

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION HOWRAH
20, Round Tank Lane, P.O. and P.S. Howrah, Dist. Howrah-711 101.
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Complaint Case No. CC/355/2019
(Date of Filing : 20 Nov 2019)

1. SRI PINTU SADHUKHAN,

S/O. Sri Ashok Sadhukhan, 66, Tripura Roy Lane, P.O. Salkia,
P.S. Golabari, Howrah 711106.

.....Complainant(s)

Versus

1. Whirlpool of India Ltd.,

Respresented by its Director, Having Eastern Regional office at
11th Floor, Shantiniketan Building, 8, Camac Street, P.S. Park
Street, Kolkata 700017.

2. Manager, Raipur Electronics Pvt. Ltd

Dealer of Whirlpool, Branch office or shop room at 91, 94 and
96, G.T. Road (N), Salkia, Howrah 711106.

.....Opp.Party(s)

BEFORE:

HON'BLE MR. Debasish Bandyopadhyay PRESIDENT
HON'BLE MR. Dhiraj Kumar Dey MEMBER

PRESENT:

Dated : 06 Jun 2024

Final Order / Judgement

Date of Filing : 20 November, 2019.

Date of Judgement : 06 June, 2024.

Mr. Dhiraj Kumar Dey, Hon'ble Member.

This complaint under Section 12 (1)(a) and (b) of the Consumer Protection Act 1986, the Act, has been filed by Sri Pintu Sadhukhan, resident of 66, Tripura Roy Lane, Salkia, Howrah-711106, for short the Complainant, against (1) M/s. Whirlpool of India Limited, 8, Camac Street, Shantiniketan building, 11th Floor, Kolkata – 700 017, and (2) M/s. Raipur Electronics Pvt. Ltd. of 91,94 & 96, G. T. Road (North), Howrah – 711 106, collectively called as OPs, alleging deficiency in service occurred from the part of the OPs arising out of non-replacing the defective washing machine or non-refunding of purchase price.

Brief facts of this case as emerged from the complaint petition are that the complainant purchased a washing machine of Whirlpool make from the OP-2 for a consideration of ₹30,600/- on 28/02/2018. He purchased this washing machine through financier, namely HDFC Bank - Finance. On 06/03/2018 the washing machine was delivered having Model No. 31170, Supreme Care 7014 and Serial No. R1030300000093117002165006821, of Whirlpool, the OP-1. After installation and using this machine for 2 months complainant faced a problem that the machine stopped working. He then complained at the Whirlpool Helpline after which a technician of the OP-1 visited and repaired it on 09/05/2018 and issued a Job Sheet having serial

no. 711 to the complainant. Thereafter on 10/05/2018 the machine again stopped working and again the complainant complained about its non-functioning. Again a technician repaired the machine and issued a Job Sheet No. 979, dated 12/05/2018. Thereafter on 15/06/2018 the washing machine again stopped working and a technician attended the machine, repaired it and Issued Job Sheet on 16/06/2018. Thereafter the machine again stopped working on 05/07/2018 and 20/10/2018 and technicians attended and repaired the machine. In January, 2019 another problem arose – water started coming out of the machine while it was being used. Complainant himself time and again shocked from electrification, allegedly due to water leakage. On 02/09/2019 a technician attended the machine for repairing and informed the complainant that some parts of the washing machine needed to be replaced for which some time would be required. On 18/09/2019 he lodged a complaint in the National Consumer Helpline and continuously communicated with the OP-1 since 22/09/2019 demanding replacement of the washing, but on 26/09/2019 the OP-1 closed the communication in their database without resolving his grievance. The machine had two years warranty up to February, 2020 but the OP-1 neither repaired the machine for full satisfaction of the complainant nor did they replace the machine for which he filed this instant complaint on 20/11/2019 praying for relief as under:-

In the light of the facts and circumstances as enumerated in the complaint petition, it is respectfully prayed that this Hon'ble Forum/Commission may graciously be pleased to:-

Direct the OP No.-1 to replace the defective washing machine;

Direct the OP No.-1 to pay an amount of ₹30,000/- as compensation towards harassment and financial loss;

Direct the OPs to pay ₹10,000/- as litigation cost;

OR Direct the OPs to refund ₹30,600/- paid by him to purchase the defective washing machine with statutory interest thereon and any other order(s) as per law and equity.

Complainant filed copies of (i) Tax Invoice being No. SL/SA1718/05558, dated 28/02/2018 issued by OP-2, (ii) five Job Sheets issued on behalf of OP-1 bearing Job Sheet Nos. 711, dated 09/05/2018; 979, dated 12/05/2018; 1529, dated 16/06/2018; 1985, dated 06/07/2018 & 4038, dated 23/10/2018 and (iii) communications with the OP-1 through email from 22/09/2019 to 26/09/2019 as annexure to the complaint petition.

OPs were noticed, but none appeared to contest the case and thereby the case proceeded ex parte. Then the complainant filed his Evidence on Affidavit. Ultimately argument was heard in details and the complainant filed his Brief Notes on Argument annexed with three citations – one of Hon'ble State Commission, Chandigarh and two of Hon'ble Supreme Court of India. We have now come to the position to deliver the Final Order in this case. We have to decide:

(A) Whether the complainant is the consumer of the OP No.-1 under the Act?

(B) Whether there is any deficiency in service caused by the OPs? And

(C) Whether the complainant is entitled to get any relief/reliefs as prayed for under the Act?

Let us take these questions together in our discussion to avoid repetition.

DECISION WITH REASONS

It is an admitted fact as is emerged from the complaint and the annexed documents that the complainant purchased a Washing Machine of Whirlpool make, Model SUPREME CARE 7014, having Model No. 31170 on 28/02/2018 for a consideration of ₹30,600/- through financing by HDFC Bank. The machine was delivered on 06/03/2018 and was installed later. After using the machine for two months complainant faced that the machine stopped working. He then complained about the problem to the OP-1 who sent a technician to repair it. But this problem occurred frequently and repairing was done accordingly. Then the complainant faced another problem of water leakage from the body of the washing machine for which he himself became electrocuted on several occasions. Last time when a technician informed him that some parts should be replaced and that would take some time, complainant demanded replacement of the washing machine. But the OP-1 refused to replace it, but insisted to repair the machine. Ultimately OP-1 stopped communication with the complainant for which this case arises.

As the OPs did not turn up to contest this case we have no other alternative materials to counter or rebut the complaint petition.

When we scrutinise the five Job Sheets issued by the OP-1 through its service partners, M/s. Delite Sales and Service and M/s. We Care Services, addresses of which are not written in these Job Sheets, we find that the technicians attended to repair the faults of the washing machine but nature of service has not been written in these Job Sheets. So, we have no other view as alleged in the complaint.

Now, let us go through the communications made between the complainant and the OP-1 through email from 22/09/2019 to 26/09/2019. We see therein that whenever the complainant demanded replacement of the defective washing machine every time the OP-1 responded with a mechanised answer that: *“accordance with the prevalent market norms that if a product can be repaired and its defects can be removed then priority should always be given to carrying out of repairs.”* [Emphasis provided.] Here the question of how many times of repairing are to be allowed by a purchaser has not been taken into consideration by the OP-1. Admittedly, as the complainant stated that the machine had two years warranty, but it is not desirable that within the warranty period a product should be repaired incessantly. A purchaser purchases a product with a hope to utilise it up to his full satisfaction, he should not be expected to accept frequent fault of the product and its repairing. In this context let us take shelter of the observations made by the Hon'ble **National Commission** on 02/07/2020 while rendering judgement in Revision Petition No. 342 of 2015; [2020(4) CPR 37 (NC)] such as:

“13. Generally, whenever a consumer goes for brand new goods like a thrasher in this case has minimum expectation that he would not encounter or face any inconvenience or hardship for few months or a year or within warranty. In case if he had to take the machine time and again to the workshop or call the technician time and again for removing one defect or the other, certainly he suffers immensely loss of time, loss of business, physical discomfort and emotional sufferings for purchasing such new machine by paying heavy amount.

14. *I find, the defect in thrasher in the instant case continues for months together and erupts time and again, thus no other inference can be drawn than that the machine suffers from manufacturing defect as defect which is not of manufacturing nature can be rectified or removed without its recurrence or without giving any further inconvenience to the consumer.*

15. *My view is that the onus shifts to the manufacturer to show that the machine does not suffer from manufacturing defect once complainant has proved and discharged the initial onus that the machine was defective on showing that machine was attended for many occasion (seven times) for removing one defect. It is pertinent to note that the thrasher machine was taken to OP's workshop with the help of four people is sufficient to draw the inference that the machine was a defective one.*

16. *For such type of manufacturers and service providers the Hon'ble Supreme court has in **Ghaziabad Development Authority Vs. Balbir Singh** [(2004) 5 Supreme Court Cases 65] come down heavily and called upon the Consumer Forum and Commissions established under the Act, 1986 to not only compensate the consumer as to the actual loss suffered by him but also to compensate him as to the mental agony, harassment, emotional suffering, physical discomfort, loss of business, loss of time by taking vehicle time and again to the workshop." [Emphasis provided.]*

Now, let us take the word 'Warranty' into our consideration. In normal sense, a warranty means a guarantee or promise made by a manufacturer, or similar party, regarding the condition of their product. A warranty also refers to the terms and situations in which repairs, refunds, or exchanges will be made if the product does not function as originally described or intended. Warranties offer consumers some assurance that the goods and services they purchase are as advertised. So, a warranty ensures a purchaser on full and smooth functioning of the product he intended to purchase. A product may or may not have defects, whether inherent or not, and the manufacturer or the product seller should be always there to remove any defect. But then a question arises: how many times will a consumer expect repairing of the defects of the product he bought for a specific intention? In this case the complainant allowed repairing frequent times and yet the problem could not be solved, besides a new problem of water leakage from the washing machine surfaced. These clearly indicate that either the technicians were unskilled in solving these problems or the machine has inherent defects which could not be cured unless it is replaced. The OP-1 had never satisfied the complainant with their repairing efforts, as they had not taken any comment from the complainant in their Job Sheets, nor did they assure the complainant about the smooth and trouble free functioning of the newly purchased product. This indicates that the OP-1 was negligent in redressing the grievance of the complainant.

The OP-2, despite receiving notice to contest the case, have not appeared before this Forum/Commission resulting of which we cannot ascertain whether any action had been taken by them to resolve the complainant's problem. They cannot avoid their responsibility of after sales service. This indicates, in this case, that the OP-2 is deficient in their service to the purchaser/complainant.

We have considered the judgements passed in First Appeal No. 422 of 2012 passed by the Hon'ble **S, C. D. R. C., Chandigar**, in **Whirlpool Vs. Ashwani Dhingra**, and the orders of the Hon'ble Supreme Court passed in **Hindustan Motors Ltd. & Anr Vs. N. Shiva Kumar & Anr [(2000) 10 Supreme Court Cases 654]** and **Anand Kumar Vs Prem Singh & Othrs [(2000)**

10 Supreme Court Cases 655], which are annexed by the complainant with his BNA, to reach in our final decision.

So, in conclusion, we are of the considered view that there is a defect in the washing machine for which the manufacturing company sent its technician time and again to cure the defect which cannot be cured and another problem of water leakage surfaced and the manufacturing company, the OP-1, denied to replace it despite the purchaser's/complainant's repeated request which surmounts deficiency in service from the part of the OP-1 which must be compensated and the complainant is entitled to get relief for such deficient act of the OP-1. Complainant prayed for replacement of the defective washing machine together with a compensation of ₹30,000/- and a litigation cost of ₹10,000/- or, alternatively, refund of the purchase price of ₹30,600/- along with statutory rate of interest till realisation. Here OP-2 cannot avoid their responsibility of after sale service.

Hence, it is

ORDERED

that the complaint Case No. CC/355/2019 be and the same is allowed ex parte against the Opposite Parties.

1. The Opposite Party No. 1 is directed to either replace the defective washing machine by a new one of the same model or of same value or refund ₹30,600/- together with interest at the rate of 6% per annum from the date of purchase till the date of this order to the complainant.

2. The Opposite Party No. 1 is directed to pay ₹10,000/- as compensation to the complainant.

3. The Opposite Party No. 1 is directed to pay ₹5,000/- and the Opposite Party No. 2 is directed to pay ₹1,000/- to the complainant as litigation cost.

4. All the above noted directions should be complied by the Opposite Parties within 45 days from the date of receipt of this order failing which the respective sums shall carry 9% simple interest per annum till full and final realisation by the complainant.

Let a copy of this order be issued, on demand, to the parties of both sides free of cost.

Dictated and corrected by me

Member.

**[HON'BLE MR. Debasish Bandyopadhyay]
PRESIDENT**

[HON'BLE MR. Dhiraj Kumar Dey]
MEMBER