



BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL  
COMMISSION, VIZIANAGARAM.  
(UNDER THE CONSUMER PROTECTION ACT, 2019)

PRESENT:- SRI R.VENKATA NAGASUNDAR, B.Com. B.L., PRESIDENT.  
SMT. B. SRIDEVI, M.A., M.C.J., MEMBER.  
MONDAY THE 26<sup>th</sup> DAY OF JUNE, 2023.

C.C.51 OF 2022

Between:

Sri Vempadapu Suryanarayana, S/o late Ramul,  
Hindu, aged about 55 years, Resident of  
H.No.33, Raja veedhi, Rellivalasa Village,  
Poosapatirega Mandal, Vizianagaram District.

... Complainant

And

1. TOYOTO, Represented by its Chief Manager,  
No.24, 10<sup>th</sup> Floor, Canberra Block,  
Vittal Mallya Road, Bangalore - 560 001.
2. TOYOTO, LEELA KRISHNA TOYOTO,  
# 164/1, Paradesipalem, NH-5,  
Madhurawada, Visakhapatnam - 530 041.

...Opposite Parties

This complaint is coming on for final hearing before us in the presence of Sri B.Satyanarayana, Advocate for the Complainant and Sri D.Appa Rao, Advocate for the Opposite Party No.1 and Advocate for the Opposite Party No.2 called absent and having stood over for consideration, the Commission made the following:

O R D E R

**SMT. B. SRIDEVI, M.A., M.C.J., MEMBER.**

This is a complaint filed Under Section 35 of the Consumer Protection Act, 2019 to direct the Opposite Parties a) to return the amount of Rs.25,13,569/- paid by the Complainant towards

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advance of Innova Crysta ZX-7 model car, together with the interest @ 24% per annum from the date of filing of the complaint till the date of realization; b) to direct the Opposite Parties to return the EMIs i.e., Rs.2,84,552/- paid by the Complainant in respect of the loan availed for purchase of the car; c) to direct the Opposite Parties to pay Rs.1,31,313.91 ps. towards provision charges of the loan incurred by the Complainant; d) to pay amount of Rs.20,00,000/- as compensation and for the cost of complaint.

**The case of the Complainant in brief is as follows:**

2. The Complainant is resident of Rellivalasa Village, Poosapatirega Mandal, Vizianagaram district. The 1<sup>st</sup> Opposite Party is dealer of Toyota vehicles and the Opposite Party No.2 is the sub dealer of the 1<sup>st</sup> Opposite Party. The Complainant intended to purchase Innova Crysta ZX-7 Str auto transmission vehicle and the 1<sup>st</sup> Opposite Party offered to sell the said car for Rs.31,06,489/- and assured the Complainant that he will deliver the said vehicle to the Complainant in the 1<sup>st</sup> week of February 2022 and not later than 28-02-2022. Believing the said assurance the Complainant has purchased the said vehicle at the said rate. The personnel of the 1<sup>st</sup> Opposite Party informed Complainant that the 2<sup>nd</sup> Opposite Party is their dealer and they will deliver the vehicle through 2<sup>nd</sup> Opposite Party. The Complainant as per the instructions of the 1<sup>st</sup> Opposite Party paid an amount of Rs.2,00,000/- and the same was acknowledged by the respondents. Subsequently the Complainant paid sum of Rs.23,13,569/- by availing loan from ICICI bank and paid the same to the respondents on 01-11-2021 towards part sale consideration. It is agreed that the Complainant shall pay the balance sale consideration of Rs.5,92,920/- to the respondents at the time of delivery of the vehicle. Thus in total the Complainant

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has paid sum of Rs.25,13,569/- to the respondents towards part sale consideration of the vehicle.

3. The Complainant is ready with the balance sale consideration as and when the Opposite Parties deliver the vehicle to him. The Opposite Parties by letter dated 11-01-2022 agreed to deliver the vehicle of 2022 make within the agreed time. But the Opposite Parties did not deliver the vehicle within the stipulated time. The Opposite Parties used to postpone the delivery of the vehicle on one pretext or the other, whenever the Complainant demanded for delivery of the vehicle. On several demands the Opposite Parties sent a mail on 09-03-2022 stating that they will deliver vehicle in the 3<sup>rd</sup> week of March 2022 without fail. The Opposite Parties did not deliver the vehicle on that date also. In view of the dilly dallying conduct on the part of the Opposite Parties in the matter, the Complainant lost confidence and requested the Opposite Parties to return the sale price paid by him together with interest @ 24% per annum. But the Opposite Parties neither delivered the vehicle nor re-paid amount paid by the Complainant. The Complainant has been paying installments EMIs @35,569/- per month in respect of the loan obtained by him for purchase of the vehicle and the closer charges of said loan 11-04-2022 comes to Rs.1,31,313/-. In view of the act on the part of Opposite Parties in not deliver the vehicle and not return the amount paid by him, the Complainant suffered severe mental agony and hence the Opposite Parties are liable to pay compensation of Rs.20,00,000/-. He got issued a legal notice Dtd.-06-2022 demanding the Opposite parties to return the amount together with interest and compensation, but the Opposite parties did not respond to the notice. Therefore the complaint is filed the Complaint for return of amount paid by him together with interest @ 24% per annum and compensation.

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4. The Opposite Party No.1 though made his appearance before the commission, did not file any counter within the 45 days and hence the right to file counter has been forfeited. The notice sent Opposite Party No.2 returned un-served with endorsement "no such addressee", hence at the request of Complainant the commission ordered services by way of paper publication in daily newspaper. The Opposite Party No.2 did not appear before the commission. Since the Opposite Parties No.1 and 2 did not contest the complaint, the commission proceeded to dispose of the complaint as contemplated under section 38 (3) (b) (ii) of the Consumer Protection Act, 2019.

The Complainant to prove his case filed his evidence affidavit as PW-1 has got marked exhibits A.1 to A.10. The Complainant also filed written arguments. Heard the Complainant.

5. Now the points for consideration are:-

1. Whether there is deficiency of service on the part of the Opposite Parties?
2. Whether the Complainant is entitled for reliefs as prayed for?
3. To what relief?

6. **POINT NO.1**:- The case of the Complainant is that he intended to purchase Innova Crysta ZX-7 Str auto transmission vehicle, being manufactured by Toyota Company for which Opposite Party No.1 is the dealer. The Opposite Party No.1 offered to sell the said vehicle for on road price of Rs.31,06,489/- and in view of assurance by them that they will deliver the vehicle in the month of February 2022, the Complainant agreed to purchase the same for the said price, and booked the car vide Ex.A1 order Booking Form. The Opposite Party No.1 informed the Complainant that the Opposite Party No.2 is their dealer and they will deliver the vehicle through Opposite Party No.2. The

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Complainant paid advance of Rs.2,00,000/- to the respondents on 21-10-2021 under Ex.A.2 and also paid Rs.23,13,569/- on 01-11-2021 under Ex.A.3 Receipt voucher, having availed loan from ICICI bank. Thus in total he paid Rs.25,13,569/- leaving balance of Rs.5,92,920/- as endorsed by the Opposite parties under Ex.A.4.

7. According to the agreement between the parties, the Complainant has to pay the balance of Rs.5,92,920/- at the time of delivery of the vehicle. But the Opposite Parties did not deliver the vehicle in the month of February 2022 as promised by them and on several requests made by the Complainant, the Opposite Parties addressed a letter dated 09-03-2022 under Ex.A.5 stating that the vehicle will be delivered in the month of March. The Opposite Parties also addressed another letter dated 15-03-2022 under Ex.A.6 stating that they will deliver the vehicle on or before 31<sup>st</sup> March, 2022. It is the contention of the Complainant that even after the above referred letters, the Opposite Parties did not deliver the vehicle and in view of the conduct part of Opposite Parties, he lost confidence and requested the Opposite Parties to return the amount paid by him together with interest @ 24% also pay EMIs charges and loan closer charges, by addressing E-mail dated 12-04-2022 under Ex.A.7. Even after received the said E-mail, the Opposite Parties did not respond and same necessitated him to issue a legal notice dated 11-06-2022 under Ex.A.8. The notice sent to Opposite Party No.1 returned un-served with endorsement 'addressee left' under Ex.A.9, where as the notice sent to the Opposite Party No.2 served under Ex.A.10 postal acknowledgement. The Complainant has reiterated his case in his evidence affidavit. Heard the Complainant.

8. The commission has carefully and meticulously gone through the evidence placed by the Complainant. The contents of the

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Ex.A.1 order booking form dated 21-10-2021 shows that the Complainant has booked Innova Crystal model car, grey color XH ZX 7S (AT), diesel vehicle, manufactured by Toyota company at the total cost of Rs.31,06,489/- and paid advance of Rs.2,00,000/-. The contents of Ex.A.2 receipt dated 21-10-2021 issued by the Opposite Party No.2 shows that they acknowledged receipt of Rs.2,00,000/- as advance in respect of the car, from the Complainant. The contents of Ex.A.3 receipt dated 01-11-2021 issued by Opposite Party No.2 shows that the Opposite Party No.2 received Rs.23,13,589/- from the Complainant through ICICI bank. The contents of Ex.A.4 letter addressed by Opposite Party No.2 dated 11-01-2022 to the Complainant shows that they have received an amount of Rs.25,13,569/- towards the order made by the Complainant Crystal ZX STR AT. It also shows that the Opposite Parties have assured f the Complainant that they will deliver the vehicle as per the price quoted at the time of making the payment.

9. The contention of the Ex.A.5 letter dated 09-03-2022 shows that the as per the discussions they had with the Complainant the vehicle will be delivered during the 3<sup>rd</sup> week of the month. If any ambiguous circumstances occur they shall to deliver the vehicle, they will refund the amount. The contents of Ex.A.6 letter shows that the Opposite Parties have assured the Complainant to deliver the vehicle on or before 31-03-2022; that in case of failure they will refund full amount with interest along with bank charges. The contents of the Ex.A.7 letter shows that the Complainant has asked the Opposite Parties to return the amount of Rs.25,13,569/- paid by him towards value of the car and also pay bank charges for closing the loan of Rs.1,31,313.91 ps. processing charges for Rs.6,431/-, EMI payments of Rs.35,569/- for 5 months together with interest. In Ex.A.8 legal notice also the Complainant has demanded the Opposite Parties return the

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amount paid by him towards value of the car the EMIs paid by him in respect of bank loan, bank loan closer charges, processing charges and other charges altogether and also pay Rs.20,00,000/- for compensation. The Opposite Parties did not issue any reply to the said notice.

10. The evidence of the Complainant coupled with A1 Booking form, Ex.A.2 & Ex.A.3 receipts, categorically prove that the Opposite Parties, have received total amount of Rs.25,13,569/- from the Complainant towards part payment of Toyota Innova Crysta ZX -7 Str car. The correspondence made by the Complainant with the Opposite Parties as discussed above also makes it clear the Opposite Parties have acknowledged the receipt of Rs.25,13,569/- from the Complainant towards the part payment cost of the car. The evidence of the Complainant coupled with Ex.A.5, Ex.A.6 letters addressed by the Opposite Party No.2 makes it imperative that the Opposite Parties have assured the Complainant that they will deliver the car by the end of March, 2022. But the Opposite Parties could not keep up their promise. The Opposite Parties also gave under taking in the letters that they will refund the amount received by them together by bank charges and interest if they fail to deliver the vehicle. The Complainant is a consumer within the meaning of Section 2(7) of the Consumer Protection Act, as he paid part of the sale consideration to the Opposite Parties who are the product sellers as defined under section 2 (37) of Consumer Protection Act, 2019. Therefore the Opposite parties are under obligation to deliver the car or in the alternative refund the amount so received by them towards part consideration of the car. But they failed to fulfill their obligation as per the contract entered by them with the Complaint. The said act on the part of Opposite Parties is certainly amounts to deficiency of service within the meaning of section 2 (11) of Consumer Protection Act,

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2019. Therefore the commission holds that there is a deficiency of service on the part of the Opposite Parties. This point is answered in favour of the Complainant.

11. **POINT NO.2:-** The evidence of the Complainant coupled with documentary evidence categorically proves that he paid Rs.23,13,569/- by availing loan from ICICI bank. The fact that the Complainant paid the said amount through ICICI bank also proves the contention of the Complainant that he availed finance from ICICI bank. The Complainant also stated in Ex.A.7 letter as well a Ex.A.8 legal notice that he has paid EMIs of Rs.35,569/- per month for 5 months and the bank charges for closing the loan as on 11-04-2022 is Rs.1,31,313.91 ps. The evidence of the Complainant left un-rebutted as the Opposite Parties did not contest the case. Therefore the Complainant is justified in claiming EMIs of Rs.2,84,552/- and bank closer charges for Rs.1,31,313.91 ps. The Complainant though paid substantial part of sale consideration of the car, could not able to get delivery of the car. Due to that he not only suffered mental agony but also sustained financial loss. Hence the Complainant is entitled for reasonable interest on the amount paid by him. Taking into consideration the facts and circumstances of the case the commission is of the considered view that granting interest @ 12% per annum on the amount of Rs.25,13,569/- from the date of complaint till the date of realization is reasonable. Besides that the Opposite Parties shall also pay Rs.2,84,552/- towards EMIs paid by the Complainant and Rs.1,31,313.91 ps. towards bank closer charges. The damages claimed by the Complainant is on higher side and as the commission has granted interest on the amount paid by the Complainant, the commission directs the Opposite Parties to pay compensation of Rs.1,00,000/- towards mental agony; the commission also grants Rs.30,000/- towards

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legal expenses which includes advocate fee of Rs.5,000/-. This point is answered in favor of the Complainant.

12. **POINT NO.3:-** In the result, the complaint is allowed in part and the Opposite Parties No.1 and 2 are directed jointly and severally to return sum of Rs.25,13,569/- (Rupees Twenty five lakhs thirteen thousand five hundred and sixty nine only) being the part sale consideration of the car paid by the complainant to the Opposite parties, together with interest @ 12% per annum from the date of complaint till the date of realization, to the Complainant; they are further directed to pay Rs.2,84,552/- (Rupees two lakhs eighty four thousand five hundred and fifty two only) and Rs.1,31,313.91 Ps/- (Rupees One lakh thirty one thousand three hundred thirteen and ninety one paise only) towards EMIs and bank closer charges; they are also directed to pay compensation of Rs.1,00,000/- (Rupees One lakh only) to the Complainant and also to pay Rs.30,000/- (Rupees thirty thousand only) towards legal expenses which includes Advocate fee of Rs.5,000/- (Rupees five thousand only).

Time for compliance is 45 days from the date of receipt of this order.

*Dictated to the Steno, transcribed by him, corrected by me and pronounced by us in the open Commission, this the 26<sup>th</sup> day of June, 2023.*

  
**Woman Member**

  
**President**

C.C.No.51 of 2022  
APPENDIX OF EVIDENCE  
WITNESSES EXAMINED

**For Complainant:-** P.W.1: Vempadapu Suryanarayana.

**For Opposite Parties:-**

**Documents Marked**

**For Complainant:-**

1. Ex.A1 is the Original customer book-let, dated 21/10/2021.
2. Ex.A2 is the Photostat copy of receipt voucher for Rs.2,00,000/- dated 21-10-2021.
3. Ex.A3 is the Photostat copy of receipt voucher for Rs.23,13,569/- dated 01-11-2021.
4. Ex.A4 is the Photostat copy of letter addressed to Complainant dated 11-01-2022.
5. Ex.A5 is the Original extract copy – Mail addressed to Complainant.
6. Ex.A6 is the Photostat copy of letter addressed to Complainant.
7. Ex.A7 is the Original extract copy – Mail correspondence by the Respondents.
8. Ex.A8 is the Office copy of Registered Lawyers notice, dated 11-06-2022.
9. Ex.A.9 is the Original postal cover returned.
10. Ex.A.10 is the Original acknowledgement.

**For Opposite Parties:- N I L**

  
**Woman Member**

  
**President**

Dis.No. 287  
dt. 3-7-2023