

**DISTRICT CONSUMER DISPUTES REDRESSAL
MALAPPURAM**

**Complaint Case No. CC/254/2023
(Date of Filing : 26 May 2023)**

1. SHAFEEK PARAVATH

PARAVATH HOUSE WEST KODUR POST MALAPPURAM
676504

.....Complainant(s)

Versus

1. OLA ELECTRIC TECHNOLOGIES PVT LTD

REGENT INSIGNA 414 3RD FLOOR 4TH BLOCK 17TH
MAIN 100 FEET ROAD KORAMANGALA BANGLORE
560034

2. OLA ELECTRIC SCOOTER SHOWROOM

TIRURKAD PERINTHALMANNA MAAB SQUARE
ANGADIPURAM 679321

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. MOHANDASAN K PRESIDENT
HON'BLE MR. MOHAMED ISMAYIL CV MEMBER
HON'BLE MRS. PREETHI SIVARAMAN C MEMBER**

PRESENT:

Dated : 23 Apr 2024

Final Order / Judgement

By Sri. MOHAMED ISMAYIL C.V., MEMBER

The averment of the complainant is as follows:-

1. On 06/04/2023, the complainant had remitted Rs.1,45,777/- to the opposite parties and booked for an electric scooter. The opposite parties had assured to make delivery of the vehicle on 18/04/2023. But it is alleged that the opposite parties are failed to deliver the vehicle as promised. The complainant had repeatedly contacted the opposite parties to get the vehicle delivered. But all of his attempts were failed. On 14/05/2023, the complainant had cancelled his booking and same was intimated both the opposite parties. It is alleged that the act of the opposite parties have caused financial loss, mental agony and inconvenience to the complainant. So the complainant has prayed for a direction to the opposite parties to pay compensation of Rs. 5,00,000/- (Rupees Five lakh only) for the sufferings of financial loss, mental agony, inconvenience. The complainant also prayed for cost of the proceedings.

2. The complaint is admitted and issued notice to the opposite parties. The opposite parties have appeared and filed version jointly.

3. In the version, it is contended that the complaint is not maintainable and denied all allegations raised by the complainant. The first opposite party is the manufacturer and second opposite party is the authorised dealer of the vehicle. The opposite parties admitted that the

complainant had booked Ola SI Pro Electric Scooter. It is also admitted that cancellation of reservation was accepted by them. Also, on 18/06/2023 the opposite parties have refunded the amount of the vehicle to the complainant. So no consumer dispute was existed between them. It is contended that as per Pre-Booking and Booking terms and conditions, the delivery time of the vehicle is only indicative in nature and is not binding on the first opposite party. The complainant had explicitly agreed to the terms and conditions related to Pre-Booking and Booking of the vehicle. It is added that the expected delivery date was only indicative in nature even at the time of Pre-booking of the vehicle. There is no deficiency in service from the side of the opposite parties. The delivery of the vehicle depends upon many internal and external factors and some time out of control of the first opposite party. It is contended that the complainant is trying to make unlawful gain from the opposite parties. So the complainant is not entitled for any relief as prayed in the complaint.

4. The complainant and the opposite parties have filed affidavits in lieu of their respective evidence. The documents of the complainant is marked as Exts. A1 to Ext. A4 documents. Ext. A1 document is the copy of acknowledgement dated 06/04/2023 issued by the bank to the complainant showing remittance of Rs.1,45,777/- in favour of the opposite parties. Ext.A2 document is the copy of proforma invoice dated 05/04/2023 issued by the opposite party to the complainant. Ext.A3 series documents are the communication made through email and mobile app between the complainant and the opposite parties. Ext.A4 series documents are copies of receipts showing payment for another electric scooter by the complainant. No document is produced by the opposite parties.

5. Heard both sides in detail. Perused affidavits, documents and argument notes of complainant. The Commission considered the following points for adjudication of the case:-

1. Whether the acts of the opposite parties are amounted to deficiency in service?
2. Relief and cost?

6.Point No.(i) & (ii):-

The Commission is considering both points together for the sake of brevity. It is pleaded by the complainant, that on 06/04/2023 he had booked an Electric Scooter from the opposite parties as per Ext. A1 document. Ext. A1 document would show that he had made arrangement for remittance of Rs. 1,45,777/- through bank. Ext.A2 document produced by the complainant would show that price of the electric scooter was Rs.1,45,777/-. The opposite parties did not challenge Ext. A1 and Ext. A2 documents. The argument of the complainant is that the opposite parties had promised to deliver the vehicle on 18/04/2023. But they failed to deliver the same accordingly. Even though the complainant had repeatedly contacted the opposite parties for taking delivery of the vehicle, opposite parties did not deliver the vehicle. So it is argued by the complainant that due to the irresponsible and negligent act of the opposite parties, he had compelled to cancel the booking of the vehicle on 14/05/2023 and demanded refund of the price of the electric scooter as well as compensation for the sufferings of mental agony, inconvenience and financial loss. Ext. A3 documents produced by the complainant would show that cancellation of the booking was caused due to delay of delivery of the vehicle by the opposite parties.

7. The opposite parties admitted booking of the vehicle as well as payment of the price of the vehicle by the complainant. At the same time, it is argued that the amount received from the complainant was refunded on 18/06/2023 following the cancellation of the reservation by the complainant. Conversely, it is argued by the opposite parties that as per pre-booking and booking terms and condition, the delivery time of the vehicle was an indicative in nature and is not binding on the first opposite party. The complainant had agreed to the terms and conditions of Pre-booking and booking of the vehicle. Moreover, delivery of the vehicle is also related to internal and external factors and some time out of control of the opposite parties.

8. It has come out in evidence of the complainant that refund was made only on 18/06/2023. It is argued by the complainant that refund was made only after filing of the complaint before this Commission. In the verification of the documents, it can be seen that complaint was filed on 26/05/2023 and amount was refunded only on 18/06/2023. So the Commission find that the opposite party have committed deficiency in service causing mental agony and inconvenience to the complainant.

9. In the evaluation of evidence, it can be also seen that the complainant had contacted the opposite parties for delivery of the vehicle on several occasions. It has come out in evidence that the opposite parties had promised to deliver the vehicle on 18/04/2023 i.e., after 12 days of making payment for the scooter. The contention of the opposite parties are that as per terms and conditions of Pre-booking and booking, the delivery time of the booking was an indicative in nature and not binding. But the Commission find that such contentions are not acceptable and against the interest of the consumer. The admitted fact is that the opposite parties could not deliver the vehicle as promised at the time of making payment by the complainant. The Commission find that the opposite parties have failed to explain reason for delay caused to the delivery of the vehicle. The Commission also find that the opposite parties have collected entire amount of the vehicle on 06/04/2023 and failed to deliver the vehicle as promised. More so the complainant had received amount from the opposite party only after filing of the complaint though cancellation of booking was made on 14/05/2023. As per law unless otherwise agreed, delivery of goods and payment of the price are concurrent conditions. In this case the payment was made by the complainant on 06/04/2023. The opposite parties have admitted that they were promised to deliver the vehicle on 18/04/2023. But they failed to do so. So the Commission find that the opposite parties cannot elude from their responsibility as keeping entire amount collected as the price of the vehicle and prolonging the delivery of the vehicle for an indefinite period without any valid reason. The act of the opposite parties are amounted to deficiency in service and they are liable to pay compensation for the same. In the light of the discussion made above the Commission find that the deficient service of the opposite parties caused mental agony and inconvenience to the complainant. The opposite parties are failed to establish before the Commission that the vehicle was ready for delivery at any moment of transaction made between them. The first opposite party is the manufacturer and the second opposite party is the authorised dealer of the first opposite party. It has come out in evidence that the price of the vehicle was received by the first opposite party and booking was done by the second opposite party. Even after repeated attempts made by the complainant, both opposite parties have failed to deliver the vehicle and kept the amount for a long period. So both opposite parties are jointly and severally liable to pay compensation to the complainant. The refund of the price of the vehicle was already received by the complainant. Considering the aspect of mental agony and inconvenience caused to the complainant, the Commission find that the opposite parties are

liable to pay compensation of Rs.50,000/- to the complainant. Moreover, the opposite parties are liable to pay Rs. 5,000/- to the complainant as cost of the proceedings.

10. It is argued by the complainant that, had incurred additional expense of Rs. 16,000/- (Rupees Sixteen thousand only) as he had purchased another electric scooter from the opposite party. Moreover, the purchase was made by availing loan as per direction of the opposite parties. It is argued by the complainant that when he availed the loan as demanded by the opposite parties, vehicle was immediately delivered, but when he tried to purchase the same with his own money, the opposite parties had wilfully rejected the same. The complainant alleged that the opposite parties are making unlawful profit. The complainant has produced Ext.A4 series documents to that regard. The Commission find that the complainant has purchased the scooter after availing loan from the financier. But, at the same time there is no documentary evidence available before the Commission to prove that the opposite parties have compelled the complainant to purchase the vehicle by using a loan from the financier of the opposite parties. Moreover, the complainant was also failed to establish that he was capable of purchasing the vehicle without availing a loan from anybody else. So the Commission is declined to make any order on that aspect. In the conclusion, the complaint is allowed in the following manner:-

1. The opposite parties are directed to pay Rs.50,000/-(Rupees Fifty thousand only) to the complainant as compensation for the sufferings of mental agony and inconvenience caused due to the acts of the opposite parties.
2. The opposite parties are directed to pay Rs. 5000/- (Rupees Five thousand only) to the complainant as cost of the proceedings.

The opposite parties shall comply this order within 30 days from the date of receipt of copy of this order otherwise entire amount shall carry interest at the rate of 9% per annum from the date of this order till the date of realisation.

Dated this 23rd day of April, 2024.

MOHANDASAN K., PRESIDENT

PREETHI SIVARAMAN C., MEMBER

MOHAMED ISMAYIL C.V., MEMBER

APPENDIX

Witness examined on the side of the complainant : Nil

Documents marked on the side of the complainant : Ext.A1 to A4

Ext. A1 : Document is the copy of acknowledgement dated 06-04-2023 issued by the bank to the complainant showing remittance of Rs. 1,45,777/- in favour of the opposite parties.

Ext.A2 : Document is the copy of proforma invoice dated 05/04/2023 issued by the opposite party to the complainant.

Ext. A3 : Series documents are the communication made through email and mobile app between the complainant and the opposite parties.

Ext. A4 : Series documents are copies of receipts showing payment for another electric scooter by the complainant.

Witness examined on the side of the opposite party : Nil

Documents marked on the side of the opposite party : Nil

MOHANDASAN K., PRESIDENT

PREETHI SIVARAMAN C., MEMBER

MOHAMED ISMAYIL C.V., MEMBER

**[HON'BLE MR. MOHANDASAN K]
PRESIDENT**

**[HON'BLE MR. MOHAMED ISMAYIL CV]
MEMBER**

**[HON'BLE MRS. PREETHI SIVARAMAN C]
MEMBER**