

BEFORE THE DISTRICT CONSUMER DISPUTES
REDRESSAL COMMISSION, MYSORE-570023

CONSUMER COMPLAINT No.325/2023

DATED ON THIS THE 3rd 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. Sreejith,
S/o Sri.Gopalakrishna Marar,
Aged about 42 years,
R/at No.401,
All India Speech and Hearing
Quarters, Manasagangotri,
Mysuru-570006.

(Rep.by.Adv. Sri.Gururaj.D)

V/S

OPPOSITE PARTY/S : 1. The Manager,
Royal Enfield Global,
No.269, Rajiv Gandhi
Salai, Elcot sez,
Sholinganallur,
Chennai,
Tamil Nadu-600119.
2. The Manager,
Aadith Motors,
No.881, Vijayanagar
I Stage, Devaraja Mohalla
Hunsur Road,
Mysuru.
(Exparte)

Nature of complaint	:	Deficiency in service
Date of filing of complaint	:	04.10.2023
Date of Issue notice	:	11.10.2023
Date of order	:	03.06.2024
Duration of Proceeding	:	7 MONTHS 30 DAYS

**Sri.Maruthi Vaddar,
Member**

1. This complaint has been instituted U/s 35 of the Consumer Protection Act 2019 by the complainant Sri.Sreejith, R/o Mysore against the opposite parties No.1 and 2 i.e., Manager, Royal Enfield Global, Chennai and the Manager Aadith Motors, Mysore alleging deficiency in service praying this commission to direct the 2nd opposite party to deliver the new vehicle or in the alternative to repay amount of Rs.3,03,000/- along with other charges and amount payable under the circumstances of the case.
2. **The brief facts of the complaint in a nutshell is as here under:-**
It is stated in this complaint that, the complainant had booked a Royal Enfield, Himalayan Granite Black BL seat bike with the 2nd opposite party on 28.08.2023 and at the time of booking, the complainant had paid a booking amount of Rs.10,000/- against the total price of the vehicle at Rs.3,03,000/-. On 29.08.2023 the complainant remitted the balance amount of Rs.2,93,000/- and required of the 2nd opposite party to deliver the vehicle on 03.09.2023 within 12:15 P.M in the afternoon. As per the complainant wish the 2nd opposite party gave delivery of the vehicle on the day and time as stipulated by the complainant. Immediately, after taking delivery of the said vehicle, the

complainant in the company of his wife and 3 years old child proceeded to the nearby petrol bunk which is just 1 Km away from the Showroom to fill the petrol to the vehicle. As soon as the complainant opened the lid of the petrol tank of the vehicle and the employee of the petrol bunk started filling the petrol the petrol begin to leak under petrol tank and smoke appeared near engine. Immediately, employee of the petrol bunk instructed the complainant to park the vehicle outside the petrol bunk.

3. The complainant further submitted that, immediately he called to the 2nd opposite party and informed the same. The complainant reached the 2nd opposite party showroom by walking along with his wife and child. Thereafter the complainant said that he would file a police complaint. The 2nd opposite party requested the complainant not to file any complaint instead the 2nd opposite party assured the complainant that they would rectify the problem but the complainant insisted for new vehicle. Thereafter the employee of the 2nd opposite party appeared near the petrol bunk and took the vehicle to their custody. The complainant was receiving the calls from the 2nd opposite party office requiring the complainant to take the said bike and the complainant was / is not willing to take the said bike as he requires new bike and in respect to the same the complainant had also sent e-mail communication on 05.09.2023 requiring of the 2nd opposite party to deliver new vehicle. In spite of receiving the said e-mail communication the office of the 2nd opposite party is not responding to the genuine requirements of the complainant. On 07.09.2023 one of the sales executive of the 2nd opposite party called the complainant over telephone and instructed the

complainant to take delivery of the said vehicle or that they threatened the complainant to face the dire consequences.

4. The complainant further submitted that heavily relies upon the usage of the bike as he has to travel during odd times. Owing to the act attributable to the office of the 2nd opposite party the complainant is confused and the sentiments and feelings of the complainant has been deeply hurt. It was his so many years of dream to purchase the said vehicle and the same came to be shattered owing to the negligence of the 2nd opposite party. Even in the presence of such a message from the side of the complainant, the 2nd opposite party did not bother to deliver a new vehicle to the complainant or in the alternative to refund entire amount of Rs.3,03,000/-. In every sense of term the move made by the 2nd opposite party amounts to deficiency in service. Needles to mention the complainant is a consumer as defined under the consumer protection Act under such circumstances with the help of notice dated 08.09.2023 the 2nd opposite party was cautioned that incase the 2nd opposite party were to fail in delivering new vehicle or in the alternative to refund the entire amount of Rs.3,03,000/- a complaint would be filed before the district consumer commission.
5. The said notice was also sent to 1st opposite party. But, on 19.09.2023 the Manager of the 2nd opposite party called the complainant over telephone and required of the complainant to take delivery of the said vehicle and he assured that he is replace the parts which were in defect in the petrol tank. However, the complainant flatly refused to receive the same as the complainant has paid his hard earned money upon his dream bike.

Unfortunately, there was a life threat to entire family of the complainant. Such being, the complainant has completely lost his faith on the said vehicle. Hence he requested / demanded the 2nd opposite party either to deliver a brand new vehicle or in the alternative to refund entire amount of Rs.3,03,000/- to the complainant. Hence this complaint.

6. After registering of this complaint, notices were ordered to be issued to the opposite parties. In pursuance of the notices the opposite parties did not appeared and hence they placed Exparte.
7. Then the complainant filed his affidavit in lieu of evidence and got marked the documents as Ex.P1 to P8 and closes his side evidence.
8. Heard the arguments of the counsel for the complainant.
9. Now the points that appear for the consideration of this commission :-

1. Whether the complainant is able to prove the alleged deficiency of service on the part of the opposite parties No.1 and 2 and thereby he is entitled to the reliefs as sought?
2. What order?

10. The findings of this commission on the aforesaid points is as hereunder:

Point No.1:-Partly in the affirmative

Point No.2:-As per the final order for the following

:: R E A S O N S ::

11. **Point No.1:-** In order to prove the case, the complainant filed his affidavit in lieu of evidence and reiterated the facts of the complaint. Ex.P1 seven photos of the vehicle, Ex.P2 copy of the customer receipt voucher, Ex.P3 copy of the order booking form, Ex.P4 copy of the notice, Ex.P5 CD, Ex.P6 postal acknowledgment, Ex.P7 track consignment, Ex.P8 messages. After the evidence of the complainant, the counsel for the complainant submitted his side arguments. After perusing carefully the pleadings and the documents submitted by the complainant, it is noticed that the complainant had booked a Royal Enfield, Himalayan Granite Black BL seat bike with the 2nd opposite party on 28.08.2023 and at the time of booking, the complainant had paid a booking amount of Rs.10,000/- against the total price of the vehicle at Rs.3,03,000/-. On 29.08.2023 the complainant remitted the balance amount of Rs.2,93,000/- and required of the 2nd opposite party to deliver the vehicle on 03.09.2023 within 12:15 P.M in the afternoon. As per the complainant wish the 2nd opposite party gave delivery of the vehicle on the day and time as stipulated by the complainant.
12. Based on the above pleadings of the complainant, this commission has perused the documents furnished by the complainant. ExP3 copy of the order booking form dated 28-08-2023 issued by opposite party no 2 wherein the name and address of the complainant is mentioned. The purchase mode of the bike is by way of cash. In the payment terms and conditions column, condition no 3 stated that "For booking your vehicle, a minimum of Rs.10,000/- is required." As per the terms and conditions mentioned in ExP3, the complainant paid Rs.10,000/-

as booking amount. Upon receipt of the amount of Rs.10,000/- the opposite party no 2 has endorsed his signature that he has received such and such amount. Further in Exp3 it is clearly mentioned that the tentative date & delivery date is one month. This commission further perused Exp2 customer receipt voucher receipt no PAY005709GH01863 receipt date 29-08-2023. After perusal of Exp2 document it is clearly noticed that the opposite party no 2 has received Rs.2,93,000/- cash for balance payment for Himalayan Granite Black BL Seat bike by endorsing his seal and signature. Upon perusal of these documents it is crystal clear that the averments made out in the foregoing paras of the complaint are clearly corroborated.

13. In the affidavit evidence the complainant deposed that, immediately, after taking delivery of the said vehicle, the complainant in the company of his wife and 3 years old child proceeded to the nearby petrol bunk which is just 1 Km away from the Showroom to fill the petrol to the vehicle. As soon as the complainant opened the lid of the petrol tank of the vehicle and the employee of the petrol bunk started filling the petrol, the petrol began to leak under petrol tank and smoke appeared near engine. Immediately, employee of the petrol bunk instructed the complainant to park the vehicle outside the petrol bunk. Immediately he called to the 2nd opposite party and informed the same. The complainant reached the 2nd opposite party showroom by walking along with his wife and child. Thereafter the complainant said that he would file a police complaint. The 2nd opposite party requested the complainant not to file any complaint instead the 2nd opposite party assured the complainant

that they would rectify the problem but the complainant insisted for new vehicle. Thereafter the employee of the 2nd opposite party appeared near the petrol bunk and took the vehicle to their custody.

14. The complainant further deposed that he was receiving the calls from the 2nd opposite party office requiring the complainant to take the said bike and the complainant was / is not willing to take the said bike as he requires new bike and in respect to the same the complainant had also sent e-mail communication on 05.09.2023 requiring of the 2nd opposite party to deliver new vehicle. In spite of receiving the said e-mail communication the office of the 2nd opposite party is not responding to the genuine requirements of the complainant. On 07.09.2023 one of the sales executive of the 2nd opposite party called the complainant over telephone and instructed the complainant to take delivery of the said vehicle or that they threatened the complainant to face the dire consequences. Heavily relies upon the usage of the bike as he has to travel during odd times, owing to the act attributable to the office of the 2nd opposite party the complainant is confused and the sentiments and feelings of the complainant has been deeply hurt. It was his so many years of dream to purchase the said vehicle and the same came to be shattered owing to the negligence of the 2nd opposite party. Even in the presence of such a message from the side of the complainant, the 2nd opposite party did not bother to deliver a new vehicle to the complainant or in the alternative to refund entire amount of Rs.3,03,000/-. In every sense of term the move made by the 2nd opposite party amounts to deficiency in service.

15. It is further case of the complainant that, complainant is a consumer as defined under the consumer protection Act under such circumstances with the help of notice dated 08.09.2023 the 2nd opposite party was cautioned that in case the 2nd opposite party were to fail in delivering new vehicle or in the alternative to refund the entire amount of Rs.3,03,000/- a complaint would be filed before the district consumer commission. The said notice was also sent to 1st opposite party. But, on 19.09.2023 the Manager of the 2nd opposite party called the complainant over telephone and required of the complainant to take delivery of the said vehicle and he assured that he is replace the parts which were in defect in the petrol tank. However, the complainant flatly refused to receive the same as the complainant has paid his hard earned money upon his dream bike. Unfortunately, there was a life threat to entire family of the complainant. Such being, the complainant has completely lost his faith on the said vehicle. Hence he requested / demanded the 2nd opposite party either to deliver a brand new vehicle or in the alternative to refund entire amount of Rs.3,03,000/- to the complainant. Hence this complaint.
16. From the contention taken by the complainant this commission has perused further documents produced by the complainant.ExP1 seven photos of the Royal Enfield bike. In two photos out of seven photos the petrol tank was removed. Further this commission has perused Exp5 CD wherein some email chats and videos can be seen. After the incident, the complainant insisted for the replacement of the bike or for the refund of entire amount of Rs.3,03,000/-. When the opposite parties not

responded then finally the complainant got issued legal notice to the opposite parties as per Exp4. Even after the service of the legal notices the opposite parties have not delivered new bike to the complainant or refund the entire amount of Rs.3,03,000/-. But the opposite party no 2 called the complainant over telephone and assured to replace the parts which were defective in the petrol tank. But the complainant did not agree and hence he approached this commission seeking necessary reliefs.

17. In spite of the service of summons /notices by this commission the opposite parties did not appear and not contested in the present proceeding by filing version /affidavit evidence to disprove the allegations leveled by the complainant. Hence the evidence of the complainant remains unchallenged. From the conduct of the opposite parties, it is appeared that though the complainant has booked the said vehicle on 28-08-2023 opposite party no 2 assured to deliver the same in one month. But the opposite party no 2 delivered the said bike on 03-09-2023 within a span of 7 days from the date of booking. There is a doubt arises about the conduct of the opposite parties. In Exp5 the complainant reacted with a message that the vehicle was already run 18 kms while delivered to him and the handle of the bike was bended and the petrol tank was leaked and smoke appeared near petrol tank and he presumed that the opposite party no 2 has delivered a demo bike of the showroom. The said bike consists some manufacturing defects. Hence the complainant demanded a new bike. The said act of the opposite party no 1 and 2 is only with an intention to cheat the complainant which amounts to deficiency in service on the part of the opposite parties. Hence the opposite parties are

bound to give a new bike or refund the amount of Rs.3,03,000/- to the complainant along with costs. Consequently we answer the point as partly in the affirmative.

18. **Point No.2:-** For the aforesaid reasons, we proceed to pass the following.

:: ORDER ::

The complaint is allowed in part.

The opposite parties 1 and 2 are jointly and severally liable to deliver a new Royal Enfield Himalayan Granite Bike to the complainant within two months from the date of this order. Failing which the opposite parties shall liable to refund the amount of Rs.3,03,000/- along with interest at the rate of 9 % p.a. from the date of this order till its payment.

The opposite parties are also liable to pay Rs.20,000/- compensation towards mental agony caused to the complainant by way of deficiency of service and Rs.8,000/- being the litigation costs within two months from the date of this order.

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

The complainant is at liberty to take action against the opposite parties under section

**72 of the C.P. Act 2019 for non-compliance of
this order.**

**Supply free copies of the order to all the
parties.**

**(Dictated to the Stenographer transcribed, typed by her, corrected by us and then
pronounced in open Commission on this the 3rd June, 2024)**

(A.K. NAVEEN KUMARI)
PRESIDENT

(MARUTHI VADDAR)
MEMBER

(M.K.LALITHA)
MEMBER