

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, ERNAKULAMDated this the 15th day of February 2024.

Filed on: 11/07/2022

PRESENT

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

President
Member
Member

C.C.No. 338/2022**COMPLAINANT**

Midhun N.M., S/o.Mukundhan N.V., Nochikkadu Veedu, House No.443,
Cherai-683 514

Vs**OPPOSITE PARTY**

Coolcare Refrigeration,, Samsung Authorized Service Centre,
Napa Tower, Vedimara, Mannam P.O., North Paravoor, Ernakulam,
Pin-683 520

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

This complaint was filed under Section 35 of the Consumer Protection Act, 2019. The fridge purchased by the complainant developed a malfunction, leading to a service request at Samsung's service center. Upon inspection at the complainant's home, the service technician advised replacing certain fridge components, providing an estimated cost. Despite replacing the recommended parts, the fridge's issues persisted. Efforts by the complainant to secure further repairs from the responsible party were unsuccessful. A subsequent evaluation by a different technician revealed the need for another part's replacement, making it the fifth component to require changing. The complainant incurred a total expense of 3386 rupees for these repairs. However, the fridge remained in its defective state. In response, the complainant sought compensation for the distress caused and the incurred expenses, taking the matter to the Consumer Commission.

2) Notice

The notice to the opposite party was sent by the Commission. However, despite accepting the notice, the opposite party did not file a version, and as a result, it is set ex parte.

3) Evidence

The complainant had filed an ex-parte proof affidavit and 6 documents that were marked as Exhibits-A-1-A-6.

Exhibit A-1: A copy of the bill issued by the service center to the complainant.

Exhibit A-2: Photocopy of Aadhaar Card.

Exhibit A-3: Call Detail of Call by Complainant to Service Technician.

Exhibit A-4: A copy of the document to prove the complainant approached Customer Care of the opposite party.

Exhibit A-5: Copy of the e-mail to Samsung Customer Care and the Reply sent by the Opposite Party.

Exhibit A-6: Telephone conversation of Complainant with the Opposite Party Staff (Pen Drive).

4) 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 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 bill issued by the service center to the complainant.** 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's failure.

The evidence presented included an ex-parte proof affidavit filed by the complainant, and it was unchallenged by the opposite parties. 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 version 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 as against the opposite party. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

The complaint and accompanying documentation submitted by the complainant indicate that they were compelled to replace various spare parts. The service technician recommended the replacement of specific components of the fridge, along with an estimated cost for these parts. Despite following the advice and replacing the suggested parts, the fridge continued to malfunction. Attempts made by the complainant to obtain further repairs from

the responsible party were fruitless. An assessment conducted by an alternative technician highlighted the need to replace an additional component, marking the fifth part that needed replacement. The complainant has spent a total of 3386 rupees on these repairs, yet the fridge remains defective. Furthermore, the complainant undertook additional repairs, which strongly suggests that the replacements were necessitated by manufacturing defects.

Based on the evidence and legal analysis presented, the following judgment.

- A. **Maintainability of the Complaint:** The complaint is maintainable under Section 2(7) of the Consumer Protection Act, 2019, as the complainant qualifies as a consumer by purchasing goods and availing services from the opposite party.
- B. **Deficiency in Service and Unfair Trade Practice:** The evidence provided by the complainant, including the bill from the service center (**Exhibit A-1**) and correspondence with the opposite party (**Exhibit A-5**), demonstrates a clear case of deficiency in service. Despite multiple attempts at repair, the fridge remained defective, indicating negligence on the part of the opposite party in providing satisfactory service. This constitutes an unfair trade practice under the Consumer Protection Act.
- C. **Entitlement to Relief:** The complainant is entitled to relief as per the provisions of the Consumer Protection Act. The incurred expenses of 3386 rupees for multiple repairs, coupled with mental distress caused by the prolonged malfunctioning of the fridge, warrant compensation from the opposite party.
- D. **Costs of the Proceedings:** The costs of the proceedings, if any, shall be borne by the opposite party due to their failure to respond to the notice and present their version before the commission, leading to an ex parte proceeding.

The decision is supported by established legal precedent, as exemplified in the case of **Nuzhat vs Dee Dee Motors Pvt. Ltd. & Anr, adjudicated by the Honourable National Consumer Disputes Redressal Commission on 3 December 2019**. In this case, a manufacturing defect was defined as a persistent issue that remains unresolved despite diligent attempts made by the dealer.

In conclusion, considering the evidence presented, the failure of the opposite party to contest the allegations, and the legal principles outlined, the commission finds in favour of the complainant. The opposite party is directed to compensate the complainant for the incurred expenses and mental distress caused by the deficiency in service and bear the costs of the proceedings.

We determine that issue numbers (I) to (IV) are resolved in the complainant's favour due to the significant service deficiency and an unfair trade practice on the part of the opposite party. Consequently, the complainant has endured considerable inconvenience, mental distress, hardships, and financial losses as a result of the negligence 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 the amount of ₹3,386 (Rupees Three Thousand Three Hundred Eighty-Six only) incurred by the complainant for the repairs of the refrigerator.
- II. The Opposite Party shall pay ₹20,000 (Rupees Twenty Thousand only) towards compensation for the mental agony and inconvenience caused due to the deficiency in service and unfair trade practice under the Consumer Protection Act.
- III. The Opposite Party shall also pay the complainant ₹5,000 (Rupees Five Thousand only) towards the cost of the proceedings.

The Opposite Party is liable for the above-mentioned directions, which shall be complied with within 30 days from the date of the receipt of a copy of this order. Failing which, the amounts ordered vide items (i) and (ii) above shall attract interest at 9% per annum, starting from the day following the 30-day compliance deadline until the date of realization.

Pronounced in the Open Commission on this 15th day of February 2024.



D.B.Binu, President



V.Ramachandran, Member



Sreevidhia T.N, Member