

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM  
ERNAKULAM**

**Complaint Case No. CC/22/80  
( Date of Filing : 07 Feb 2022 )**

1. RAVIPRASAD P.V

PAZHANILATHU HOUSE UNIVERSITY COLONY, NEAR  
RATION SHOP, KALAMASSERY 682022

.....Complainant(s)

Versus

1. WHIRLPOOL INDIA LTD

18/10A, COCHIN UNIVERSITY

.....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 : 19 Jun 2024**

**Final Order / Judgement**

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, ERNAKULAM**

Dated this the 19<sup>th</sup> day of June 2024

Filed on: 07-02-2022

**C.C No. 80/2022**

D.B.Binu

President

.V.Ramachandran

Member

Sreevidhia T.N

Member

**The Complainant**

Raviprasad P.V, Pazhanilath House University colony, near Ration shop Kalamassery Pin-  
682 022

(By Adv.Ameer K.M., Near Cochin University Metro Station, S.Kalamassery, Kochi-33)

**The opposite parties**

1. Whirlpool India Ltd., Building No. 18/10A, Cochin University (P.O), Cochin University Road, Kochi-682022.
2. The Manager, Bismi Connect Pvt. Ltd., 21/466E, Vallathol Jn., Kalamassery, Ernakulam, Kalamassery- 682022.

(Op 2 rep. by Adv.T.J.Lakshmanan, Power House Road, Kochi-682 018)

## **FINAL ORDER**

### **D.B. Binu, President:**

#### **1. A brief statement of facts of this complaint is as stated below:**

The complaint was lodged under Section 35 of the Consumer Protection Act, 2019. On 12.03.2021, the complainant purchased a "Whirlpool Fridge Model REF FF 355LIFPRO OMEGA TEEL 3 STAR" from the second opposite party for Rs. 37,901/-. The fridge was delivered on 13.03.2021, and a week later, a technician from the first opposite party installed it.

In the second week of October 2021, the complainant discovered a 3-inch rupture in the inner body of the fridge, indicating a manufacturing defect. The complainant reported this to the second opposite party's customer care, which directed the issue to the first opposite party and registered a service request (COC 25102113264) on 25.10.2021. A technician inspected the fridge but stated that the issue could not be rectified and advised the complainant to inform the first opposite party.

In the first week of November 2021, the complainant noticed the fridge's automatic cut-off system malfunctioning. The technician confirmed that the electronic board was faulty. Despite repeated reminders, follow-ups, and personal visits to the offices of both the first opposite party and the second opposite party, no corrective measures were taken.

On 09.11.2021, the complainant issued a registered notice to both opposite parties demanding a refund or replacement, but no action was taken. Another legal notice was sent on 29.11.2021, with postal receipts provided.

The complainant experienced significant mental agony, financial loss, and job problems due to the opposite parties' failure to address the issues. The cause of action arose on 13.03.2021 with the purchase, in October 2021 with the discovery of the rupture, and in November 2021 with the malfunctioning cut-off system. These events occurred in Ernakulam, within the jurisdiction of this commission.

### **Prayer:**

The complainant requests the Commission to:

1. Refund the cost of the fridge.
2. Pay Rs. 20,000 for physical strain, mental agony, and job issues.
3. Pay Rs. 1,000 for the cost of litigation.

### **2) Notice**

The Commission issued notice to the first opposite party who, despite being duly served, did not appear. Consequently, the first opposite party was declared ex-parte on 29.10.2022. However, the second opposite party filed a version.

### **3. THE VERSION OF THE SECOND OPPOSITE PARTY**

The complainant purchased the refrigerator after a thorough inspection and based on his wish, being confident in its make, performance, warranty, and after-sales service. They assert that post-sale service and warranty are provided by the manufacturer (the first opposite party), and the warranty card is with the complainant. The second opposite party claims no knowledge of communications between the complainant and the first opposite party. It states that no reliable evidence has been provided to prove any defect in the refrigerator.

The second opposite party cites the Honourable Supreme Court rulings to support their stance:

- Dealers are not liable for manufacturing defects (Hindustan Motors v. Shivakumar and Ors, 2000 (10) SCC 654).
- Only defective parts, not the entire product, should be replaced (Maruti Udyog Ltd. v. Shusheel Kumar Gabgotra & Anr, 2006 (4) SCC 644).

They stated that the complainant has not provided expert evidence to prove any defect necessitating total replacement and used the refrigerator without issues for five months. It is crucial to determine whether the defect is due to manufacturing or misuse, requiring expert evidence which the complainant has not provided. The second opposite party asserts that they have been unjustly added to the complaint and denies causing any mental agony, financial loss, or job problems. They claim no deficiency in service or unfair trade practice has been proven by the complainant.

The second opposite party requests the Commission to dismiss the complaint with costs, citing the complainant's failure to provide evidence and prove allegations.

### **4). Evidence**

A proof affidavit was filed by the complainant and marked Exhibits A1 and A4 to support his case.

Exhibit A1: The true copy of the Invoice.

- Exhibit A2: The true copy of the Initial complaint.
- Exhibit A3: The true copy of the Postal receipts.
- Exhibit A4: The true copy of the Legal notice.

### **5) The main points to be analyzed in this case are as follows:**

- i) Whether the complaint is maintainable or not?
  - ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant.
  - iii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?

iv) Costs of the proceedings if any?

**6) The issues mentioned above are considered together and are answered as follows:**

In the present case, as per Section 2(7) of the Consumer Protection Act, 2019, a consumer is a person who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment. The true copy of the Invoice by the complainant (**Exhibit A1**) establishes that the complainant is a consumer as defined under the Consumer Protection Act, 2019. Therefore, **point No. (i)** is against the opposite parties.

The complainant initiated legal action to seek redress for the deficiencies in service and the engagement in unfair trade practices by the opposite parties.

**Summary of Argument Note Filed by Sri. Ameer K.M, Counsel for the Complainant:**

The complainant purchased a "Whirlpool Fridge Model REF FF 355LIFPRO OMEGA TEEL 3 STAR" from the opposite party No. 2 on 12.03.2021 for Rs. 37,901/- (**Exhibit A1**). The refrigerator was delivered to the complainant's residence on 13.03.2021. The refrigerator functioned without apparent issues until the first week of November 2021. During this period, the complainant noticed that the automatic cut-off system of the refrigerator was malfunctioning. Concerned about the appliance's functionality, the complainant contacted the service centre.

A service technician was dispatched to inspect the refrigerator. Upon examination, it was determined that the electronic board responsible for the automatic cut-off system was defective and not in working condition. The technician advised that this defect was likely present from the time of delivery, indicating a pre-existing issue with the product. In addition to the malfunctioning automatic cut-off system, the complainant discovered a significant defect while cleaning the refrigerator in the second week of October 2021. A 3-inch rupture was found in the inner body under the vegetable tray, which compromised the structural integrity and functionality of the appliance.

Despite multiple requests to the second opposite party for repairs or replacement, no satisfactory action was taken. The complainant then formally filed a complaint on 09.11.2021 (**Exhibit A2**), seeking redressal. This was followed by a legal notice sent on 29.11.2021 (**Exhibit A4**), demanding rectification of the defects or replacement of the refrigerator.

The factual issues raised in the complaint before the commission are: the automatic cut-off system of the refrigerator is not working, and a 3-inch rupture was found in the inner body under the vegetable tray of the refrigerator. The chronological list of dates and events includes the purchase on 12.03.2021, delivery on 13.03.2021, discovery of the rupture in October 2021, malfunction detection in November 2021, filing of the initial complaint on 09.11.2021, and issuance of the legal notice on 29.11.2021.

The complaint and the accompanying documents were duly served to both the opposite parties by the procedural rules of this commission. The first opposite party failed to appear before the commission despite being duly served with the complaint and accompanying documents. As a result, the first opposite party was declared ex-parte. This non-appearance implies a lack of defense against the claims made by the complainant and can be interpreted as an implicit acceptance of the allegations of manufacturing defects in the refrigerator.

The second opposite party, the product seller, filed a version in response to the complaint. However, they did not categorically deny the specific allegations of deficiency in service and manufacturing defects claimed by the complainant. The response provided by the second opposite party was vague and lacked substantive refutation of the facts presented by the complainant. This failure to provide a detailed and categorical denial of the alleged defects and service deficiencies suggests an inability or unwillingness to refute the complainant's version effectively. The lack of a strong defense against the allegations indicates an implicit acknowledgment of the issues raised by the complainant.

The failure of the second opposite party to effectively challenge the complainant's version and evidence further substantiates the claims of defective product and inadequate after-sales service. The complainant presented multiple pieces of evidence, including the invoice (Exhibit A1), the initial complaint (Exhibit A2), postal receipts (**Exhibit A3**), and the legal notice (Exhibit A4). These documents were not contested by the second opposite party, thereby reinforcing the credibility and authenticity of the complainant's claims. The absence of counter-evidence or substantial rebuttal from the second opposite party strengthens the validity of the defects and the deficiency in service as alleged by the complainant.

The process and steps taken in this case highlight a significant lapse on the part of both the opposite parties. The first opposite party's non-appearance and ex-parte declaration, coupled with the second opposite party's inadequate response, collectively emphasize the lack of due diligence and accountability from both parties. This sequence of events demonstrates a clear deficiency in the duty of care owed to the complainant and justifies the complainant's demand for relief.

As per the Consumer Protection Act, 2019, there is a clear mandate for product sellers to inspect and maintain the products before delivering them to consumers. The second opposite party, the retailer and product seller, had an unequivocal duty to ensure that the refrigerator was in perfect working condition before it was handed over to the complainant. The failure of the second opposite party to carry out this obligation resulted in the refrigerator being delivered with significant defects, specifically the malfunctioning of the automatic cut-off system and a structural rupture under the vegetable tray.

The automatic cut-off system is a crucial component of the refrigerator, designed to regulate temperature and ensure the appliance operates efficiently. Its malfunction not only compromises the refrigerator's performance but also poses a risk to the stored food's safety. Similarly, the 3-inch rupture found in the inner body of the refrigerator indicates a severe defect that could affect the refrigerator's overall functionality and longevity.

The presence of these defects upon delivery demonstrates clear negligence on the part of the second opposite party. This negligence breaches the standard of care that consumers are entitled to expect from product sellers. The complainant's reliance on the second opposite party's assurance of the product's quality and condition was met with a defective and inadequately inspected product, thus justifying the claims of negligence and failure to provide a defect-free product as required under the Consumer Protection Act.

Deficiency in service is defined under Section 2(11) of the Consumer Protection Act, 2019, as any fault, imperfection, shortcoming, or inadequacy in the quality, nature, and manner of performance which is required to be maintained by or under any law for the time being in force, or has been undertaken to be performed by a person in pursuance of a contract or otherwise

about any service. In this case, the second opposite party exhibited a clear deficiency in service by failing to address the complainant's concerns and rectify the defects in the refrigerator despite multiple requests. The failure to provide timely and adequate after-sales service aggravated the inconvenience and potential health risks faced by the complainant. The service technician's diagnosis of the defective electronic board was not followed up with appropriate corrective action, leaving the complainant to deal with a malfunctioning appliance. Such inaction and failure to provide the necessary repairs or replacement constitute a breach of the service standards expected from a reputable retailer and a clear case of deficiency in service.

According to the Consumer Protection Act, 2019, any deceptive practice by a seller that misleads consumers regarding the quality, standard, or grade of a product is classified as an unfair trade practice. In this instance, the second opposite party misrepresented the refrigerator's quality to the complainant, leading him to believe that he was purchasing a high-quality, fully functional appliance. However, the subsequent discovery of significant defects both in the automatic cut-off system and the refrigerator's structural integrity proves otherwise. The act of selling a defective refrigerator under the guise of it being a high-quality product constitutes deliberate deception and unfair trade practice. This misrepresentation not only caused financial loss to the complainant, who paid Rs. 37,901 for the refrigerator but also led to significant inconvenience and potential health risks due to the malfunctioning appliance. The complainant was deceived into making a purchase based on false information, which is a clear violation of the principles of fair trading and consumer rights protected under the Act.

Article 21 of the Constitution of India guarantees the right to life and personal liberty, encompassing the right to live with human dignity and all that goes along with it, including the right to health and safety. The defective refrigerator, by its very nature, poses a substantial health risk to the complainant and his family. The malfunctioning automatic cut-off system could lead to improper refrigeration, resulting in food spoilage and potential food poisoning. The structural rupture further compromises the refrigerator's ability to maintain a safe environment for food storage. By failing to rectify these defects or provide a replacement, the opposite parties are infringing upon the complainant's fundamental right to life and health. The opposite parties' neglect and failure to address the defects despite being aware of them not only breach their statutory obligations but also violate the constitutional right guaranteed under Article 21. This right is not merely a passive right against arbitrary action but requires affirmative governmental action for its protection and preservation. In this context, the opposite parties' actions or lack thereof constitute a direct infringement on the complainant's right to a safe and healthy living environment.

#### **LEGAL PRECEDENTS:**

1. **V.P. Asokan v. M/S Carrier Company:** Dealers have a legal obligation to facilitate repairs and provide adequate after-sales service (Hindustan Motors v. Shivakumar and Ors, 2000 (10) SCC 654).
2. **Dr. Thirumeny M.J v. Samsung India Electronics Pvt Ltd:** Failure to file a written version or contest allegations strengthens the complainant's case.

#### **Summary of Argument Note Filed by Sri. Lakshmanan T.J., Counsel for the Second Opposite Party:**

The complainant independently visited the showroom and purchased the refrigerator manufactured by the first opposite party after thoroughly inspecting it. The complainant was confident about the product's make, performance, warranty, and after-sales service, and he selected and purchased the fridge.

The second opposite party asserts that post-sale service and warranty are provided by the manufacturer (the first opposite party), and the warranty card is with the complainant. They claim no knowledge of any communications or transactions between the complainant and the first opposite party.

The second opposite party argues that the complainant has not provided any reliable evidence or expert testimony to prove the refrigerator has a defect. They reference the Supreme Court ruling in *Hindustan Motors v. Shivakumar and Ors* (2000 10 SCC 654), stating that dealers are not liable for manufacturing defects. Additionally, they cite *Maruti Udyog Ltd. v. Shusheel Kumar Gabgotra & Anr* (2006 4 SCC 644), which states that only defective parts, not the entire product, should be replaced.

The second opposite party contends that the complainant used the refrigerator without issues for five months and that expert evidence is necessary to determine whether the defect is due to manufacturing or misuse. They claim the complainant has wilfully withheld such evidence.

They argue that the complainant added them to the complaint without justification and that they have not caused any mental agony, financial loss, or job problems as alleged. They deny any deficiency in service or unfair trade practices and assert that the complainant has not provided evidence to prove these allegations.

In conclusion, the second opposite party requests the Commission to dismiss the complaint with costs, as the complainant has failed to provide reliable evidence to support the allegations of deficiency in service or unfair trade practices.

The evidence presented included an ex-parte proof affidavit filed by the complainant, which was unchallenged by the first opposite party. Therefore, the complainant's claims were considered credible and supported by the evidence. The complainant requests the commission to grant the relief sought, including compensation for mental agony and unfair trade practices.

The first opposite party's conscious failure to file their written version despite having received the Commission's notice to that effect amounts to an admission of the allegations levelled against them. Here, the case of the complainant stands unchallenged by the first opposite party. We have no reason to disbelieve the words of the complainant against the first opposite party. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

We have carefully heard the submission made at length by the learned Counsel representing the complainant, and the second opposite party have also considered the entire evidence on record.

### **Analysis and Legal Reasoning:**

**A. Maintainability:** Under Section 2(7) of the Consumer Protection Act, 2019, a consumer is a person who buys any goods or hires or avails of any services for consideration. The complainant provided a valid invoice (**Exhibit A1**), making him a consumer as defined under the Act.

**B. Deficiency in Service and Negligence:** The complainant discovered significant defects in the refrigerator within a few months of purchase. Despite multiple requests for repairs or replacement, both opposite parties failed to take corrective action. This amounts to a clear deficiency in service as defined under Section 2(11) of the Consumer Protection Act, 2019.

**C. Legal Precedents:**

- **V.P. Asokan v. M/S Carrier Company:** Dealers have a legal obligation to facilitate repairs and provide adequate after-sales service.
- **Dr. Thirumeny M.J v. Samsung India Electronics Pvt Ltd:** Failure to file a written version or contest allegations strengthens the complainant's case.
- **Nachiket P. Shirgaonkar v. Pandit Automotive Ltd. & Another:** Products requiring frequent repairs shortly after purchase indicate a defective product, holding both the manufacturer and seller liable.
- **Bandhua Mukti Morcha v. Union of India:** The right to life under Article 21 includes the right to health and safety. The defective refrigerator violates this right.
- **Kishan Rao v. Nikhil Super Speciality Hospital and Another:** Expert evidence is required only in complex cases. In straightforward cases like this, the defects are evident without the need for expert testimony.

**D. Liability of the First Opposite Party:** The manufacturer, despite being duly served, did not appear before the Commission, leading to an ex-parte decision. This non-appearance implies a lack of defense against the claims made by the complainant and can be interpreted as an implicit acceptance of the allegations of manufacturing defects in the refrigerator.

We have carefully heard the submissions made at length by the learned Counsel representing the complainant and the first opposite party have also considered the entire evidence on record.

The evidence presented, including the invoice (**Exhibit A1**), initial complaint (**Exhibit A2**), postal receipts (**Exhibit A3**), and legal notice (**Exhibit A4**), was credible and supported the complainant's claims. The first opposite party's failure to appear indicates a deficiency in the duty of care owed to the complainant.

In light of the evidence and legal precedents, the complaint against the first opposite party is upheld. The first opposite party is liable for the manufacturing defects and the resulting mental agony and financial loss experienced by the complainant.

However, the liability of the second opposite party is exempted as they were not responsible for the manufacturing defects and were only the dealers. The complainant has not provided sufficient evidence to hold the second opposite party accountable for the defects in the refrigerator.

*Consumer protection is of paramount importance, particularly when it comes to the responsibilities of manufacturers. Manufacturers are entrusted with the duty of ensuring that their products meet the highest standards of quality and safety. This obligation is critical, as consumers rely on the integrity and reliability of manufacturers when purchasing goods. Any failure in this duty, such as producing and selling defective products, not only undermines consumer trust but also exposes consumers to potential harm and financial loss. Upholding consumer protection ensures that manufacturers remain accountable for their products, fosters trust in the marketplace and guarantees that consumers can confidently rely on the quality and*



*safety of the products they purchase. This case underscores the necessity for stringent consumer protection measures and the crucial role of manufacturers in maintaining these standards.*

We determine that issue numbers (I) to (IV) are resolved in the complainant's favour due to the significant service deficiency and the unfair trade practices on the part of the first opposite party. Consequently, the complainant has endured considerable inconvenience, mental distress, hardships, and financial losses as a result of the negligence of the first opposite party.

In view of the above facts and circumstances of the case, we are of the opinion that the first opposite party is liable to compensate the complainant. Hence, the prayer is partly allowed as follows:

- I. The first opposite party is directed to refund the cost of the fridge amounting to Rs.37,901 (Rupees Thirty-Seven Thousand Nine Hundred and One Only) to the complainant as evidenced by **Exhibit A-1**.
- II. The first opposite party is directed to pay ₹25,000 (Rupees Twenty-Five Thousand Only) as compensation for monetary loss, mental agony, and hardship suffered by the complainant due to the significant service deficiency and unfair trade practices.
- III. The first opposite party shall also pay the complainant ₹10,000 (Rupees Ten Thousand Only) towards the cost of the proceedings.

The first opposite party is mandated to comply with the directives mentioned above within 45 days from the date of receipt of this order. Failure to comply with the payment orders under points (I) and (II) will result in interest at the rate of 9% per annum from the date of filing the complaint (07-02-2022) until the date of full payment realization.

Pronounced in the Open Commission on this 19<sup>th</sup> day of June 2024.

Sd/-

D.B.Binu, President

Sd/-

V. Ramachandran, Member

Sd/-

Sreevidhia.T.N, Member

Forwarded by Order

Assistant Registrar

by Order  
Assistant Registrar

**Appendix**

- Exhibit A2: The true copy of the Initial complaint.
- Exhibit A3: The true copy of the Postal receipts.

Exhibit A4: The true copy of the Legal notice

Date of Depatch ::

By Hand ::

By Post ::

kc/

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

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

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