

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
ERNAKULAM**

Dated this the 15th day of December, 2023.

Filed on: 22/07/2015

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member

Smt.Sreevidhia.T.N

Member

C.C. No. 486/2015

COMPLAINANT

Selvan T.K., S/o Krishnankutty, Thareparambu House, Ezhikkara.P.O., N. Paravoor-683513
(Rep. by Adv. K.S. Sherimon, Sree Bhadra, Mulanthuruthy P.O., Ernakulam)

Vs

THE OPPOSITE PARTIES

1. Shijo K Thomas, SS Technomall (Oxygen Computer Shop) Near Oberon Mall, N H Bypass Opp: Samsung Plaz, Kochi.
2. Lenovo (India) Pvt Ltd, Level II, Doddenakundi Village, Marathhalli, Outerring Rd., Marathhalli P O, K R Puram, Hobli, Bangalore – 5660037.
(Rep. by Adv. M.S. Amal Dharsan & Noel Jacob, TJ Legal, Level2, Greens, Jawahar Nagar, Kadavanthra)

FINAL ORDER

D.B.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. In this case, the complainant is a member of a poor scheduled caste community and purchased a Lenovo laptop and accessories for educational purposes, using a loan from the Kerala State SC/ST Development Corporation. The laptop malfunctioned within a week of purchase, with issues such as a gap in the body and a non-functional keyboard. The complainant attempted to seek assistance from the seller but was met with refusal and ridicule. This denial of service caused the complainant mental, physical, financial, and emotional distress. The complainant claims to be a consumer under the Consumer Protection Act and asserts that the denial of service constitutes deficiency in service and unfair trade practice. They are requesting compensation of Rs. 2 lakhs for the difficulties and distress caused by the negligence and unfair practices of the seller.

2) Notice

The Commission sent notices to the opposite parties, which were acknowledged by them, but they did not file their versions. Therefore, they have been set as ex-parte.

3). Evidence

The complainant submitted an ex-parte proof affidavit along with four documents, which were marked as Exhibits A-1 to A-4. The Expert Commission Report is marked as Exhibit C-1.

- **Exhibit A1:** Electoral ID card No. KL/11/070/405664 belonging to the complainant.
- **Exhibit A2:** Invoice No.SST/14-15/B10334 dated 17-01-2015 issued by the first opposite party for the purchase of the laptop.
- **Exhibit A3:** Loan passbook issued by the Kerala State SC/ST Development Corporation for the educational loan availed by the complainant.
- **Exhibit A4:** A photograph of the laptop showing the defects mentioned in the complaint.

4) The main points to be analysed 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. Copy of Invoice No. SST/14-15/B10334 dated 17-01-2015 issued by the first opposite party for the purchase of the laptop. (**Exhibits A-2**). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 2019. (**Point No. i**) goes against the opposite parties.

We heard K. S. Sherimon, the learned counsel appearing for the complainant. The complainant, belonging to the Pulaya community and facing financial constraints, purchased a Lenovo laptop and accessories for his son's education with a loan from the Kerala State SC/ST Development Corporation. The purchase invoice (**Exhibit A2**) shows the transaction. Unfortunately, the laptop became defective just a week after purchase, with issues like a gap in the body and a non-functional keyboard (evidenced by **Exhibit A4**). The complainant contacted the seller multiple times for repairs but was met with refusal and ridicule.

The complainant claims to be a consumer under the Consumer Protection Act, as he purchased the laptop as per **Exhibit A2** invoice. The seller's deliberate failure to address the defects amounts to deficiency in service and unfair trade practice under section 2(7) and 2(47) of the Consumer Protection Act, respectively. As a

result, the complainant suffered significant mental, physical, financial, and emotional distress.

The complainant seeks compensation of Rs. 2 lakhs for the hardships and distress caused by the seller's negligence and unfair trade practices, including the laptop's cost.

The relevant portion of the Expert Commission Report, appointed by the commission, is extracted below (**Exhibit C-1**).

EXPERT COMMISSIONER OBSERVATION

"1. At the time of inspection, the laptop was not in good working condition. The touch of the display is not responding. Vertical lines present on the screen indicated the malfunctioning of screen and display unit. Keyboard also not detecting. The power unit, hard disk, and motherboard unit are working, operating system is loading, with slow response.

2. From the petitioner's statement, the keyboard was not detecting within a week from the date of purchase. And within the warranty period, touch of the screen becoming non- functioning and which makes the laptop unusable. 3. Petitioner stated that, petitioner contacted the seller, regarding the complaint and the seller was not able to repair or replace the same. No proof regarding the same is produced. No proof of servicing the laptop during the warranty period is also available. 4. Since there are no documents regarding the defect of laptop during the warranty period was available, the exact issue is not identified. On Lenovo official service portal, no historical repair cases found under this serial number laptop. Presently the touch and keyboard of the laptop is not functioning. Which makes any software diagnosis impossible.

5. Hence, from the above statements, expert commission conclusions are, the laptop had become unusable condition within the warranty period. The petitioner contacted the seller. The seller failed to resolve the issues. Petitioner, couldn't document the procedure. But, on the official web portal of Lenovo support, it shows that the laptop has

"Product has a one-year limited warranty which includes a warranty upgrade. This product is entitled to parts and labor and is entitled to on-site service. This machine is also entitled to Accidental Damage Protection"-copy of the page attached.

Which means, the petitioner had already paid for Accidental Damage Protection and opted for onsite warranty. That means the company had to repair or replace the laptop even if it had an accidental damage. And which had to be done on-site. That's at petitioner's premises. Hence it

is the fault of either seller, or the company that, the customer didn't get the service which he actually paid for.”

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 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 as against the opposite parties. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

We have meticulously reviewed the complaint affidavit and the documents submitted by the complainant. We have extracted the pertinent portion of the complaint below for our analysis:

This complaint is filed under Section 12(1) of the Consumer Protection Act, 1986. The complainant, belonging to a disadvantaged scheduled caste community, purchased a Lenovo laptop and accessories for educational purposes using a loan from the Kerala State SC/ST Development Corporation. The laptop experienced significant malfunctions within a week of purchase, including a non-functional keyboard and a malfunctioning touch screen. The complainant's efforts to seek assistance from the seller were met with refusal and ridicule, leading to considerable mental, physical, financial, and emotional distress. The complainant asserts that the seller's conduct constitutes deficiency in service and unfair trade practices, seeking compensation of Rs. 2 lakhs for the hardships endured.

1. **Notice and Evidence:**

The Commission sent notices to the opposite parties, which were acknowledged but not responded to, resulting in them being set as ex-parte. The complainant submitted an ex-parte proof affidavit along with four documents marked as **Exhibits A-1 to A-4**. Additionally, the Expert Commission Report, marked as **Exhibit C-1**, provides observations crucial to this case.

i) Complaint Maintainability:

As per Section 2(7) of the Consumer Protection Act, 2019, a consumer is defined as a person who buys goods or avails services for a consideration. In this case, the complainant's purchase of the laptop, as evidenced by **Exhibit A2** invoice, qualifies the complainant as a consumer. Therefore, the complaint is maintainable.

ii) Deficiency in Service and Unfair Trade Practice:

The Expert Commission Report (**Exhibit C-1**) presents critical observations. It establishes that the laptop was rendered unusable within the warranty period due to various issues, including a non-functioning keyboard and malfunctioning touch screen. The complainant's efforts to seek resolution were futile. The report also notes that the complainant had paid for Accidental Damage Protection and on-site warranty, making it the responsibility of either the seller or the company to address these issues promptly.

These findings substantiate the complainant's claim of deficiency in service and unfair trade practice. The opposite parties' failure to file their versions, despite receiving notices, further strengthens the complainant's case.

iii) Entitlement to Relief:

Given the evidence presented and the findings in the Expert Commission Report, the complainant is undoubtedly entitled to relief. The complainant has suffered considerable mental, physical, financial, and emotional distress due to the negligence and unfair practices of the opposite parties.

iv) Costs of Proceedings:

The Commission, in accordance with the circumstances of this case, may order appropriate costs to be borne by the opposite parties.

In light of the above analysis, it is evident that the complainant is entitled to relief. The opposite parties' failure to respond and the findings of the Expert Commission Report support the complainant's claims of deficiency in service and unfair trade practices.

We find that issues (i) to (iv) also favour the complainant, as they are a result of the serious deficiency in service on the part of the Opposite Parties. Naturally, the complainant has experienced a significant amount of inconvenience, mental distress, hardships, financial losses, etc., due to the deficiency of service and unfair trade practices by the 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.

Hence the prayer is partly allowed as follows:

- I. The Opposite Parties shall refund the sum of ₹51,000/- (Fifty-One Thousand Only) to the complainant, corresponding to the invoice price of the laptop (**Exhibit A2**).
- II. The Opposite Parties shall pay the sum of ₹40,000/- (Forty Thousand Only) as compensation for the deficiency in service and unfair trade practices they committed.

III. The Opposite Parties shall also pay the complainant the sum of ₹10,000/- (Ten Thousand Only) towards the cost of the proceedings.

The opposite parties are jointly and severally liable for the above-mentioned directions. They must comply within 30 days from the date of receiving a copy of this order. If they fail to do so, the amounts ordered in points (i) and (ii) above will attract interest at a rate of 9% per annum from the date of the complaint (22.07.2015) until the date of realization.

Pronounced in the Open Commission on this the 15th day of December, 2023.

Sd/-

D.B.Binu, President

Sd/-

V. Ramachandran, Member

Sd/-

Sreevidhia.T.N, Member

Forwarded/By Order



Assistant Registrar

Appendix

Complainant's Evidence

Exhibit A1: Electoral ID card No. KL/11/070/405664 belonging to the complainant.

Exhibit A2: Invoice No.SST/14-15/B10334 dated 17-01-2015 issued by the first opposite party for the purchase of the laptop.

Exhibit A3: Loan passbook issued by the Kerala State SC/ST Development Corporation for the educational loan availed by the complainant.

Exhibit A4: A photograph of the laptop showing the defects mentioned in the complaint.

Opposite party's evidence

Nil

kp/

Despatch date:

By hand:

by post:

C.C. No. 486/2015

Order date: 15/12/2023