

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM  
ERNAKULAM**

**Complaint Case No. CC/22/132  
( Date of Filing : 02 Mar 2022 )**

1. P.M JOSHI

KEERTHI VILLA, ST FRANCIS XAVIERS CHURCH  
ROAD, KALOOR

.....Complainant(s)

Versus

1. KOTAK MAHINDRA PRIME LTD  
G-BLOCK BANDRA, MUMBAI

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. D.B BINU PRESIDENT  
HON'BLE MR. RAMACHANDRAN .V MEMBER  
HON'BLE MRS. SREEVIDHIA T.N MEMBER**

**PRESENT:**

**Dated : 29 May 2024**

**Final Order / Judgement**

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM**

**Dated this the 29<sup>th</sup> day of May, 2024**

Filed on: 02/03/2022

**PRESENT**

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member Smt.Sreevidhia.T.N

Member

**C.C. NO. 132/2022**

**COMPLAINANT**

P.M. Joshi, Advocate, S/o. Mathai, 36/1787C, Keerthi Villa, St. Francis Xavier's Church Road,  
Kaloor, Ernakulam 682017

**VS**

**OPPOSITE PARTY**

1. M/s. Kotak Mahindra Prime Ltd., Regd. Office at 27BKC, C27, G Block, Bandra, Mumbai 400051. Rep. by its Managing Director
2. The Branch Manager, M/s. Kotak Mahindra Prime Ltd., 4<sup>th</sup> Floor, Thadikkaran Centre, Palarivattom, Kochi 682025.

## **FINAL ORDER**

### **V. Ramachandran, Member:**

The complainant approached this Commission praying for issuing direction to the opposite parties to issue NOC and other forms including form 35 of vehicle- Honda City 1.5 SV MT with Registration No. KL07/CC-2600 and intimate the same to R.T.O., Ernakulam to enable the complainant to cancel the hypothecation along with other reliefs.

The complainant purchased a brand new Honda City car bearing Reg. No. KL07/CC2600 in the year, 2014 and the vehicle was purchased availing hire purchase loan from the 2<sup>nd</sup> opposite party branch at Kochi. The complainant had given cheques to the opposite parties for the hire purchase loan amount sanctioned by them to the complainant for Rs.5,00,000/- which was repayable in 60 equal instalments at the rate of Rs.8,595/- with effect from 12/12/2014. The complainant had entrusted to the 2<sup>nd</sup> opposite party to debit the monthly instalments of the loan repayment from his bank account maintained with SBI, Kathrikadavu. The opposite party had availed the Electronic Clearance Services (ECS) for most of the instalments. Complainant stated that till December, 2018 the monthly instalments were debited without any difficulty but in January, 2019 the 2<sup>nd</sup> opposite party approached the complainant and stated that the EMI for December, 2018 and January, 2019 could not be realized due to some technical problem. They also assured that no penal interest shall be levied from the complainant since the fault for delay occurred is not from the part of the complainant and requested to pay only Rs.21,190/- towards the loan amount for the above 2 instalments. The opposite parties also requested for 2 cheques and signed NACH for future clearance and the complainant issued 2 cheques and also signed on NACH as demanded by the opposite parties. Thereafter the complainant received a letter from the opposite parties on 29/03/2019 stating that they have not received the EMI for the month of March, 2019. Complainant issued a cheque dated 30/03/2019 as demanded by the opposite party. Even thereafter the further instalments upto July, 2019 had been realized through ECS from complainant's savings bank account on 22/08/2019 complainant received a lawyer notice from the opposite party since the opposite party could not collect the EMI for the month of July and August, 2019 and that the complainant was asked to pay the amount which the complainant had not agreed to do. The complainant sent a letter to the opposite party being reply to that lawyer notice of opposite party. The opposite party on 22/10/2019 again approached the complainant stating the ECS for the instalments for July to October has not been cleared due to technical error and assured that no ECS charges will be levied from the complainant. Though the opposite parties had requested for 2 more cheques and signed NACH for future clearance, complainant did not issue the same because there was only 1 more instalment to be paid. Therefore instead of giving document for further ECS clearance complainant had issued another cheque dated 05/11/2019 for Rs.10,595/- as the last instalment to be paid towards the HP loan.

It is submitted by the complainant that the entire loan amount was repaid with interest on 05/11/2019 and delay if any occurred in collecting the EMI amounts through ECS is not the fault of the complainant but because of the wrong information uploaded by the opposite parties. Complainant further states that the opposite party had not issued NOC for the vehicle releasing from hypothecation and even the CIBIL score of the complainant was affected due to the defective action, deficiency in transaction and unfair trade practice from the side of the opposite party.

Upon notice from the Commission opposite party appeared before the commission and filed their version.

The opposite parties in their version contented that the complainant had availed a car loan from the opposite parties in the year 2014 as per the Loan agreement CF-11054400 for an amount of Rs.5,00,000/- by hypothecating the vehicle bearing Reg. No. KL07/CC2600, the loan is period of 60 months. First EMI to be paid on 05/01/2015, the loan maturing date is 05/11/2019 as per loan agreement. At the time of availing the loan the complainant had ensured that he will repay the loan amount without default on the other had if there is any default in repayment complainant had agreed to repay the loan amount along with bouncing charge and late payment charges and mode of repayment chosen is through Electronic Clearance System. From the same it is crystal clear that it is the boundant duty of the borrower, the complainant here in to ensure all the EMI with regard to the subject matter loan were promptly repaid without default. Here in the subject matter case the complainant is a gross defaulter, the complainant had defaulted repayment for the month June, 2016, September, 2018, December 2018 and from January, 2019 to October, 2019. Out of which the default in the year 2019 during the month of March, July, August, September and October was due to some technical problem in the Electronic Clearance mandate issued by the complainant. As per the agreement the complainant is liable to repay the loan with bouncing charge and delay charge as the terms of the agreement. Hence the opposite parties had initiated recovery measures. But upon knowing the fact that the above alleged default during the year 2019 for the month of March, July, August, September & October had occurred due to the reason which is beyond the control of the complainant as a gesture of good will of the opposite parties intimated the complainant that the opposite party will not claim ECS return charges for the said period.

The complainant had produced 10 documents which are marked as Exbt. A1 to A10. Opposite parties had not have produced any documentary evidence even though sufficient opportunities were given to them. The Manager, SBI, Katrikadavu had produced one document which was marked as Exbt. C1. The complainant was examined in box as PW1 and the deposition recorded.

Exbt. A1 is the copy of EMI schedule of the loan issued by the opposite parties, Exbt. A2 is the copy of the letter dated 17/01/2019 issued by 2<sup>nd</sup> opposite party, Exbt. A3 is the copy of the letter dated 29/03/2018 of 2<sup>nd</sup> opposite party, Exbt. A4 is lawyer notice dated 22/08/2019, Exbt. A5 copy of the reply dated 29/08/2019, Exbt. A6 is the lawyer notice dated 19/09/2019, Exbt. A7 is the letter dated 28/10/2019 issued by opposite party, Exbt. A8 is the letter dated 02/11/2021 by registered post to the 2<sup>nd</sup> opposite party, Exbt. A9 is postal receipt, Exbt. A10 is the copy of RC book. Exbt. C1 is account statement of complainant.

From the above documents and the Commission has to verify the following points:

1. Whether the complainant is sustained to any sort of deficiency of service, or unfair trade practice from the side of the opposite party?
2. Whether the complainant is eligible to get any relief from the opposite party?
3. Cost of the proceedings if any?

On going through the complaint, version and evidence produced by the complainant, the Commission observed that the complainant had purchased a brand new Honda City car bearing Reg. No. KL07/CC2600 in the year, 2014 and the vehicle was purchased availing hire purchase loan from the 2<sup>nd</sup> opposite party branch at Kochi. The complainant had given cheques to the opposite parties for the hire purchase loan amount sanctioned them to the complainant for Rs.5,00,000/- which was repayable in 60 equal instalments at the rate of Rs.8,595/- with effect from 12/12/2014. The complainant had entrusted to the 2<sup>nd</sup> opposite party to debit the monthly instalments of the loan repayment from his bank account maintained with SBI, Kathrikadavu. The opposite party had availed the Electronic Clearance Services (ECS) for most of the instalments. Complainant stated that till December, 2018 the monthly instalments were debited without any difficulty but in January, 2019 the 2<sup>nd</sup> opposite party approached the complainant and stated that the EMI for December, 2018 and January, 2019 could not be realized due to some technical problem. They also assured that no penal interest shall be levied from the complainant since the fault for delay occurred is not from the part of the complainant and requested to pay only Rs.21,190/- towards the loan amount for the above 2 instalments. The opposite parties also requested for 2 cheques and signed NACH for future clearance and the complainant issued 2 cheques and also signed on NACH as demanded by the opposite parties. Thereafter the complainant received a letter from the opposite parties on 29/03/2019 stating that they have not received the EMI for the month of March, 2019. Complainant issued a cheque dated 30/03/2019 as demanded by the opposite party. Even thereafter the further instalments upto July, 2019 had been realized through ECS from complainant's savings bank account on 22/08/2019 complainant received a lawyer notice from the opposite party since the opposite party could not collect the EMI for the month of July and August, 2019 and that the complainant was asked to pay the amount which the complainant had not agreed to do. The complainant sent a letter to the opposite party being reply to that lawyer notice of opposite party. The opposite party on 22/10/2019 again approached the complainant stating the ECS for the instalments for July to October has not been cleared due to technical error and assured that no ECS charges will be levied from the complainant. Though the opposite parties had requested for 2 more cheques and signed NACH for future clearance, complainant did not issue the same because there was only 1 more instalment to be paid. Therefore instead of giving document for further ECS clearance complainant had issued another cheque dated 05/11/2019 for Rs.10,595/- as the last instalment to be paid towards the HP loan.

It is submitted by the complainant that the entire loan amount was repaid with interest on 05/11/2019 and delay if any occurred in collecting the EMI amounts through ECS is not the fault of the complainant but because of the wrong information uploaded by the opposite parties. Complainant further states that the opposite party had not issued NOC for the vehicle releasing from hypothecation and even the CIBIL score of the complainant was affected due to the defective action, deficiency in transaction and unfair trade practice from the side of the opposite party which the complainant had proved with documentary evidences whereas the opposite party denied the statement of the complainant. It can be seen from evidences that the opposite party had failed to utilize the ECS in time though there was sufficient fund maintained by the

complainant in his account. The opposite party is only verbally denied the argument of the complainant whereas Exbt. A1 to A10 and Exbt. C1 produced by the complainant and the Bank statement very clearly shows that there was sufficient fund in the account of the complainant during the said period. Therefore the complainant is eligible to get the compensation and other reliefs. The complainant has proved Point No. 1 in his favour. Since the Point No. (1) proved in favour of the complainant Point No. (2) and (3) decided accordingly. Hence the following orders are issued.

1. The opposite parties to directed to issue NOC for the complainant's vehicle No. KL.07 CC2600 within one month from the date of receipt of a copy of this order for releasing the vehicle from hypothecation.
2. The opposite parties shall pay an amount of Rs.25,000/- (Rupees twenty five thousand only) to the complainant as compensation.
3. The opposite parties shall also pay an amount of Rs.10,000/- (Rupees ten thousand only) as cost of proceedings to the complainant.

The opposite parties shall jointly and severally liable to comply with the above order within 30 days from the date of receipt the copy of this order failing which the amount ordered vide (1) and (2) above shall carry interest at the rate of 6% from the date of order till realization.

Pronounced in the Open Commission on this the 29<sup>th</sup> day of May, 2024

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V.Ramachandran, Member

Sd/-

D.B.Binu, President

Sd/-

Sreevidhia.T.N, Member

Forwarded/by Order

Assistant Registrar

### **Appendix**

#### **Complainant's Evidence**

Exbt. A1: Copy of EMI schedule of the loan issued by the opposite parties

Exbt. A2: Copy of social the letter dated 17/01/2019 issued by 2<sup>nd</sup> opposite party

Exbt. A3: Copy of the letter dated 29/03/2018 of 2<sup>nd</sup> opposite party

Exbt. A4: Copy of lawyer notice dated 22/08/2019

Exbt. A5: Copy of the reply dated 29/08/2019

Exbt. A6: Copy of lawyer notice dated 19/09/2019

Exbt.A7: Letter dated 28/10/2019 issued by opposite party

Exbt. A8: Letter dated 02/11/2021 issued by opposite party

Exbt. A9: Postal receipt

Exbt. A10: Copy of RC Book

**Opposite party's Exhibits**

Nil

**Deposition**

Exbt. C1: Account statement of complainant2

**023**

Despatch date:

By hand: By post

kp/

**CC No. 132/2022**

**Order Date: 29/05/2024/12/**

**[HON'BLE MR. D.B BINU]  
PRESIDENT**

**[HON'BLE MR. RAMACHANDRAN .V]  
MEMBER**

**[HON'BLE MRS. SREEVIDHIA T.N]  
MEMBER**