

Complaint No.345/2023
Date of Filing: 30.10.2023
Date of Disposal : 15.06.2024

BEFORE THE DISTRICT CONSUMER DISPUTES
REDRESSAL COMMISSION, MYSORE-570023

CONSUMER COMPLAINT No.345/2023
DATED ON THIS THE 15th June, 2024

- Present:** 1) Smt.A.K. Naveen Kumari.,
B.Sc., LL.M., - PRESIDENT
2) Smt.M.K. Lalitha.,
M.A., BAL, LL.B., -MEMBER
3) Sri. Maruthi Vaddar
BA., LLB., (Spl) – MEMBER

COMPLAINANT/S

Sri. P. Shantharamu Aged
about 65 Years, S/o
Late. K. Puttaswamaiah,
R/at D. No.4455, L20/A,
7th Cross, Saint Marries
Road,
N.R. Mohalla, Mysuru.

(Rep.by.Adv.R.S.Anand,.)

V/S

OPPOSITE PARTY/S

M/s. Kotak Mahendra Life
Insurance Company Ltd.,
by its Authorised
signatory No.1st Floor,
Sharadha Platina,
Opposite to Clock Tower,
Mysuru-1.

(Rep.by.Adv.S.Suresh,.)

Nature of complaint	:	Deficiency in service
Date of filing of complaint	:	30.10.2023
Date of Issue notice	:	06.11.2023
Date of order	:	15.06.2024
Duration of Proceeding	:	7 MONTHS 16 DAYS

SMT.A.K. NAVEEN KUMARI.
PRESIDENT

The complainant has filed complaint against the opposite party for issue of direction to the opposite party to direct the opposite party to refund Rs.2,55,630/- apart from the damages in favour of the complainant. And for costs and such other reliefs that the Hon'ble commission deems fit to grant in the circumstances of the case, in the interest of justice and equity.

2. The complaint in brief avers as follows:-

It is contended that, the complainant obtained the policy from the opposite party for the term of 20 years, for the premium payment is 10 years on 21.03.2018 and the payment mode was annual i.e., Rs.51,126/-. That, the complainant has paid five annual premium amounting to Rs.2,55,630/-. It is contended that he is unable to make further payment due to unavoidable circumstances. So, the complainant has approached the opposite party seeking for refund of the amount paid by him amounting to Rs.2,55,630/-. But on one or the other reason the opposite

party's good office is dodging the matter without their being any justifiable cause on one or the other reason. Due to which the complainant is put into mental trauma and agony. As such the opposite party has caused deficiency in service.

3. That the complainant has approached the opposite party on many occasions with no positive result/response from its end, which prompted the complainant to issue a legal notice on 24.08.2023. Though the said notice was duly served upon the opposite party it has not bothered to meet the demands of the said notice nor replied to it. Hence, left with no option the complainant was constrained to file this complaint. Hence, the complaint for damages from the opposite party amounting to Rs.1,00,000/- apart from Rs.2,55,630/-.Hence, this complaint.

4. After filing of the complaint notice was issued to the opposite party. After service of the notice the opposite party appeared through counsel and filed version, which avers as follows:-

It is contended that the prayer put forth by the complainant before the Hon'ble commission is bad and in contravention to the interest of justice. That the complainant prayed for refund of premium amount with interest and the exorbitant amounts towards compensation at Rs.1,00,000/-. That as per the terms & conditions of the subject policy, as the complainant has paid three years premium he is eligible for

the surrender value. Presently, the policy in question is in force and in reduced paid up status and it is urged to the complainant to continue paying the premiums regularly to gain the benefits attached to the policy.

5. That the complainant has not established any deficiency of service that has been caused to him owing to any act of the opposite party and thus there exists no cause of action against the opposite party. That the policy holder was at all times aware of the policy terms and condition of the policy had he applied for the same and made the premium payment. That the present complaint does not disclose any cause of action against the opposite party. That in the absence of any cause of action against the opposite party, no deficiency of service has been attributed against the opposite party. That, the complainant was in receipt of the policy document along with welcome letter and terms and conditions mentioning about the free look provision did not approach the opposite party with the concerns in free look period as mentioned in clause 15, with any discrepancies regarding benefits payable or any other policy terms and conditions, neither did he approach the opposite party for cancellation of the policy during the free look period.
6. It is contended that the complainant is now estopped from raising any grievances, issue relating to the policy or its terms and conditions, or seek refund of the premium paid

by him. The complainant is bound by the policy contract and is deemed to have given-up/waived his rights by not exercising the free look provision. That the opposite party company received the last premium installment from the complainant on 22.03.2022, thereby opposite party have received 3 annual premiums towards the policy. Subsequently, the complainant has raised grievance to cancel the policy. That, a life insurance policy is a long term commitment and complainant as a policyholder was aware at the time of signing of the proposal form. That the opposite party company had never received any complaint or request for cancellation of the policy within free look period.

7. That the opposite party has been receiving the renewal premiums and the last premium has been received on 22.03.2022 for the period of 2022-2023. At present the policy has been moved to reduced paid up mode and as per the terms and condition of the policy contract i.e; clause 2.2 of the policy document and the policyholder has the option to revive the policy within the revival period. That as the policyholder/complainant has paid more than 3 full years premiums the policy has been moved reduced paid up mode. As a gesture of goodwill, the company may by way of written intimation remind the policyholder when the premium is due and payable under this policy. However, it shall be the sole responsibility of the policyholder, at all

times, to discharge the premium payment obligations as mentioned in the policy. In an event of lapse the following conditions shall be applicable. Premium payment term greater than or equal to ten (10) years.

8. That anytime during the first three policy years, if premiums, as mentioned in clause 2 above, are not paid within the grace period, the policy together with the rider benefits (if applicable), shall lapse from the due date of the first unpaid premium. The policyholder can revive the policy as per the procedure mentioned below. In case the policy is not revived within 2 years from the date of lapse, the policy shall stand forfeited as per clause 7 of the terms and conditions and all the benefit available under the policy cease. No benefits shall be payable during lapse period of the policy. Clause 2.4 revival of lapsed policy: the policyholder can revive the lapsed policy or a policy in reduced paid-up mode with or without rider benefits, by making an application within a period of two years from the due date of the first unpaid premium and before the date of maturity of the policy.
9. That after the policy acquires surrender value, as defined in section 5, if the subsequent premiums are not paid within the grace period the policy will be automatically converted into a reduced paid-up policy. Once the policy is converted into reduced paid-up policy, the policy will not be eligible for any guaranteed loyalty additions and any future

guaranteed yearly additions. When the policy becomes reduced paid-up, rider benefits may cease depending on the features of the rider benefits chosen. Accordingly, the letter dated 21.04.2023 intimating that the policy has been moved to reduced paid up mode was sent to the complainant and it was mentioned in the letter that sum assured has also been reduced to Rs.31,2981/-.

10. That as the complainant has paid premiums for more than 3 full years, the policy has acquired surrender value as per clause 5 of the policy document: 5.surrender value: the policy acquires a surrender value depending on the premium payment term chosen and the number of premiums paid as mentioned below: in case when premium payment term is greater than or equal to ten (10) years the policy acquires surrender value after payment of full premiums for three policy years hence, at this stage, the complainant is eligible for surrender value and the value shall be paid basis the surrender request received. Hence, prays to dismiss the compliant with exemplary cost.
11. The complainant has filed affidavit in lieu of evidence and got marked documents as Ex-P1 to P7.
The Assistant Vice President of the legal of the opposite party has filed affidavit in lieu of evidence and got marked documents as Ex-R1 to R4.

12. Heard arguments of the learned counsel of the complainant. The learned counsel for the opposite party filed written arguments.
13. Now the points that arise for the consideration of this commission are:-
 1. Whether the complainant has proved the deficiency in service by the opposite parties?
 2. Whether the complainant is entitle for the relief sought?
 3. To what order?
14. Our findings on the aforesaid points are as follows:-
 - Point No.1:- In the Affirmative.
 - Point No.2:- Partly in the Affirmative.
 - Point No.3 :- As per the final order for the following:-

:: R E A S O N S ::

15. **Point No.1:-** The evidence of the complainant discloses that he had obtained the policy from the opposite party for a term 20 years. The annual premium payment is Rs.51,126/-each for 10 years commencing from 21.03.2018. As per the evidence of the complainant he has made payment of 5 annual premium in all amounting to Rs.2,55,630/-. Now he is unable to make further payments due to unavoidable reasons. So, he has approached the opposite party claiming the refund of the amount paid by

him. But, the opposite party failed to refund. So he has issued notice to the opposite party on 24.08.2023 as per the copy of the notice Ex-P6. The postal acknowledgment marked as Ex-P7 discloses that the notice is duly served on the opposite party. In spite of service of notice the opposite party not bothered to refund the amount.

16. The complainant has not produced the policy document. However, the opposite party has produced copy of the policy marked as Ex-R3. As per the policy terms and conditions the insured had the option to cancel the policy within 15 days after the receipt of the same. Since the complainant has not chosen to do it he is not liable to surrender the policy and claim for refund of the amount unless the term of the policy is completed. Ex-P1 to P5 are the copies of the policy deposit receipts which discloses that the complainant has made payment of 5 annual premiums commencing from 08.03.2018 to 22.03.2022 so in all he is made payment of Rs. 2,55,630/-. The complainant has clearly stated that due to unavoidable reasons he is unable to make payment. No doubt the term of policy is 20 years and the premium payment term is 10 years, but, since the complainant has paid only 5 annual payments the opposite party ought to have refunded at least 20% the sum assured as per the policy terms and conditions. But instead refused to pay the amount which certainly amount to deficiency in service. Hence we answer this point in the Affirmative.

17. **Point No.2:-** The complainant has sought for refund of Rs. 2,55,630/-. The sum assured is Rs. 6,25,962/-. Since the complainant has paid 5 annual premium of Rs. 51,126/- each the complainant is entitle for refund Rs. 1,25,192.40 being 20% of the sum assured. The complainant is entitle for compensation of Rs.25,000/- towards mental agony and deficiency in service and he is entitle for cost of Rs. 10,000/- towards litigation expenses. Hence, we answer this point partly in the Affirmative.
18. **Point No.3:-** In view of answering points No.1 and 2 as above we proceed to pass the following order:-

:: ORDER ::

The complaint is allowed in part.

The opposite party shall refund Rs. 1,25,192.40/- to the complainant along with interest at 9% p.a. from the date of filing of this complaint within one month from the date of passing of this order.

Failing which the opposite party shall pay interest on the said amount at 12% p.a. from the date of passing of this order till its actual payment.

The opposite party shall pay compensation of Rs. 25,000/- towards mental agony and deficiency in service

and shall pay cost of Rs. 10,000/- towards litigations expenses to the complainant from the date of passing of this order.

Failing which the said amount will carry interest on the said amount at 9% p.a. from the date of this order till its actual payment.

Furnish free copies of the order to both the parties

(Dictated to the Stenographer transcribed, typed by her, corrected by us and then pronounced in open Commission on this the 15th June, 2024)

**(A.K. NAVEEN KUMARI)
PRESIDENT**

**(MARUTHI VADDAR)
MEMBER**

**(M.K.LALITHA)
MEMBER**