

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,  
PANCHKULA**

Consumer Complaint No	:	394 of 2021
Date of Institution	:	24.09.2021
Date of Decision	:	06.03.2024

Kuldip Garg son of Sh. B.R.Garg, resident of House No.379, Sector-9, Panchkula.

....Complainant

Versus

1. Mahindra & Mahindra Ltd., Gateway Building, Apollo Bunder, Mumbai-400039, through its Managing Director.
2. Managing Director, Mahindra & Mahindra Ltd., Gateway Building, Apollo Bunder, Mumbai-400039.
3. KBS Motors Pvt. Ltd., (Authorised Dealer of Mahindra & Mahindra Ltd.), Village Tepla, Nr. Taneja Public School, Ambala Jagadhari Road, Saha, District Ambala, through its Managing Director.
4. Managing Director, KBS Motors Pvt. Ltd., (Authorised Dealer of Mahindra & Mahindra Ltd.), Village Tepla, Nr. Taneja Public School, Ambala Jagadhari Road, Saha, District Ambala.

....Opposite Parties

**COMPLAINT UNDER SECTION 35 OF THE CONSUMER PROTECTION ACT, 2019**

Before: Sh. Satpal, President.  
Dr. Sushma Garg, Member.  
Dr. Barhm Parkash Yadav, Member

For the Parties: Complainant in person  
Sh.Rohan Mital, Advocate for OPs No.1 & 2.  
Sh. Saurabh Garg, Advocate OPs No.3 & 4.

### **ORDER**

**(Satpal, President)**

1. The brief facts, as alleged, in the present complaint are, that the complainant had purchased a new vehicle i.e. Mahindra XUV 500 FWD W11 WTHO NP(Vehicle ID:MA1YU2WTUJ6D13380) in May 2018, from the OP No.3 & 4, being the authorized dealer of the OPs no.1 & 2, vide no.INV19A000134 dated 13.05.2018. It is stated that from the very beginning of purchasing of the new Vehicle, the complainant has been facing the numerous operational problems in the vehicle, which are given as under:-

- i. Noise while operating the wiper;
- ii. Loud noise during driver side door glass operations;
- iii. Phone and Audio streaming non-functional;
- iv. Sound in call Top etc.

It is stated that the complainant informed the OPs No.3 & 4 about the operational difficulties and problems in the vehicle and sent the vehicle for its inspection and removal of problems a number of times but no resolution of the operational difficulties being faced by the complainant, while running the vehicle, was provided. The local authorized dealer i.e. Speed Links Panchkula was also contacted but to no avail. It is averred that an email was sent to the OPs No.3 & 4 on 04.05.2019, in response to which, the higher authorities of OPs No.1 & 2, ultimately vide email dated 03.06.2019, had expressed their inability to make any improvement in the functioning of the infotainment system. It is stated that the complainant made several representations via emails

for the removal of the faults as constantly persisting in the vehicle; however, instead of removing the persisting operational defects and problems in the vehicle, the representatives of OPs had just tried to subside the same under the guise of technical phrases and lame excuses in a very clandestine manner and the same has caused severe harassment and mental agony to the complainant. Ultimately, a legal notice was sent to OPs on 23.08.2019 but to no avail. Due to the act and conduct of the OPs, the complainant has suffered financial loss and mental agony, physical harassment; hence the present complaint.

2. Upon notice, the OPs No.1 & 2 appeared through counsel and filed written statement raising preliminary objections that the relationship between manufacturer on one hand and the dealer on the other hand are based on principal to principal basis and thus, the manufacturer i.e. OPs No.1 & 2 cannot be held liable for any lapses in service, which are attributable on the part of dealer; the complainant has not come with clean hands. The complainant has concealed the fact that the car had, in fact, met with an accident and several issues had arisen after the said accident. It was only after the accident that the complainant had tried to rake up the non-existent issues as manufacturing defects, even though the car was being used for over three and a half years and has run for over 32000 Kilometers. It is stated that the only issue, which the complainant had raised is about the infotainment system, which is limited by its technology as was duly explained to the complainant by the concerned officials of the Ops. However, still the complainant has tried to portray it is a major manufacturing defect and is trying to use it as a cause for claiming a replacement of the vehicle, which by no means, can be permitted under law.

On merits, it is stated that the car in question has no manufacturing defects, which fact becomes clear on seeing the vehicle history and repair orders. It is submitted that it was only after six months of car usage, for the very first time, the complainant had reported that there was an issue with the wiper not cleaning properly. The wiper blade was instantly changed under warranty and subsequently, as a goodwill gesture, blades of both the wipers were changed for the complainant completely free of cost. No other issue was reported by the complainant and every minor issue as reported was duly taken care of under the terms and conditions of warranty. It is stated that the technological issues were duly explained to the complainant and the complainant was also requested to refer to the manual and was explained as to how to get the best experience with regard to the infotainment system. Apart from the concerns regarding the infotainment system, no other issues have even been raised by the complainant through email. Further, whatever issues had been raised at the time of service or vide email, were duly considered and duly addressed and as such, there is no deficiency in service. Rest of the allegations alleged by the complainant has been denied and it has been prayed that there is no deficiency in service on the part of the OPs No.1 & 2 and as such, the complaint is liable to be dismissed.

Upon notice, the OPs No.3 & 4 appeared through counsel and filed written statement raising preliminary objections qua the complaint is not maintainable as the commission lacks the territorial jurisdiction and the complaint is time barred. On merits, it is submitted that that the vehicle was sold and delivered to the complainant in perfect working condition, after due satisfaction of the complainant. It is submitted that as per vehicle history, the vehicle had visited at OP's dealership for first four free services. It is submitted that the vehicle was produced for its

services on 16.06.2018, 29.01.2019, 16.04.2019, 07.05.2019, 16.05.2019, 31.05.2019, 26.11.2019 & 20.11.2020 and on every occasion, proper service was provided as per the satisfaction of the complainant. Thereafter, on 01.03.2021, the vehicle had visited at OP's dealership for job of accidental repairs. After carrying out the necessary repairs, the vehicle was delivered after due satisfaction of the complainant. Thus, as per the vehicle history, no such type of defects have ever been found in the vehicle during any service at the dealership of the OPs and also the customer had not complained at the dealership for the same, at any point of time. The Ops have always delivered best services to the complainant and made the repairs as demanded by the complainant and there has been no deficiency in services on the part of the Ops at any point of time. It is submitted that no complaint was ever lodged by the complainant qua infotainment system as alleged in the present complaint and thus, the complaint is liable to be dismissed being baseless and meritless.

3. To prove the case, the learned counsel for the complainant has tendered affidavit as Annexure C-A along with documents Annexure C-1 to C-6 in evidence and closed the evidence by making a separate statement. On the other hand, the learned counsel for the OPs No.1 & 2 has tendered affidavit as Annexure R-1/A along with documents as Annexure R-1/1 to R-1/2 and closed the evidence. The learned counsel for OPs No.3 & 4 has tendered affidavit as Annexure R-3/A along with documents as Annexure R-3/1 & R-3/2 and closed the evidence.

During arguments, the learned counsel for Ops No.1 & 2 has tendered a copy of email, wherein the price of infotainment system i.e. Audio Head Unit-81639 has been shown, which is taken on record as Mark 'A'.

4. We have heard the complainant and the learned counsels for OPs No.1 & 2 as well as OPs No.3 & 4 and gone through the record available on file including the written arguments filed by the complainant, OPs No.1 & 2 as well as OPs No.3 & 4 and minutely and carefully.

5. The complainant, during arguments, reiterated the averments as made in the complaint as also in his Affidavit(Annexure C-A) and contended that the OPs had failed to resolve the issue qua the infotainment system as was raised by him vide his emails dated 31.05.2019(Annexure C-2) followed by legal notice dated 23.08.2019 (Annexure C-6). It is argued that the complainant was not able to avail the facility of infotainment system in a hassle free manner due to the manufacturing defect in the same and thus, the complaint is liable to be accepted by granting the relief as claimed for in the complaint.

6. The OP No.2, who is manufacturer of the vehicle in question, has contested the complaint by raising the preliminary objections as well as on merits. During arguments, the learned counsel for the OPs No.1 & 2 has raised the objections that the relationship between the manufacturer and its authorized dealer are based on principal to principal basis and thus, no deficiency is liable to be attributed qua any lapses in services on the part of dealer.

The next objection, which has been raised by the learned counsel, is that the complainant has not submitted any expert report, which is mandatory vide Section 38(2)(c) of the Consumer Protection Act, in order to prove any manufacturing defect in the vehicle. Reliance has

been placed on the case law titled as Dr. K.Kumar Advisor (engineering Maruti Udyog Ltd.) Vs. Dr. A.S.Narayana Rao & Anr. [(2010) CPJ 19(NC)].

7. On merits, the learned counsel has argued that there was no manufacturing defect in the vehicle and the only issue, which was raised by the complainant qua the infotainment system, was explained to him by the technical persons and the complainant was requested to refer to the manual, so as to get the best service qua the infotainment system. It was also argued that the vehicle had been extensively used by the complainant and the minor issues, which have been raised, are attributable to the wear and tear in the normal usage of the vehicle. The learned counsel argued that the other issues regarding the defects in the wiper blades etc. were resolved by the changing the same and thus, the complaint is liable to be dismissed being frivolous, baseless and meritless.

8. The OPs No.3 & 4, who had sold the vehicle in question to the complainant vide invoice dated 13.05.2018(Annexure C-1) amounting to Rs.16,28,000/-, has contested the complaint by raising preliminary objections as well as on merits. During arguments, the learned counsel for the Ops No.3 & 4 reiterated the objections as raised in the written statement qua the lacking of territorial jurisdiction as also the issue of filing the present complaint beyond the prescribed period.

9. On merits, the learned counsel contended that the vehicle was sold and delivered to the complainant in perfect working condition, after due satisfaction of the complainant. The learned counsel argued that all the issues as raised during the free services of the vehicle were duly resolved by providing proper services to the complainant. It is argued that the vehicle was brought on 01.03.2021 for carrying out the job qua accidental repairs and as per vehicle history, no such type of defects as raised in the present complaint was ever raised by the complainant. The learned counsel argued that the vehicle was taken by the complainant to a local dealer, at Panchkula and thus, no liability can be fastened upon OPs No.3 & 4. Concluding the arguments, the learned counsel contended that no email correspondence had ever occurred between the complainant and the Ops No.3 & 4 and thus, the complaint is liable to be dismissed qua OPs No. 3 & 4 being frivolous, baseless and meritless.

10. After hearing the complainant and the learned counsel for OPs, it is found that the four operational issues were raised by the complainant as per averments made in para no.3 of the complaint as also in the corresponding para of the affidavit(Annexure C-A), which are as under:-

- i. Noise while operating the wiper;
- ii. Loud noise during driver side door glass operations;
- iii. Phone and Audio streaming non-functional;
- iv. Sound in call Top etc.

11. Admittedly, all the issues have been resolved by the OPs except the issue pertaining to

the infotainment system. In this regard, the complainant has been found to have raised this issue as per vehicle history on 29.01.2019, 16.04.2019 and 31.05.2019; as such, the complainant has been found to have raised the issue qua the working of the infotainment system just after a period of 8 months approx. from the purchase of the vehicle.

12. Apart from the above, the complainant has been found to have raised the issue qua the working of infotainment system vide his email dated 31.05.2019(Annexure C-2) by sending the same to Sh. Sanjoy Gupta, who had taken up the matter with Sh.S.Santhanam, the General Manager, North Zone. The email correspondence between said Sh. Sanjoy Gupta and Sh.S.Santhanam is available on record as Annexure C-4. Regarding the voice recognition capability of infotainment system through Blue Tooth, the relevant part of email is reproduced as under:-

Mr. Garg had 3 concerns, two of which namely noise while operating wiper and noise during driver side door glass operations were resolved by dealership.

Focus of our telecom was for the clarification on the concern of 'Voice Recognition'(VR) in the vehicle's infotainment specifically when the mobile phone is connected through Bluetooth.

We had in past consulted our team at Mahindra Research Valley(MRV) and the clarification was offered as below.

-VR vide 'Bluetooth' connectivity is an offline connection and has a limitation of identifying language accent/pronunciation, hence there can be a need of multiple attempts required to identify the intended contact. Sharing the extract for the infotainment manual which specifies the same. An excerpt from the manual page 4-79, is pasted below for ready reference.

-VR vide 'Android Auto' with advanced technology has a far better compatibility and accuracy of VR, since this is an online connection with a data cabin connection between phone and infotainment.

13. Sh. Sanjoy Gupta vide his email dated 03.06.2019 (Annexure C-5) informed the complainant that the Ops would not be able to improve the voice recognition capability of infotainment system through blue tooth. The said email for sake of clarity and convenience is reproduced as under:-

Good day Mr. Garg,

As promised here in the update from my colleague. Given the technical points explained in mail below. I am afraid we won't be able to better the performance of Bluetooth driven VR beyond what it delivers at present.

Team did make all efforts to ascertain possibilities. Many we request you to please use android auto if possible for better quality VR experience.

14. From the above emails, it is evident that the manufacturer i.e. Ops No.1 & 2 have

expressed their inability to make any improvement in the voice recognition capability of the infotainment system through Blue tooth. As per email(Annexure C-5), the complainant was advised to use android auto for having better quality of voice recognition. However, no such manual or other documents has been placed on record by the OPs that the complainant was informed prior to the sale of the vehicle in question to him that the infotainment system had a limited capability qua voice recognition through blue tooth. No copy of manual is placed on record for the reasons best known to them and thus, the Ops were deficient while rendering services to the complainant.

15. In view of the above discussion, the preliminary objections as raised by the Ops No.1 & 2 as well as Ops No.3 & 4 are dismissed having no merits therein.

16. Resultantly, the OPs No. 1 & 2 as well as the OP No.3 & 4, jointly and severally, are held liable to compensate the complainant on account of deficiency on their part.

17. In relief, the complainant has claimed for the replacement of the vehicle with new one or in the alternative, has sought the directions against the OPs to remove/rectify the operational defects qua the infotainment system. Further, the compensation of Rs.1,00,000/- and Rs.30,000/- on account of mental agony, harassment and litigation charges respectively has been claimed.

The prayer of the complainant for the replacement of the vehicle in question with new one is declined as no defect has been alleged qua the functioning of the vehicle except the operation of infotainment system. As discussed in above paras of this order, the infotainment system was found deficient as the same has a limited capability qua voice recognition through Bluetooth. The price of the infotainment system (audio head unit) as per Mark 'A' is given as Rs.81369/-. Since the working of infotainment system as fitted by the OP No.1 & 2 (manufacture) in the car in question is OK except its limited capability qua voice recognition through Bluetooth, a compensation to the extent of half of the total price of the infotainment system, which comes to Rs.40684.50/- (81369/2) would be proper, reasonable and justified.

18. As a sequel to above discussion, we partly allow the present complaint with the following directions to the OPs No.1 & 2 as well as OP NO. 3 & 4:-

- i. To pay a sum of Rs.40684.50/- to the complainant on account of compensation pertaining to deficient services given by infotainment system.
- ii. To pay an amount of Rs.10,000/- to the complainant on account of mental agony and harassment.
- iii. To pay an amount of Rs.5500/- as litigation charges.

19. The OPs No. 1 to 4 shall comply with the order within a period of 45 days from the date of communication of copy of this order failing which the complainant shall be entitled to the interest @ 9% simple on the amount of Rs.40684.50/- as awarded above w.e.f. the date of this order till actual realization. Further, the complainant shall be at liberty to approach this

Commission for initiation of proceedings under Section 71/72 of CP Act, against the OPs No.1 to 4. A copy of this order shall be forwarded, free of cost, to the parties to the complaint and file be consigned to record room after due compliance.

Announced on:06.03.2024

Dr.Barhm Parkash Yadav	Dr.Sushma Garg	Satpal
Member	Member	President

Note: Each and every page of this order has been duly signed by me.

Satpal

President