

BEFORE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
SHIMLA (H.P.)

Complaint No.: 181/2022
Presented on: 27.07.2022
Decided on: 09.10.2023

Nek Ram Shyam,
Son of Late Shri Bhagat Ram Shyam,
Resident of Shyam Niwas, Sadhna Ghatti,
Chotta Shimla, District Shimla, H.P.

....Complainant

Versus

M/s. Nike Showroom,
Secor-17, Chandigarh,
Through its Proprietor,
SCO-42, Sector-17 E,
Opposite Sindhi Sweets,
Chandigarh.

....Opposite Party

Coram :

Dr. Baldev Singh, President.

Mr. Jagdev Singh Raitka, Member.

For the Complainant: Mr. Anil Chauhan, Advocate.

For the Opposite Party: Ex-parte.

ORDER:

Present complaint has been filed by Nek Ram Shyam (hereinafter referred to as the complainant) under Section 35 of the Consumer Protection Act 2019 (hereinafter referred to as the Act) against M/s. Nike Showroom (hereinafter referred to as the OP) on account of deficiency in service and unfair trade practice, seeking relief therein that the OP be directed either to replace the defective Nike Shoes with new one or to refund Rs.17,595/- alongwith interest, to pay Rs.10,000/- as compensation, to pay Rs.15,000/- as litigation costs etc.

2. The case of the complainant in brief is that on 17.09.2021, the complainant purchased Nike Shoes from the OP for Rs.17,595/- and the OP issued cash memo, but the same got misplaced by the complainant and same is not traceable till date. It is stated that the payment of the said shoes was made by the complainant through his PBS of Punjab National Bank, Branch at The Mall, Shimla, H.P. It is stated that at the time of purchase of the shoes the complainant was assured by the OP that shoes as purchased by him is of superior quality with one year

warranty/guarantee. It is stated that the shoes purchased by the complainant started giving problems to him within three months of the purchase as due to manufacturing defect the sole of the shoes got punctured within the warranty period. It is stated that thereafter, the complainant's son visited the shop of the OP and showed the photographs of defective shoes, but the OP refused to cater any services regarding his problems and rejected the claim of the complainant on the ground of eligibility criteria and did not pay any heed towards the complaint of the complainant as well as his son. It is stated that aforesaid acts on the part of OP amounts to deficiency in service as well as unfair trade practice. It is prayed that the complaint may be allowed as prayed for.

3. After admission of complaint, notice was issued to the OP. The OP was duly served and when failed to appear on 28.09.2022, then was ordered to be proceeded ex-parte.

4. The complainant adduced evidence in support of his contentions. On behalf of the complainant affidavit of complainant has been tendered in evidence. Complainant has also filed documents in support of his contentions.

5. We have heard Ld. Counsel for the complainant and have also gone through the entire record carefully.

6. It is the plea of the complainant that on 17.09.2021, the complainant purchased Nike Shoes from the OP for Rs.17,595/- and the OP issued cash memo, but the same got misplaced by the complainant and same is not traceable till date. It is further plea of the complainant that the payment of the said shoes was made by the complainant through his PBS of Punjab National Bank, Branch at The Mall, Shimla, H.P. It is the plea of complainant that the shoes purchased by the complainant started giving problems to him within three months of the purchase as due to manufacturing defect the sole of the shoes got punctured within the warranty period and thereafter his son visited the shop of OP and told about the condition of shoes, in question, but the OP refused either to replace the same or to refund the amount.

Notice of complaint was issued to the OP and OP opted to be proceeded against ex-parte, rather than to contest the same. Such facts have also been asserted by the complainant in his proof affidavit. The fact that the sole of the shoes got punctured within the three months of its purchase appears to be genuine from the perusal of photograph annexed with the complaint as Annexure C-3. Moreover, the factum of payment of shoes to the OP is also clear from the perusal of Annexure C-1. Since the OP chose not to contest the complaint and opted to be proceeded ex-parte, hence, there is nothing on record to disbelieve the case and evidence of the complainant, which goes unrebutted. In other words, evidence produced by the complainant is sufficient to prove his case against the OP that there was deficiency in service as well as unfair trade practice on the part of the OP and therefore, we are of the opinion that the complainant has been able to prove his case against the OP. Accordingly, it is held that the OP is liable to compensate the complainant for the same.

7. In view of the foregoing discussion and reasons assigned therein the complaint is ordered to be allowed and the OP is directed to refund Rs.17,595/- to the complainant. The OP is also directed to pay a sum of Rs.5,000/- to the complainant as compensation for mental harassment and agony and sum of Rs.5,000/- as costs of litigation. The OP shall collect the product from the complainant at its own costs, if needed. The OP is directed to comply this order within 45 days from the date of passing of the order. Copy of this order be supplied to the parties free of cost as per rule. The file after its due completion be consigned to the Record Room.

Announced on this the 9th day of October, 2023.

(Dr. Baldev Singh)
President

(Jagdev Singh Raitka)
Member