

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM  
ERNAKULAM**

**Complaint Case No. CC/17/447  
( Date of Filing : 13 Nov 2017 )**

1. SAINUL ABIDEEN

AGED 37 S/O HAMEEDKUNJU KARUPPAM VEETIL  
DESHABHIMANI ROAD MULLOTHU LANE KALOOR P  
O KOCHI 682017

.....Complainant(s)

Versus

1. TTL TRADING PVT LTD

NEAR OBERON MALL NH BYE PASS PADIVATTOM  
EDAPPALLY KOCHI 682024

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. D.B BINU PRESIDENT  
HON'BLE MR. RAMACHANDRAN .V MEMBER  
HON'BLE MRS. SREEVIDHIA T.N MEMBER**

**PRESENT:**

**Dated : 31 Jul 2023**

**Final Order / Judgement**

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM**

**Dated this the 31<sup>st</sup> day of July, 2023**

Filed on: 13/11/2017

**PRESENT**

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member

Smt.Sreevidhia. T. N

Member

**C.C. NO.447/2017**

**Between**

**COMPLAINANT**

Sainul Abdeen, S/o. Hameed Kunju, Karuppam Veetil, Deshabhimani Road, Mulloth Lane,  
Kaloor P.O., Ernakulam 682017

VS

**THE OPPOSITE PARTIES**

1. TTL Trading Pvt. Ltd., Near Oberon Mall, NH Bypass, Padivattom, Edappally, Kochi 682024. Rep. by its Manager

(Rep. by Adv. G.G. Manoj, V/s, 5<sup>th</sup> Floor, Empire Building, High Court End, Old Railway Station Road, Cochin 18)

2. Toshiba India Pvt. Ltd., Corporate Office, 3<sup>rd</sup> Floor, B1 No. 10B, DLF Cyber City, Gurugon, Delhi 122002. Rep. by its Managing Director.

(Rep. by Adv. Rajeswary K., Nura Huda Masjid Building, Opp. Specialist Hospital, Ernakulam North 682018)

**FINAL ORDER****DB.Binu, President****1. A brief statement of facts of this complaint is as stated below:**

The complaint is filed under Section 12 (1) of the Consumer Protection Act, 1986. The brief facts, as averred in the complaint, are that the complainant has filed a complaint under Section 12 (1) of the Consumer Protection Act, 1986. The complaint states that he purchased a 32-inch LED TV from the first opposite party (seller) on 22/12/2016, who assured good quality and a 3-year warranty. However, the TV became defective and useless before completing a year. The complainant contacted the second opposite party (service provider) to resolve the complaint but received no response. When the complainant approached the first opposite party for a replacement as per the warranty card, they rejected the request, claiming that the Toshiba Company does not exist in TV manufacturing and sales. The first opposite party sold the TV without disclosing the warranty details and the existence of the second opposite party during the sale. The complainant seeks a refund of Rs. 15,000 paid, compensation of Rs. 30,000 for damages and mental agony, costs of proceedings, and other reliefs from the opposite parties.

**2. Notice**

Notices were issued from the Commission to the opposite parties. The opposite parties received the notice and filed their versions.

**3. THE VERSION OF THE FIRST OPPOSITE PARTY**

The complainant purchased a Toshiba TV on December 22, 2016. The opposite party acquired the TV from LULU Hypermarket for onward sale in their retail outlet, as indicated by a tax invoice dated April 17, 2015. They assert that the TV sold to the complainant is a genuine

product in perfect working condition. The complainant examined the product before purchasing it and found it to be without fault.

The opposite party is a retail dealer without the authority or expertise to handle product complaints and only the authorized service center is authorized to address complaints regarding Toshiba products, as per the terms and conditions of the warranty. The opposite party denies the allegations of hiding the closure of the manufacturer company and selling the product under false pretences. The opposite party provided information about the product being sold and its condition at the time of purchase.

There is no deficiency of service on their part and the opposite party acted in good faith based on the warranty promised by the manufacturer. The opposite party had a demand for 30 TVs from Toshiba, out of which 17 units were sold to the complainant at a lower price than the purchase price. The opposite party denies mistreating the complainant, emphasizing that as a retailer, they cannot ill-treat customers.

In response to the complaint about the product defect, the opposite party promptly contacted the manufacturer's authorized service center and booked a complaint on behalf of the complainant. The opposite party provided the complainant's contact details to the service center for further communication. The opposite party accuses the complainant of filing the complaint without disclosing these actions, suggesting an attempt to mislead.

The opposite party is not in a position to replace the complainant's TV and the warranty and service fall under the manufacturer's responsibility and deny engaging in unfair trade practices or providing deficient service. The opposite party challenges the complainant to provide evidence of any alleged deficiencies or defects in the product.

The relief sought against them is not sustainable, denying any liability to pay the requested amount. The opposite party denies causing harassment, mental agony, or mistreatment to the complainant.

#### 4. THE VERSION OF THE SECOND OPPOSITE PARTY (TOSHIBA COMPANY)

The complainant purchased a Toshiba LED 32P2400ZE (referred to as "LED") with serial number E496D2300776G1 from the first opposite party for Rs. 15,000, as per Invoice No. EDY/2016-17/1761 dated 22.12.2016. The complainant has not provided a clear copy of the invoice, and the purchase date is unclear. The second opposite party provides a one-year warranty for the LED from the date of original purchase, and their liability is limited to the terms and conditions of the warranty.

The complaint is criticized for being vague and for the complainant's alleged suppression of material facts. The second opposite party states that they inspected their records after receiving notice from the commission but found no details of the complaint. The complaint registration procedure involves assigning a unique complaint registration number for record-keeping and progress tracking. Since the complainant did not specify the unique complaint number or provide any evidence of contacting the second opposite party, the absence of a complaint suggests no deficiency in service.

The complainant failed to provide specific details of the defect and did not include any documents confirming their approach to the second opposite party regarding the alleged malfunction of the LED. The warranty provided is only for one year, and the warranty card

annexed to the complaint belongs to a different Toshiba LED model (PC, PB, PS series) and is not applicable. The second opposite party disclaims liability for any unauthorized issuance of a different warranty card by a third party.

The complainant did not file any complaint with the second opposite party within the one-year warranty period regarding the alleged malfunction of the LED T.V..

#### 5) Evidence

The complainant had produced a proof affidavit and 2 documents that were marked as Exhibits A-1 to A-2.

Exhibit A1: Copy of the warranty card

Exhibit A2: Copy of the Retail invoice bill.

The first opposite party had produced a proof affidavit and 2 documents that were marked as Exhibits B-1 to B-2.

Exhibit B1: The true copy of the Tax Invoice issued by M/S LULU Hyper Market in favour of the Opposite Party which shows the purchase of the Toshiba LED TV as per Form 8 dated 17.04.2015.

Exhibit B2: The true copy of the E-mail dated 30 11-2017 communication showing the registration of the complaint made by the first Opposite Party on behalf of the Complainant.

#### 6) The main points to be analyzed 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?

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

As per Section 2 (1) (d) of the Consumer Protection Act, 1986, 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 had produced a Copy of the Retail invoice dated 22.12.2016 issued by the first opposite party.

(Exhibits A-2). The document revealed that the complainant had paid the requisite consideration for the product to the opposite parties. Therefore, we are only to hold that the complainant is a consumer as defined under the Consumer Protection Act, of 1986 (Point No. i) goes against the opposite parties.

The complainant has filed this complaint against the first and second opposite parties, seeking compensation for the alleged deficiency in service. The complainant approached the first opposite party requesting a replacement for the TV according to the warranty card. However, the first opposite party rejected the request, stating that the second opposite party does not exist in the TV manufacturing and sales industry.

The complainant contends that the first opposite party sold them the TV without disclosing the warranty details or the existence of the second opposite party. This implies that the complainant believes they were misled or deceived by the first opposite party, as there was a lack of transparency regarding the warranty and the involvement of the second opposite party.

The learned Counsel for the complainant submitted that the opposite parties did not present any oral or documentary evidence, instead filing a vague argument note that admitted the sale, registration of complaint, and involvement of the second opposite party during the guarantee period.

The complainant argues that the first opposite party violated the fundamental principle of "Caveat venditor" by selling the TV without disclosing important information about the warranty and the company's existence. The seller-consumer relationship is established as the first opposite party admits the sale.

The argument note filed by the opposite party is a typical response in similar cases and does not address specific concerns. Evidence, such as newspaper articles, proves that the second opposite party closed its TV business in January 2016. The first opposite party sold the TV without disclosing the discontinuation of the TV business by the Toshiba Company, which indicates unfair trade practices and a deficiency in service.

The TV purchased by the complainant became defective within the warranty period, qualifying as a "Deficiency of Service" under the Consumer Protection Act. The liability for this deficiency rests with the first opposite party, as the sale occurred after the shutdown of the second opposite party's business.

Both opposite parties should be jointly and severally liable for compensating the complainant for the loss and mental agony suffered by the complainant and their family. The TV was an entertainment tool for the entire family, and their inability to use it caused significant losses and damages.

The non-attendance and delay in addressing the complainant's complaint are considered further deficiencies in service on the part of both opposite parties.

The learned Counsel for the first opposite party submitted that they are not able to replace the TV and the product sold was genuine and in good working condition, with warranty and service falling under the responsibility of the manufacturer. The complainant had ample opportunities to prove the alleged defect but failed to provide solid evidence or submit the product for examination by an authorized technical expert. The first opposite party denies any unfair trade practice or deficiency of service and states that the relief sought by the complainant is unsustainable. They assert that there was no harassment or financial loss caused by the first opposite party. They further emphasize that as a retailer, they lack the expertise to handle complaints and that the matter should be addressed by authorized service centres as per the warranty terms. The first opposite party made a complaint to the service centre on behalf of the

complainant and fulfilled their obligations. Hence, the liability for any loss or defect lies solely with the manufacturer and not the dealer.

The learned Counsel for the second opposite party submitted that the second opposite party provides a one-year warranty for the LED T.V., and their liability is limited to the terms and conditions of the warranty. The complaint is criticized for being vague and for the complainant allegedly suppressing material facts. The second opposite party states that they found no record of the complaint in their system after inspecting their records. The complainant failed to provide specific details of the defect and did not include any documents showing their approach to the second opposite party regarding the alleged malfunction. The warranty card attached to the complaint is for a different Toshiba LED model and is not applicable. The second opposite party disclaims liability for any unauthorized issuance of a different warranty card. Additionally, the complainant did not file any complaint with the second opposite party within the one-year warranty period regarding the alleged malfunction.

After carefully considering the evidence presented in this case, it is observed that the complainant has provided documentary evidence, specifically the warranty card (**Exhibit A1**) and the invoice bill (Exhibit A2), in support of their claims. On the other hand, the opposite parties have failed to produce any oral or documentary evidence before the commission. The complainant contends that the first opposite party sold the TV without disclosing crucial information regarding the warranty and the closure of the TV business by the second opposite party. It is noteworthy that the first opposite party admitted to the sale, thereby establishing the existence of a seller-consumer relationship. Newspaper articles have been submitted as evidence to corroborate the shutdown of the TV business by the second opposite party.

According to the complainant, the actions of the first opposite party amount to unfair trade practices and deficiency in service. Furthermore, it is evident that the TV purchased by the complainant became defective within the warranty period. In this regard, reference is made to Section 2(1)(f) of The Consumer Protection Act, 1986, which defines deficiency of service as encompassing acts of negligence, omission, commission, and deliberate withholding of relevant information.

It is observed that the first opposite party, acting as the seller, failed to disclose crucial information regarding the warranty and the closure of the TV business by the second opposite party. This lack of transparency constitutes an unfair trade practice and a deficiency in service.

The TV purchased by the complainant became defective within the warranty period, thereby qualifying as a deficiency of service. The responsibility for this deficiency lies with the first opposite party, as the sale occurred after the shutdown of the second opposite party's business.

In light of the above findings, it is determined that both the first and second opposite parties should be held jointly and severally liable for compensating the complainant. The complainant is entitled to a refund of the value of the TV with interest.

Furthermore, the complainant seeks compensation for mental agony and damages. Considering the loss and mental agony suffered by the complainant and their family. Additionally, the non-attendance and delay in addressing the complainant's complaint are further deficiencies in service on the part of both opposite parties.

In view of the above facts and circumstances of the case, we are of the opinion that the Opposite Parties are liable to compensate the complainant.

We find the issues Nos. (ii) to (iv) are found in favour of the complainant for the serious deficiency in service that happened on the side of the opposite parties. Naturally, the complainant had suffered a lot of inconveniences, mental agony, hardships, financial loss... etc. due to the negligence of the Opposite Parties.

Hence the prayer is partly allowed as follows:

- I. The Opposite Parties shall refund the value of the TV after deducting 10% towards depreciation for the usage of the same for one year.
- II. The Opposite Parties shall pay the complainant Rs.25,000/- as compensation for loss caused to the complainant due to the deficiency in service and unfair trade practices of the opposite parties.
- III. The Opposite Parties shall also pay to the complainant Rs.5,000/- towards the cost of the proceedings.

The 1<sup>st</sup> and 2<sup>nd</sup> Opposite Parties be jointly and severally liable for the above-mentioned directions which shall be complied with by the Opposite Parties 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 @9% from the date of receipt of a copy of this order till the date of realization.

Pronounced in the Open Commission on this 31<sup>st</sup> day of July, 2023

Sd/-

D.B.Binu President

Sd/-

V.Ramachandran Member

Sd/-

Sreevidhia TN., Member

Forwarded/by Order

Assistant Registrar

Assistant Registrar

**APPENDIX**

**COMPLAINANT'S EVIDENCE**

Exhibit A1: Copy of the warranty card

Exhibit A2: Copy of the Retail invoice bill.

**OPPOSITE PARTY'S EVIDENCE**

Exhibit B1: The true copy of the Tax Invoice

Exhibit B2: The true copy of the E-mail dated 30 11-2017

Despatch date:

By hand:    By post

kp/

**CC No. 447/2017**

**Order Date: 31/07/2023**

**[HON'BLE MR. D.B BINU]  
PRESIDENT**

**[HON'BLE MR. RAMACHANDRAN .V]  
MEMBER**

**[HON'BLE MRS. SREEVIDHIA T.N]  
MEMBER**