

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
GURGAON-122001**

Consumer Complaint No:569 of 2023

Date of Institution: 05.07.2023

Date of Decision: 17.05.2024

Naveen Gupta son of Shri Tota Ram Gupta, resident of 91, Lajpat Nagar, Gurugram-122001.

.....Complainant

Versus

Decathlon, Omaxe Celebration Mall, Sector-48, Subhash Chowk, Sohna Road, Gurugram-122103 through its Manager.

.....Opposite party

Complaint under Section 35 of Consumer Protection Act, 2019.

**BEFORE: SHRI SANJEEV JINDAL, PRESIDENT.
MS. JYOTI SIWACH, MEMBER.
MS. KHUSWINDER KAUR, MEMBER.**

Present: Shri Ravinder Jain, Advocate for the complainant.
Shri Samit Kunwar, Advocate for the OP.

ORDER SANJEEV JINDAL, PRESIDENT.

Heard on the complaint in question. The record placed on the present case file stands perused, carefully.

2. Shorn of unnecessary details, briefly stated, it is the case of the complainant that on 12.06.2023 at 20.55, he went for shopping in Decathlon i.e. the store of the OP and purchased some material, for which, he paid Rs.1909/- vide invoice/bill bearing No.70131102 dated 12.06.2023 i.e. **Ex.C-1**, whereby, the OP had also charged Rs.12/- for a carry bag. Upon it, the complainant asked the OP that it could not legally

charge extra from him for providing the carry bag in question but to no avail. Since this act of the OP was in clear violation of the provisions of law i.e. the Consumer Protection Act, 2019 and amounted not only deficiency in service but also an unfair trade practice, so, finding no other option, the complainant had to file the present complaint.

3. At the very outset of the discussion, this Court hereby puts it on the record of this file that it is well settled proposition of law as has been enunciated by the Hon'ble National Commission, New Delhi in a recently dismissed revision petition of the Big Bazar in a case titled as **Big Bazar(Future Retail Ltd.) Vs Ashok Kumar, Revision Petition NO.975 of 2020 decided on 22.12.2020 along with other revision petitions,** wherein, it has been held by the Hon'ble National Commission, New Delhi that they were not impressed with the argument of the OP to the effect that extra charges were payable in case where the customer wished to obtain the carry bag or that the carry bag were sold on no profit and no loss basis or that the customers were requested to carry their own bags, because the big stores like the OP never allowed the customers to carry bags in their hands within their store premises knowing very well that if they were allowed to do so, then customers would not easily give their consent for the purchase of the carry bag. The OP was, therefore, taking advantage of its dominating position.

. In the aforesaid citation, it was further held by the Hon'ble National Commission, New Delhi that if the OP claims itself to be

responsible and environmentally conscious, then, they should have given the carry bags to the customers free of cost because in our considered view, the price of the carry bag has generally been included by them in the profit margins of the product(s). It was for gain of the OP. By employing unfair trade practice, the OP was minting a lot of money from the gullible customers from all their stores situated across the country.

4. In another citation, the Hon'ble State Commission, Chandigarh in a case titled as M/s Lifestyle International Pvt. Ltd. Vs Pankaj Chandgothia (Appeal No. 24 of 2019) also held that it was the duty of the OP to provide free carry bags to all its customer who purchase articles from its shop. In the aforesaid citation, the Hon'ble State Commission, Chandigarh also awarded amount of Rs.1500/- as compensation to the complainant for suffering, harassment and mental agony coupled with Rs.1500/- for litigation expenses with the further direction to the OP to deposit Rs.10,000/- in the Consumer Legal Aid Account No. 32892854721 maintained with the State Bank of India, Sector-7-C, Madhya Marg, Chandigarh.

. In this regard, it was also clarified by the Hon'ble State Commission, Chandigarh that the Plastic Waste (Management and Handling) Rules, 2011 had already been amended vide notification dated 18.03.2018 and Rule 15 thereof had also been omitted vide subsequent notification dated 27.03.2018 as well, and further, that as per the current legal position, the OP cannot take the shelter of the said rule which

stipulated that “no carry bag shall be made available free of cost by retailer to its customers”.

5. In this regard, it is also worth-mentioning here that sub section 5 of Section 36 of the Sale of Goods Act 1930, also clearly states that unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller. Thus, under this provision of law also, all the expenses with regard to packaging etc. shall be borne by the vendor in order to put goods into a deliverable state.

6. Even otherwise, this Commission is also of the considered view that if the practice of charging for carry bags is continued to be adopted in the Nation by the big stores/shopkeepers/vendors, it would defeat the very purpose of the Consumer Protection Act, and that the crores of the outlets in the whole of India will use the same language “Bags security refundable” and further that a new trend to extort the money from the customers would start in the Nation, and, thus, the crores of consumers would be in the clutches of these type of daily outlets.

7. Thus, in view of our aforesaid discussions, it is clear that the OP in the present case has to be held as guilty of rendering deficiency in services and adopting an unfair trade practice against the complainant. Hence, the present complaint is hereby accepted with costs. Accordingly, the OP is directed to refund the amount of Rs.12/- to the complainant along-with interest @ 9% per annum from the date of its payment i.e. w.e.f. 12.06.2023 till its realization. The complainant is also hereby held entitled

to compensation of Rs.15,000/- for suffering mental harassment & agony at the hands of the OP coupled with Rs.11,000/- as litigation expenses. The opposite party shall make the compliance of the order within 45 days from the date of uploading of this order after the expiry of 24 hours (one day) therefrom, failing which the amount will attract interest @ 12% per annum, for the same period, till actual realization.

If the order of this Commission is not complied with, then the complainant shall also be entitled to file the execution petition under Section 71(1) of the Consumer Protection Act, 2019 and in that eventuality, the OP may also be held liable for prosecution under Section 72 of the said act which envisages punishment with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than Rs.25,000/-, but which may extend to Rs.1,00,000/-, or with both. The copy of the order be supplied to the parties free of cost as per the rules. The order be promptly uploaded on the website of this Commission. File be consigned to the record room, after due compliance.

Announced.
17.05.2024

(Jyoti Siwach)
Member

(Khushwinder Kaur)
Member

(Sanjeev Jindal)
President,
District Consumer Disputes
Redressal Commission, Gurgaon