significant lapse in complying with trade practice standards and consumer protection. The opposite party failed to issue a bill or cash memo in compliance with the rules, as required by Section 2(47) of the Consumer Protection Act, 2019, and the Consumer Protection (General) Rules, 2020. This omission constitutes an unfair trade practice as it deprives consumers of essential transaction details for protection in case of disputes.

The complainant's claim of a defective Trafford sheet is supported by the expert commissioner's report (**Exhibit C-1**), confirming issues with the sheet. The opposite party failed to challenge or contest this report.

The representations made by the opposite party's staff to the complainant regarding the Trafford sheet's quality, waterproof nature, and rust resistance were a material part of the transaction, and the opposite party is bound by these representations.

In Lucknow Development Authority v. M.K. Gupta [AIR 1994 SC 787 791] Justice R.M. Sahai aptly observed:

"The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove

the helplessness of a consumer which he faces against powerful business, described as, 'a network of rackets' or a society in which, 'producers have secured power' to 'rob the rest' and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked."

Government Departments and other regulatory bodies are entrusted with the responsibility of safeguarding consumers' interests and must also take assertive measures against traders who neglect to provide consumers with invoice, bill, cash memo or receipt for goods sold or services rendered in accordance with the provisions of the Consumer Protection Act, 2019 and The Consumer Protection (General) Rules, 2020. The Commission's registry has been directed to forward a copy of this order to the Secretary of the Department of Consumer Affairs, Government of Kerala, to facilitate subsequent actions.

We find the issue Nos. (II) to (IV) are also found in favour of the complainant for the serious deficiency in service and unfair trade practice that happened on the side of the opposite party. 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 party.

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

Hence the prayer is partly allowed as follows:


- I. The Opposite Party shall refund Rs. 2,00,000/- spent by the complainant for roof installation charges, including labour and other related expenses, to the complainant.
- II. The Opposite Party shall pay Rs. 30,000/- to the complainant as compensation for the deficiency in service and unfair trade practice

committed by the opposite party and for the mental agony, emotional distress, and financial loss sustained by the complainant

- III. The Opposite Party shall also pay the complainant Rs 10,000/- towards the cost of the proceedings.
- IV. The Commission's Registry is directed to forward a copy of this order to the Secretary of the Department of Consumer Affairs, Government of Kerala, for appropriate action in line with the Consumer Protection Act, 2019, and the Rules.

The Opposite Party be liable for the above-mentioned directions which shall be complied with by the Opposite Party 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 at 9% from the date of payment of the amount until the date of realization.

Pronounced in the Open Commission on this the 15th day of September 2023


D.B. Binu, President

V.Ramachandran, Member


Sreevidhya T.N. Member