

(1992) 02 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

AMRUTHBAI HARGOVANLAL RAMI

APPELLANT

Vs

PATEL VALLABHBHAI MULJIBHAI And MANAGER VOLTAS
LIMITED

RESPONDENT

Date of Decision : 27-02-1992

Acts Referred:

Citation : 1992 2 CPJ 695

Hon'ble Judges : S.A.Shah , Leelaben Trivedi J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal was posted for hearing on 15.11.91. But could not be heard because notice was not served on the Respondent No. 1. The notice appears to have been served" on the Respondent No. 1 on 2.2.92 by personal service and the date for hearing the appeal is fixed today. None of the Respondents is present and, therefore, we have heard the representative of the appellant on merits.

2. THE appellant is the original complainant who had purchased a Voltas Refrigerator on 1.1.90 from the Respondent No. 1, who was Opponent No. 1 before the District Forum. THE Respondent No. 1 represented himself that he was the authorised dealer of Respondent No, 2-M/s. Voltas Limited and sold this refrigerator to the complainant after recovering full price i.e. it was sold as a new refrigerator. THE complainant has also produced the original bill of Opponent No. 1 which shows that the same has been sold by Opponent No. 1 recovering Rs. 6,900/-, the price of a new refrigerator. THE opponent has also issued a guarantee card which gives guarantee of 7 years and one year free service. Though the refrigerator was alleged to be a new one the same was sent for reparation within a month since the refrigerator stopped making ice. In other words, it was not giving cooling which requires water to turn into ice. The same was repaired by the Opponent No. 1 but again it stopped proper cooling. It appears that the complainant originally sent an application by way of letter to the District Forum on 7.6.90 wherein he has narrated the performance of his

refrigerator. He has also made a demand from the Opponent No. 1 that the refrigerator was defective and, therefore, it may be replaced with a new one. The Opponent No. 1 has not filed its version before the District Forum. However, Opponent No. 2, M/s. Voltas Limited has filed its version and stated that the Refrigerator Unit No. V2 170420, Compressor Sr. No. 185269 and Thermostat No. 339316 was sold to one M/s. Jose Jones who was their approved dealer vide invoice No. 6352386 dated 17.12.1988 and M/s. Jose Jones in turn sold the above piece to one Mr. Rameshchandra D. Modi of Kukarwada vide cash memo No. 512 dated 17.12.1988. The delivery challan has also been produced. They have further stated that the Opponent No. 1 was not their approved dealer and they had not given by guarantee to the opponent No. 1.

The District Forum after hearing the complainant and Opponent No. 2 arrived at a conclusion that the refrigerator was purchased by Rameshchandra D. Modi of Kukarwada on 17.12.88 from M/s. Jose Jones of Ahmedabad and the present complainant has purchased the same from Chanasma. The complainant has also paid Rs. 2,734/- for repairing the refrigerator during the pendency of the complaint according to Mr. Rajiv Mehta at the suggestion of the Court. The refrigerator was, therefore, repaired by M/s. Voltas Limited, Respondent No. 2 who charged Rs. 2,734/- for the same which the complainant was required to pay.

3. THE District Forum therefore passed an order directing both the opponents to pay Rs. 2,734/- the repairing charges with running interest @ 12% p.a. from 19.2.91. The District Forum has not considered the prayer of the complainant regarding replacement of the refrigerator since from the evidence on record it appears that the Respondent No. 1 was not an authorised dealer and that the refrigerator was a second-hand refrigerator in the sense it was first sold to one Mr. Rameshchandra D. Modi of Kukarwada and then that was sold by Opponent No. 1 to the complainant. The subsequent performance of the refrigerator clearly shows that the piece was defective i.e. the refrigerator might have been returned to the dealer by the purchaser Mr. Modi and the Opponent No. 1 might have purchased it from the dealer at a lesser price and has sold the same to the complainant as a new piece realising full amount. To our opinion this is a clear cut case of mis-representation, exploitation and unfair trade practice of a seller of goods. The complainant was not aware of these facts till the reply was filed by M/s. Voltas Limited.

4. IT is not understandable as to why the District Forum directed him to pay the charges for reparation to M/s. Voltas Limited. And without any findings against M/s. Voltas Limited, it is not possible to understand as to why an order has been passed against both the opponents to pay Rs. 2,734/-, the reparation charges. To our opinion, the complainant was forced to take a second-hand piece on mis-representation on payment of full amount. Such type of cases should be severely dealt with by the Forums when comes to their knowledge. There is no doubt that the refrigerator which was sold to the complainant was not a new one and the

person who was claiming to be the dealer was not a dealer of M/s. Voltas Limited. We are of the opinion that the District Forum has awarded partial relief only. So far the order of the District Forum is concerned M/s. Voltas have not filed an appeal. Though we are not very much convinced with the order of the District Forum we cannot pass any order in favour of M/s. Voltas Limited. We are of the opinion that this is a proper case in which the Opponent No. 1 should be directed to replace the refrigerator or in the alternative to return the price of the refrigerator with cost and interest. IT may also be noted that the complainant has to spent Rs. 2,734/- for reparation which has been charged by M/s. Voltas Limited. These charges according to our opinion should be borne by the Opponent No. 1 if the same are not paid by M/s. Voltas Limited under the order of the District Forum. We, therefore, pass the following order. ORDER The appeal is allowed. The order of the District Forum is set aside. IT is ordered that the Respondent No. 1 shall replace the refrigerator by a new piece of same type, make and capacity or in the alternative shall pay Rs. 6,900/- with running interest 18% p.a. from 1.1.90 till the payment. The respondent No. 1 shall also pay Rs. 2,734/- by way of damages which the appellant/ complainant was required to pay to M/s. Voltas Limited, if the same are not paid by M/s. Voltas Limited. The Respondent No. 1 is also responsible to pay cost to the appellant which is quantified at Rs. 250/- for the District Forum and Rs. 250/- for the Commission. The Respondent No. 1 shall carry out this order within 4 weeks from today. Appeal allowed.