

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 3149-3150 OF 2017**

(Against the Order dated 14/03/2017 in Appeal No. 1165/2014 of the State Commission  
Punjab)

1. RANDHIR SINGH

S/O. SH. AJAIB SINGH, R/O. HOUSE NO. 2, KHALSA  
COLONY, RAILWAY ROAD, FATEHGARH CHURIAN  
TEHSIL BATALA,  
DISTRICT-GURDASPUR  
PUNJAB

.....Petitioner(s)

Versus

1. M/S. MAHARAJA AUTO WHEELS (P) LTD. & ANR.

THROUGH ITS PARTNER/PROP/AUTHORIZED  
SIGNATORY, NEAR NEW AMRITSAR GATE, G.T. ROAD,  
MOHAN VIHAR,

AMRITSAR

PUNJAB

2. NISSAN MOTORS INDIA PVT. LTD.,

THROUGH ITS PARTNER/PROPRIETOR, PERSON-  
INCHARGE, DIRECTOR AUTHORIZED SIGNATORY, ASV,  
RAMANA, TOWER 37-38, VENKATANARAYANA ROAD,  
T-NAGAR,

CHENNAI-600017

.....Respondent(s)

**BEFORE:**

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), PRESIDING  
MEMBER**

FOR THE PETITIONER :

FOR PETITIONER : MR. RAHUL JASORIA, PROXY COUNSEL  
FOR

MR. HIMANSHU SHARMA, ADVOCATE

FOR THE RESPONDENT :

FOR RESPONDENT NO.1 : MR. VINAYAK THAKUR,  
ADVOCATE

FOR RESPONDENT NO.2 : MR. VIPIN SIGHANIA, ADVOCATE  
AND

MR. DIWAKAR CHIRANIA, ADVOCATE

**Dated : 31 May 2024**

**ORDER**

1. The present Revision Petition is filed under Section 21(b) of the Consumer Protection Act, 1986 (the "Act") against impugned order dated 14.03.2017, passed by the learned State Consumer Disputes Redressal Commission, Punjab (the 'State Commission') in FA Nos. 1165/2014 and 1188/2014, wherein the Appeals filed by the Respondents/OPs were partly allowed and modified the Order dated 09.07.2014, passed by the learned District Consumer Disputes Redressal Forum, Amritsar (the "District Forum") in CC No. 499/2013.

2. For convenience, the parties are referred to as placed in the original Complaint filed before the District Forum. Mr. Randhir Singh is identified as the Complainant. M/s. Maharaja Auto Wheels (P) Ltd. is identified as the OP-1-Dealer and Nissan Motors India Pvt. Ltd. is identified as the OP-2-Manufacturer in this present matter.

3. Brief facts of the case, as per Complainant, are that he purchased a Nissan Sunny XL Car with Regn No. PB-06-T-5696 from OP-1, manufactured by OP-2 on 08.01.2013 for Rs.8,18,354/-. He faced several issues with the car, including wheel balancing, center locking and some spots of removal of paint crust at the bottom of the windows dotted joint sheet on both sides of about 2-3 inches etc.

4. Several representations through e-mail to the Opposite Parties (OPs) regarding these defects were of no avail. Consequently, being aggrieved the Complainant filed CC No. 499/2013 before the learned District Forum, seeking refund of Rs.9,17,680/-, the purchase value of the car along with interest and compensation of Rs.50,000/- along with litigation costs and compensation from OPs for deficient service in selling her a defective car and causing agony and difficulties.

5. In reply, OP-1 admitted that Complainant had purchased the said car from it. He brought his vehicle after noticing some problems. It had warranty and during this time they had rectified all the problems reported free of cost. In their reply, OP-2 contested the allegations by stating that the defects in the car were addressed and rectified. The Complainant purchased the car from OP-1. There was no direct relationship between him and OP-2 as a consumer. OP-2 contended that the complaint against them was not valid. They specifically refuted any claims of manufacturing defects in the car and asserted that all necessary after-sales services were provided to the Complainant regarding the notified and identified defects. Therefore, OP-1 had not provided deficient service to the Complainant and, therefore, requested for the dismissal of the complaint lodged against them with costs.

6. The District Forum vide Order dated 09.07.2014, partly allowed the complaint and held OPs responsible for providing deficient service to the Complainant by selling him a defective car. The forum based its decision on the following reasons and findings:

***“10 From the entire above discussion, we have come to the conclusion that complainant purchased the aforesaid Nissan Sunny XL car bearing registration No. PB-06-T-5696 from opposite party No.1 for a sum of Rs. 8,18,354/- on 8.1.2013. The said care suffered from some defects i.e. Wheel balancing/mis-alignment and defect in auto locking system which were removed by the service centre of the opposite party as admitted by the complainant himself in the complaint. However, complainant found that the loose flakes of paint on the lower part of both the left side windows of the car and the surface of the car was found discoloured as shown in the photos***

*produced during evidence. In this regard complainant has produced the photographs of the car exbt.C-10 to C-16 which show the removal of the paint at the lower side of the windows of the car. The complainant in this regard lodged complaint with the opposite party through e-mail exbt.C-7 dated 16.5.2013, but the opposite party did not pay any heed to the request of the complainant and the complainant was forced to file the present complaint on 17.7.2013 i.e. after six months of purchase only. The complainant also examined through affidavit one Arvinder Singh, owner of Saggu Auto Workshop, who deals with automobiles and also deals with repair, painting and denting of the car and he has categorically stated in the form of affidavit exbt.C-17 that he checked the car in question and have come to the conclusion that surface of car below both the left hand side windows of the car have been repainted. The complainant also sent complaint to the manufacturer of the car exbt.C-18 dated 25.11.2013, But the opposite party did not pay any heed to the request of the complainant. Opposite party has not examined any expert to rebut the evidence of the expert examined by the complainant in the form of affidavit exbt.C-17, who has categorically proved that the surface of the car below the left hand side windows have been repainted. Opposite parties could not rebut this evidence produced by the complainant. Even the photographs of the car produced and proved by the complainant exbt.C-10, C-12, C-13 and C-16 fully prove that the car has already been repainted. Opposite parties could not produce any evidence to rebut this documentary and expert evidence produced by the complainant nor the opposite parties could explain or put forward any reason as to why the paint of the car in question purchased by the complainant got discoloured and crust removed within a period of 6 months from the date of purchase. All this fully proves that opposite parties have sold an old car by repainting the same, to the customer i.e. Complainant, which amounts to unfair trade practice on the part of the opposite parties.*

*11 Consequently we partly allow the complaint with costs and the opposite parties are directed jointly and severally to replace the said car of the complainant with a new one or in the alternative to refund the amount of Rs.8,18,354/- along with interest @ 9% p.a from the date of purchase till payments made to the complainant. Opposite parties are also directed to pay litigation expenses Rs.2000/- to the complainant. Copies of the orders be furnished to the parties free of costs. File is ordered to be consigned to the record room. Case could not be disposed of within the stipulated period due to heavy pendency of the cases in this Forum.”*

7. Being aggrieved, the Respondents/ OPs filed separate Appeals No. 1165/2014 & 1188/2014 and the State Commission vide common order dated 14.03.2017, partly allowed both Appeals and modified the District Forum order as follows:

*“10. We have given thoughtful consideration to the contentions raised by the learned counsel for opposite parties Nos.1 and 2 before us.*

***11. Admittedly the vehicle was purchased on 8.1.2013 and the complaint regarding wheel balancing and auto locking system were brought to the notice of the Dealer i.e. opposite party No.1, who had rectified the defects as the same was within warranty. Actually there is peeling of the paint crust at the bottom of the doors of the car dotted joint sheet on both sides of length approximately 2 to 3 inches. The complainant sent e-mail to the opposite parties and the same has been annexed on the record as Ex.C-7 along with photographs Ex.C-10 to Ex.C-16 and peeling of paint is clearly visible. In spite of the said defects being brought to the notice of the opposite parties, they did not do anything. The only question which arises for consideration in this case is, whether there is any manufacturing defect in the vehicle and if so, the same is liable to be replaced by fresh one or in the alternative full amount is required to be refunded to the complainant?***

***12. Admittedly, there is no defect in the engine which is the soul of the entire vehicle. The defects pointed out were auto locking system and wheel balancing, which are minor defects, which have already been repaired and rectified and there is no complaint regarding any major defect which has ever been pointed out by the complainant. The only other defect which is alleged to be the major defect is with regard to the peeling of the paint from the doors of the vehicle. There may be a number of reasons with regard to the peeling of the paint from the doors of the vehicle and as a result of which the spots may have occurred. On that basis it cannot be concluded that there is a manufacturing defect in the car.***

***13. However, a perusal of the photographs of the vehicle in question reveals that peeling of the paint of the car was apparent. There are big patches ranging between two Inches to three inches which are visible in the photographs annexed with the complaint as ExC-10 to Ex C-16. The same cannot be result of the hitting of the car with ground and if these patches would have been result of hitting of the car with the ground, then there should have been some dent in the doors also. Since the car was newly purchased and the defects have come to the notice within a short span of time and that too within the warranty period, therefore, we modify the order of the District Forum to the extent that new doors of the car of the same colour shall be fixed by opposite party No.2. The complainant shall take the vehicle to the authorized service centre of opposite party No.2, which will do the needful within a period of 30 days of the receipt of the copy of this order. In addition to the litigation expenses awarded by the District Forum, we further award litigation expenses of Rs.20,000/- to be paid by both opposite parties No.1 and 2 to the complainant, which shall also take care of the amount of compensation and the costs of these appeals. Consequently, both the appeals i.e. First Appeal No.1165 of 2014 and First Appeal No.1188 of 2014 are partly allowed and the impugned order dated 9.7.2014 passed by the District Forum is modified to the extent stated above.***

***14. Opposite party No.1-Dealer deposited the sum of Rs.25,000/- at the time of filing of the appeal (FA No.1165 of 2014). It deposited another sum of Rs.2,25,000/- on 1.12.2014 in compliance of the order dated 14.11.2014. Out of the total amount of Rs.2,50,000/-, a sum of Rs.11,000/- shall be remitted by the registry to the respondent/complainant and the balance amount along with interest on the amount of Rs.2.50,000/- during the period the same remained deposited in the Bank shall be remitted to opposite party No.1 by way of crossed cheques/demand drafts after the expiry of 45 days of the sending of certified copy of the order to them.***

***15. Opposite party No.2-Manufacturer deposited the sum of Rs.25,000/- at the time of filing of the appeal (FA No.1188 of 2014). It deposited another sum of Rs.2,25,000/- on 4.12.2014 in compliance of the order dated 14.11.2014. Out of the total amount of Rs.2,50,000/-, a sum of Rs.11,000/- shall be remitted by the registry to the respondent/complainant and the balance amount along with interest on the amount of Rs.2,50,000/- during the period the same remained deposited in the Bank shall be remitted to opposite party No.2 by way of crossed cheques/demand drafts after the expiry of 45 days of the sending of certified copy of the order to them.”***

8. The Petitioner/Complainant, being dissatisfied by the Order dated 14.03.2017 passed by the learned State Commission, filed the instant Revision Petition Nos. 3149-3150 of 2017.

9. Upon notice of the instant Revision Petition, Respondents No. 1 and 2 appeared and filed their written arguments separately.

10. The learned Counsel for the Petitioner/Complainant argued that the car purchased by the Complainant suffered manufacturing defect like wheel balancing, problem in central locking and paint of the car started peeling and there was removal of paint crust at the bottom of the window dotted joint sheet on both sides of the length about 2-3 inches within a short period from purchase of the car in question and despite this defect brought to the notice of Respondent No.1, the Respondent No.1 did not do satisfactory work to remove the same. Therefore, he sought to set aside the order of the State Commission.

11. On the other hand, learned Counsel for Respondent No.1/OP-1 reiterated the reply filed before both the fora and asserted that the present petition is not maintainable. He has argued in favour of the impugned order passed by the State Commission. He sought to dismiss the Revision Petition. He relied upon the judgment of Sunil Kumar Maity vs. State Bank of India and Anr., Civil Appeal No.432 of 2022, decided on 21.01.2022 by the Hon'ble Supreme Court. He also relied upon the judgment of NCDRC in the case of Manager, Bank of Baroda Vs. Susanta Saha, R.P. No.676 of 2017 decided on 16.05.2018. The learned Counsel for

Respondent No.2/OP2 also argued in favour of the impugned order passed by the State Commission. He sought to dismiss the Revision Petition with costs.

12. I have examined the pleadings and associated documents placed on record, including the reasoned orders of both the fora and rendered thoughtful consideration to the arguments advanced by learned Counsels for both the parties.

13. The main issue to be determined is whether the complaints with respect to the car in question constitute "manufacturing defects"? If such defect/deficiency is established, whether the Complainant is entitled for replacement of the vehicle or reimbursement of Rs.8,18,354/-, along with costs and compensation?

14. It is admitted position that the recurring problems cited included the central locking system not functioning properly, wheel balancing and repainted car etc. Despite multiple attempts by OPs, they were unresolved. The learned State Commission while modifying the Order of the learned District Forum made the following observations:-

***“12. Admittedly, there is no defect in the engine which is the soul of the entire vehicle. The defects pointed out were auto locking system and wheel balancing, which are minor defects, which have already been repaired and rectified and there is no complaint regarding any major defect which has ever been pointed out by the complainant. The only other defect which is alleged to be the major defect is with regard to the peeling of the paint from the doors of the vehicle. There may be a number of reasons with regard to the peeling of the paint from the doors of the vehicle and as a result of which the spots may have occurred. On that basis it cannot be concluded that there is a manufacturing defect in the car.”***

15. As regards core issue whether the manufacturing defect is established, the Complainant was to approach any recognized Govt. authority for inspection in terms of Section 13 of the Act. The excerpt of Section 13 pertaining to manufacturing defects is as follows:-

*13. (1) Procedure on admission of complaint (1) The District Forum shall, [on admission of a complaint] if it relates to any goods –*

*(c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;*

16. This Commission in *Mercedes Benz India Private Ltd Vs. Smt. Revathi Giri & Ors*, FA No. 766 of 2021, decided on 11.10.2023 has held that an inherent manufacturing defect needs to be established through the process of examination by way of an expert opinion. The relevant portion of the Order is as under: -

***“9. From the material on record it is manifest that no expert opinion of any authorized laboratory or authority has been brought on record to establish that the vehicle suffered from any defect that could be ascribed to the manufacturer of the vehicle by the appellant. The vehicle had admittedly run over 56,815 kms as on 18.07.2019 when it was brought to the workshop of respondent no.2. It is not the case of the respondent that the vehicle was not properly attended to or that the defects were not rectified as per the terms and conditions of the warranty valid for three years. There is, therefore, no deficiency in service that has been established in this particular case either on account of any manufacturing of defect of the vehicle under section 13 (1) (c) or repairs by respondent no.2 for which the appellant would be liable. In the absence of any deficiency in service being established under section 2 (1) (d) the findings of the State Commission that the vehicle suffered from inherent manufacturing defects cannot be sustained. Section 13 (1) (c) makes it explicitly clear that an inherent manufacturing defect needs to be established through the process of examination by way of an expert opinion. Without such an examination being undertaken, the conclusion that there were inherent manufacturing defects cannot be arrived at. Admittedly, provisions of section 13 have not been followed in this case. Defects which are covered under the terms and conditions of the warranty cannot be ascribed to be an inherent manufacturing defect without the requisite examination of the vehicle after applying the rigour of section 13 (1) (c). The defects which are covered under the terms of warranty cannot be concluded to be a manufacturing defect. In the absence of any expert opinion, such a conclusion is conjectural and based on surmise and cannot be sustained. The State Commission’s order is therefore liable to be set aside on these grounds.”***

17. Upon careful examination of the material on record and the orders of both the fora, it's apparent that no expert opinion from an authorized laboratory or recognized Govt authority was procured or presented by the Complainant to substantiate manufacturing defect claim. Entitlement to get refund of purchase price of car is feasible only if defects are established to be manufacturing defects with significant impact on the functioning of the vehicle. In this respect, the burden is on Complainant to prove that the defects present in the car are manufacturing defects, through an expert opinion.

18. In terms of Section 13 of the Act, to obtain expert opinion, the vehicle is to be inspected by Central Laboratory. It is admitted that the complainant has not taken any expert report from any Central Laboratory. In addition, evaluation of the scope of the complaints reveals that it pertains to recurring problems in central locking system, wheel balancing and repainting etc of the car in question. The OPs have addressed the complaints regularly and, in any case, the overall impact of the complaints of the Complainant was not such to warrant replacement of the car itself or refund of the consideration.

19. The Ld. State Commission critically evaluated the records and evidence and passed a detailed and reasoned order, partly setting aside and modifying the order of the District Forum limiting the relief granted to the Complainant. While limiting the relief granted, it considered that the Complaint's contention with respect to manufacturing defect is not established.

20. In view of the aforesaid discussions, I am of the considered opinion that no new grounds have been raised in the present petition and I find no reason to interfere with the well reasoned Order passed by the learned State Commission dated 14.03.2017. Consequently, the Revision Petition Nos.3149-3150 of 2017 are dismissed.

21. There shall be no order as to costs. All pending Applications, if any, also stand disposed of.

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**AVM J. RAJENDRA, AVSM VSM (Retd.)**  
**PRESIDING MEMBER**