IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 24.02.2015
Date of Hearing: 29.05.2024
Date of Decision: 02.09.2024

FIRST APPEAL NO.-101/2015

IN THE MATTER OF

.....

(Through: Mr. Kapil Chawla, Advocate)
…Appellant

VERSUS

1. **SUHRIT HYUNDAI,**
   SUHRIT SERVICE PVT. LTD.
   C-97, MAYAPURI INDUSTRIAL AREA,
   NEW DELHI- 110064

   …Respondent no.1

2. **HYUNDAI MOTORS LTD.,**
   CUSTOMERS RELATIONS OFFICE,
   REGIONAL OFFICE,
   A-30, MOHAN COOPERATIVE
   INDUSTRIAL ESTATE,
   MATHURA ROAD,
   NEW DELHI-110044
3. **HYUNDAI MOTORS INDIA LTD.,**
   HEAD OFFICE, PLOT NO. H-1, SITCOT
   INDUSTRIAL PARK,
   ILIGUNGALIUKOLLAI,
   SRIPERUMBUDUR,
   CHENNAI,
   TAMIL NADU-602105.

   …Respondent no. 2&3

CORAM

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE MR. J.P. AGRAWAL, MEMBER (GENERAL)

Present: None for the parties.

PER:HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,PRESIDENT

JUDGMENT

1. The facts of the case as per the District Commission record are as under:

"That the respondents had given an advertisement in the Times of India newspaper on 22/12/08 in fashion and style of Docamber Double Jackpot pouring the public to buy a Hyundai Santro car GL (AC+ Power steering) at 10 years old price of Rs.2.99 Lakh along with other attractive offers as mentioned in the advertisement). In this advertisement it is interalia stated that the buyers will got (free Insurance + Accessories worth Rs.15000 +Exchange discount of Rs.7500, Total savings Rs.33173 +Full excise benefit etc.

That the complainant got impressed by this lucrative offer and made up his mind to accept this offer and thereafter the complainant approached the Respondent No. 1 who are one of the authorized dealer of Hyundai.

That the complainant deposited with the respondent no. 1 an amount of Rs.3.32 Lakh (Rs 2.00 Lacs By Cheque vide receipt no. 2677 dated 29-12- 2008 and Rs 1,32,000/- by cash vide receipt no. 2152 dated 30-12-2008). Copies of both these receipts given by the respondent no. 1.

That at the time of depositing the aforesaid amount the respondent no. 1 assured the complainant that the Santro car for which the above mentioned amount has been received by them would be

delivered to the complainant on or before 31/01/09, but this assurance had gone in vain. Complainant was however told to wait till 10/02/09, when the car will be definitely be delivered to the complainant.

That on 10/02/09 the complainant again visited the office of the respondent no. 1 to take the delivery of the said car but was shocked to know that the respondent no. 1 has closed its Mayapuri Showroom and nobody was there to tell the actual situation. The complainant had therefore lodged a complaint with the police station Mayapuri on 10-02-2009 to take necessary action against the respondent in this matter as the complainant Has Been cheated the receipt under Rubber Stamp of the Police Station.

That the complainant approached Respondent No. 3 (Head Office of Hyundai Motors India Ltd.) as well as Respondent No. 2 (Customers Relation Office of the respondents, situated at A-30 Mohan Cooperative Industrial Estate, Mathura Road, New Delhi) and had sent to them several Emails including the E mail dated 27/03/09 (Copy of Email is annexed as Annexure-C3to this complaint. The complainant was told that necessary action will be taken in the matter within 3 Working days but no action was taken by the respondents. That the complainant made no of calls on customer care no. 1800114645 and registered several complaints regarding the said conduct of he dealer and customer relation department but no one bothered about it.

That the complainant received a letter dated 8-06-2009 from the respondent informing the complainant that they will not pay the interest at all nor they will refund the money unless the complainant withdrew the complaint lodged against the

respondent.

That the complainant had sent the Legal notices dated 23-05-2009 and 30/04/09 to the respondent through his advocate Sh Jitender V Tomar whereby respondent were called upon to deliver the said booked car along with the interest and compensation of Rs 1 Lakh towards mental agony within 7 days along with cost of Rs. 11,000/- incurred by him towards notice fees etc. Copies of both these Legal notices are annexed as annexure C-5 & C-6 respectively to this complaint, but these Legal notices had also no effect on the respondents.''

2. The District Commission after taking into consideration the material available on record passed the order dated **02.01.2015**, whereby it held as under:

''...After considering the facts of the case in its entirely we find ourselves in full agreement with O.P-II and O.P-III that the Complainant has utterly failed to establish any nexus between himself and O.P-II and O.P-III. Though admittedly, they are the manufacturers of the Santro Cars yet since the booked car has not been delivered by O.P-I to the Complainant despite having received Rs. 3,32,000/- on their own account vide Ex C-2 (Colly), no liability can be fastened in this case on O.P-II and O.P-III for any deficiency-in-service or sale of the car. If any false assurance is given or misrepresentation made by O.P-I on behalf of O.P-II and O.P-III on the basis of advertisement (Annexure C/1) O.P-II and O.P-III cannot be held responsible for the same, especially when 3 undoubtedly the relationship between the manufacturer and the dealer In such cases are on Principal to Principal basis. There

is no whisper even in the allegations that the consideration received by O.P-I has been passed on to O.P-II and O.P-III from the letter dated 8.6.09, (Annexure C-4) it is abundantly clear that the booking amount till then was lying with O.P-I who offered to refund the same due to their inability to deliver the car but the Complainant insisted for its delivery and refused to accept the refund without interest. In view of this fact on record, we feel fully satisfied that the Complainant has failed to establish any liability on the part of O.P-II and O.P-III to deliver him the car booked by him and assured by O.P-I to be delivered under the scheme advertised vide Ex C-1.

However, O.P-I, who as stated above has been proceeded exparte, cannot escape their liability for breach of their commitment having received the booking amount of Rs. 3,32,000/- towards the cost of the booked car to be delivered to the Complainant as assured by O.P-I.

Receipt of the money by O.P-I is fully established from the documents placed on record especially Annexure-C/2 (Colly) and Annexure-C/4. In view of these documents available on record, the case of the Complainant stands proved as to refund the amount received by them towards the booking at the car against O.P-I, who are liable with interest from the date of the money was paid to them, by the Complainant.

Allowing the complaint, therefore, we direct O.P-I, to refund to the Complainant sum of Rs. 3,32,000/- with interest @ 9% p.a. w.e.f. 1.1.2009 till realization.

No order as to compensation because the interest awarded in this case shall adequately meet the ends of justice. However, O.P-I

shall have to pay a sum of Rs. 10,000/- as cost of litigation to the Complainant.''

3. The Appellant has filed this appeal challenging the District Commission's judgment on the grounds that the lack of a current address for Respondent 1 prevents the execution of the order. Consequently, the Appellant argues that Respondent Nos. 2 and 3 should be held responsible for its execution. Furthermore, since Respondent Nos. 2 and 3 have admitted that the dealership with Respondent 1 has not been terminated, they cannot absolve themselves of liability.

4. Respondent Nos. 2 and 3, however, refuted all of the Appellant's claims. They argued that no allegations were made against them in the entire complaint. Additionally, they contended that the manufacturer's liability is confined to warranty obligations and that they cannot be held responsible for issues related to the retail of the vehicle.

5. We have perused the material available before us and heard the counsel for the parties.

6. The **only question** for our consideration **is Whether Respondent Nos. 2 and 3 should be held liable in the event that Respondent No.** ***1 cannot be served with the District Commission's order*****.**

7. To resolve this issue we deem it necessary to discuss the dicta of **2023 NCDRC Revision Petition No. 3445 of 2017 Shivani vs Mahindra & Mahindra** where the National Commission in the absence of agreement of manufacturer and dealer on record observed that

"From the above, it is clear that even if Principal to

Principal relationship is assumed in case of

manufacturer and dealer of a car, the manufacturer is liable for its published warranties with respect to repair/replacement of spare parts/car during the warranty period, subject to due observance of the conditions of warranty by the customer. For the reasons stated above, in such cases dealer will also be liable severally and jointly along with the manufacturers. Although, in the present case, no dealer agreement has been produced/available on records to establish Principal to Principal relationship between the manufacturer and dealer, we shall examine the respective liabilities of manufacturing and dealer, assuming a Principal to Principal relationship as pleaded by the manufacturer."

8. Similarly, in this case, there is no manufacturer-dealer agreement on record. Therefore, based on the submissions of Respondent Nos. 2 and 3, the court must assume that the agreement is based on a principal-to-principal relationship rather than a principal-to-agent relationship.

9. Further to determine the liability of the Respondent No. 2&3 in case of principal to principal agreements, we find it necessary to rely on the judgments of the Hon'ble Supreme Court in the case of **Indian Oil Corporation v. Consumer Protection Council, Kerala & Anr.** as reported in **(1994) II CPJ 21(SC),**

"...there is no privity of contract between the appellant and the consumer no 'deficiency' as defined under section 2(g) arises. Therefore, the action itself is *not maintainable before the Consumer Forum."*

10. Applying the aforementioned precedent to the present case, we note that the Rs. 3,32,000/- paid by the Appellant to Respondent 1 was for the booking amount and was not transferred to the manufacturer, i.e., Respondent Nos. 2 and 3. As a result, there is no privity of contract between the Appellant and Respondent Nos. 2 and 3. Therefore, they cannot be held liable for this amount.

11. Furthermore, as decided by the National Consumer Disputes Redressal in the case of **Maruti Udyog Limited vs Nagender Prasad Sinha & Another on 4 May, 2009**

> "...Keeping in view the said limits of authority, the relationship between the Maruti Udyog Ltd. and the dealer is on the basis of principal to principal and as such the Maruti Udyog Ltd. would not be liable for the acts of the dealer. It may also be pointed out at this stage that the State Commission in identical matters in the First Appeals referred to above had come to the conclusion that there was no privity of contract between the Maruti Udyog Ltd. and the customers who had booked the vehicle with the dealer. The State Commission has pointed out that it is settled that in case of relationship between manufacturer and its distributor on principal to principal basis the manufacturer was not liable for acts and its distributor. The State Commission had relied upon the judgment of the Apex Court in Indian Oil Corporation Vs. Consumer Protection Council, Kerala & Anr. II (1994) CPJ 21 (SC) (supra) wherein it is held that once delivery of vehicle is given to the dealer after realizing the price from dealer, the relationship between the manufacturer and dealer was not of principal and agent, but of vendor and purchaser. The State Commission ultimately held in the said cases that the company was not liable to either deliver the vehicle or to refund the deposit amounts or to pay *compensation to the complainant."*

12. Furthermore, the Appellant did not provide evidence establishing a privity of contract between himself and Respondent Nos. 2 and 3.

13. Consequently, it is evident that Respondent Nos. 2 and 3 cannot be held liable for any wrongdoing or omissions by the dealer. Therefore, the alleged deficiencies on the part of Respondent Nos. 2 and 3 have not been substantiated.
14. Consequently, **we uphold the judgment dated 02.01.2015 passed by the District Consumer Disputes Redressal Commission-VII, Sheikh Sarai, New Delhi-110017 and the appeal filed before this Commission stands dismissed no order as to costs**.
15. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
16. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
17. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(J.P. AGRAWAL)
MEMBER (GENERAL)

Pronounced On:
02.09.2024