

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM**

Dated this the **30<sup>th</sup>** day of December 2023.

Filed on: 16/03/2023

**PRESENT**

Shri.D.B.Binu

Shri.V.Ramachandran

Smt.Sreevidhia.T.N

President

Member

Member

**C.C No.192/2023**

**COMPLAINANT**

K G Rajan, Proprietor, S R Packaging, Building no. 28/1, Panickartambalam, Keezhillam P.O, Perumbavoor-683541

(By Adv.Tom Joseph, Court Road, Muvattupuzha-686 661)

Vs.

**OPPOSITE PARTY**

Mr. Jerald Christopher, Proprietor, M/s JC Machinery No. 28/1, Mayor Chitty Babu Street, Pammal, Chennai-600075

**FINAL ORDER**

**D.B. Binu, President.**

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

The complaint is filed under Section 35 of the Consumer Protection Act, 2019. The complainant, who runs a small-scale industry registered under the MSME scheme to earn his livelihood using self-employment, purchased a sheet separator machine from the opposite party to improve his business operations. The machine was supposed to have specific features, including pneumatically individual pressure for sheet separation, compatibility with BOPP film, a 2 HP AC motor with a control panel, and a digital sheet counter, among others, as per a quotation provided by the opposite party.

However, when the machine was delivered and installed, it suffered a breakdown and was found to lack the promised features. Instead of a pneumatic machine, a mechanically operated one was supplied, and the motor was a DC system. Despite the complainant's requests for rectification and a replacement, the opposite party failed to address the issues.

The complainant issued a lawyer's notice to the opposite party, but they did not respond or refund the payment. The complainant has been unable to use the defective machine, resulting in a loss of income. As a remedy, the

complainant seeks a refund of the machine's price, interest on the payment, reimbursement of freight charges, and compensation for the financial losses incurred due to the defective machine.

In summary, the complainant purchased a machine with specific features, but the opposite party delivered a defective machine with different specifications. The complainant seeks a refund, interest, freight charges reimbursement, and compensation for financial losses due to the faulty machine.

## **2) Notice**

The commission sent notice to the opposite party, which was acknowledged by them, but they did not file their version. Therefore, they have been set as ex-parte.

## **3). Evidence**

The complainant submitted an ex-parte proof affidavit along with nine documents, which were marked as **Exhibits A-1 to A-7**.

**Exhibit A1: Copy of the quotation dated 31.03.2022.**

**Exhibit A2: Copy of the purchase order dated 18.04.2022. Exhibit A3: A copy of the bank statement showing the payments to the opposite party.**

**Exhibit A4: Copy of the tax invoice dated 17.6.22.**

**Exhibit A5: Copies of the Email communications.**

**Exhibit A6: Copy of the lawyer notice issued to the opposite party and AD card.**

**Exhibit A7: Copy of the delivery receipt dated 11.6.22 issued by Safe Express.**

## **4) The main points to be analyzed in this case are as follows:**

- i) Whether the complaint 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?

5) **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 bank statement showing the payments to the opposite party (**Exhibit A-3**). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 2019 (**Point No. i**) goes against the opposite party.

In brief, the complainant acquired a machine expecting specific features, but the opposite party supplied a defective machine with distinct specifications. Consequently, the complainant is pursuing a legal case to claim a refund, interest, reimbursement for freight charges, and compensation for financial losses incurred due to the subpar machine. This lawsuit is based on allegations of the opposite party's failure to meet their contractual obligations, which has led to significant grievances, and seeks damages and compensation for deficiencies in service, unfair trade practices, and negligence.

We have heard from Sri. Tom Joseph, the learned counsel representing the complainant. The complaint centers on the delivery of a faulty machine that lacked the promised features. The complainant presented Exhibits A1 to A7 as evidence, and notably, the opposite party did not participate in the proceedings, resulting in an ex parte declaration.

Upon reviewing Exhibit A5, which comprises email correspondence, it becomes apparent that the opposite party initially agreed to take back the machine. In Exhibit A5, through emails dated 22.07.2022 and 29.07.2022, the opposite party committed to replacing the defective machine. However, they failed to fulfil this commitment, leading to the issuance of Exhibit A6, a lawyer's



notice. Despite this legal notice, the opposite party did not take the necessary steps to replace the machine.

Given that the opposite party themselves acknowledged the machine's defects and made a commitment to rectify the situation, they had a clear responsibility to follow through with the replacement. Their reluctance to do so undeniably constitutes a service deficiency.

In light of these circumstances, the complainant respectfully requests that the complaint be granted in their favour.

The evidence presented included an ex-parte proof affidavit filed by the complainant, and it was unchallenged by the opposite party. Therefore, the complainant's claims were considered credible and supported by the evidence. Therefore, the complainant requests the commission to grant the relief sought, including compensation for mental agony and unfair trade practices.

The opposite parties' conscious failure to file their written versions 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 opposite party. We have no reason to disbelieve the words of the complainant against the opposite party. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

This judgment is rendered under Section 35 of the Consumer Protection Act, 2019, in response to a complaint filed by the complainant, a small-scale industry owner registered under the MSME scheme to earn his livelihood using self-employment. The complainant sought redress for issues arising from the purchase of a sheet separator machine from the opposite party. The machine was intended to possess specific features, as indicated in a quotation provided by the opposite party. However, upon delivery, it was discovered that the machine did not meet the promised specifications and had significant defects. The complainant's attempts to resolve the matter were met

with unfulfilled promises by the opposite party, leading to the initiation of this complaint.

The key points of analysis and determination in this case are as follows:

- i) Maintainability of the Complaint:** As per Section 2(7) of the Consumer Protection Act, 2019, the complainant qualifies as a consumer since they purchased goods for consideration. Therefore, the complaint is maintainable.
- ii) Deficiency in Service and Unfair Trade Practice:** The evidence presented, including Exhibits **A1 to A7**, supports the complainant's claims. It is evident that the opposite party supplied a machine that did not meet the specified features, leading to a breakdown upon installation. Despite acknowledging the defects and promising to replace the machine through email communications (**Exhibit A5**), the opposite party failed to fulfill their commitment. This constitutes a clear deficiency in service and unfair trade practice on the part of the opposite party.
- iii) Entitlement to Relief:** Considering the evidence and the complainant's justified grievances, they are entitled to relief. The complainant seeks a refund of the machine's price, interest on the payment, reimbursement of freight charges, and compensation for financial losses due to the defective machine.
- iv) Costs of the Proceedings:** The opposite party's refusal to participate in the proceedings and their failure to address the legitimate concerns of the complainant have necessitated legal action. Therefore, the costs of the proceedings, if any, shall be borne by the opposite party.

In summary, the complainant is a consumer, and the evidence supports their claims of deficiency in service, unfair trade practices, and negligence on the part of the opposite party. The opposite party's refusal to rectify the defects, despite acknowledging them, is a clear violation of the complainant's rights. Therefore, this Commission finds in favour of the complainant.

The evidence presented, including an unchallenged ex-parte proof affidavit and exhibits, establishes the complainant's case. The opposite party's non-



participation implies their admission of the allegations. As such, the Commission has no reason to doubt the complainant's claims.

A. **Relevant Case Law:** The Hon'ble National Commission's order dated 2017 (4) CPR page 590 (NC) is cited as precedent, where a similar stance was taken. In that case, the National Commission upheld the complainant's claim when the opposite party failed to challenge the allegations and evidence presented by the complainant. This precedent supports the complainant's case and strengthens the argument for finding in his favor.

B. **Liability of the manufacturer :**

*Compared to the Consumer Protection Act, 1986 Act, the Consumer Protection Act, 2019 represents a more comprehensive approach, aligning well with international consumer protection laws. One of the standout features of the 2019 Act is its product liability system, which offers a consumer-friendly method for resolving disputes. Chapter VI of the 2019 Act marks a significant advancement in Indian consumer law by introducing a new framework for addressing injuries caused by defective products. This development is a notable shift in both consumer protection and product liability.*

*The law aims to provide fair compensation for damages or injuries resulting from defective products, seeking a balance between the rights and interests of manufacturers/sellers and consumers. Given that the law is relatively new, there are limited judicial precedents to gauge the general trend in applying strict product liability claims against manufacturers, sellers, or service providers.*

*The shift from the traditional concept of "buyer beware" to "seller beware" under the 2019 Act signifies a major transformation in consumer rights. The Act promotes transparency in transactions and holds sellers and endorsers accountable for their products, moving away from the contract law principle of "Let the Buyer Beware" (caveat emptor) towards "Let the*

**"Seller Beware" (caveat venditor)**, indicating a progressive step in consumer protection.

Under Section 84 of the Consumer Protection Act, 2019, a **"product manufacturer"** faces liability in several scenarios related to their products. These include:

1. **Manufacturing Defects:** If the product has flaws originating from the manufacturing process.
2. **Design Defects:** If there are inherent issues in the design of the product that render it unsafe or unfit for its intended use.
3. **Deviation from Manufacturing Specifications:** If the final product differs from its original manufacturing specifications.
4. **Inadequate Information:** If the manufacturer does not provide sufficient information about the product, particularly regarding its safe use, potential risks, or other essential details.

These provisions ensure that manufacturers are held accountable for the safety, quality, and reliability of their products, thereby protecting consumer interests.

In conclusion, the opposite party is liable for their failure to deliver a machine with promised features, causing financial losses and inconvenience to the complainant. Therefore, the Commission orders the following relief:

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.

We find the issue Nos. (i) to (iv) are found in favour of the complainant for the serious deficiency in service and unfair trade practices 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.

Hence the prayer is partly allowed as follows:

- I. The opposite party shall refund the price of the machine, which amounts to ₹2,36,000/- (two lakh thirty-six thousand rupees) as per (Exhibit A-3), to the complainant.
- II. The opposite party shall reimburse the complainant ₹23,190/- (twenty-three thousand one hundred ninety rupees) for freight charges, as per (Exhibit A-7), to the complainant.
- III. The opposite party shall pay compensation of ₹1,50,000/- (one lakh fifty thousand rupees) to the complainant for the loss of income resulting from the faulty machine and the subsequent financial losses incurred. This compensation is awarded due to the serious deficiency in service and unfair trade practices on the part of the opposite party. The complainant has endured considerable inconvenience, mental distress, financial hardships, and related losses as a result of the opposite party's negligence and unfair trade practices, which warrant this compensation.
- IV. The Opposite Party shall also pay the complainant a sum of ₹10,000 (Ten Thousand) towards the cost of the proceedings.

The Opposite Party shall be liable to comply with the above-mentioned directions within 30 days from the date of receipt of a copy of this order. Should they fail to comply, the amounts specified in points (i), (ii) and (iii) will accrue interest at the rate of 9% per annum. This interest will be calculated from the date of the complaint (16.03.2023) until the date of realization.

The Opposite Party shall have the liberty to take back the machine in question from the complainant within 30 days of complying with the above directions.

Pronounced in the open commission on this 30<sup>th</sup> day of December 2023.

  
D.B. Bino, President

  
V. Ramachandran, Member

  
Sreevidhya T.N., Member