

(2015) 02 NCDRC CK 0143

In the National Consumer Disputes Redressal Commission

Santa Banta Com Ltd

APPELLANT

Vs

Shreyans Motors Pvt Ltd

RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Citation : 2015 2 CPJ 153

Hon'ble Judges : V.B.GUPTA , SURESH CHANDRA J.

Final Decision : Appeal dismissed

Judgement

1. DELAY of 5 days condoned.

2. IN this appeal filed by Appellants/Complainants there is challenge to order dated 11.04.2014 passed by the State Consumer Disputes Redressal Commission, U.T. Chandigarh (for short, "State Commission) vide which, their complaint was dismissed being devoid of any merit.

3. BRIEF facts are, that Complainant No.2, is Director of Complainant No.1 M/s Santa Banta.Com Limited, cars, which are being imported through Respondent No.3/Opposite Party No.6 and sold through Respondent No.1/Opposite Party No.3. It is stated that Opposite Party No.2, is the representative in India of Opposite Party No.1, while Opposite Party No.5, looks after the operations of Opposite Party No.1, and is responsible for overall supervision of imports and sales in India being the Brand Manager. It was further stated that Opposite Party No.4 is the Sales Manager of Opposite Party No.3, and the person responsible for inducing customers to purchase Porsche cars for and on behalf of Opposite Party No.3. It was further stated that Opposite Parties No.7 and 8 are the Directors of Opposite Party No.3, as well as Opposite Party No.6 and they are responsible for the conduct of business management and day to day affairs of the said two Companies. It is further stated that appellants were approached by the Opposite Parties, for purchase of Porsche Cayenne V -6 vehicle. They told the appellants that vehicle would be built and customized, as per their requirements. The price of vehicle was calculated at Rs.68.93 lacs and appellants were asked to pay 60% of the price of the car, in advance. The remaining 40% price was to be paid on

delivery of the car. It is further stated that being allured by the assurances, held out by the Opposite Parties, appellants handed over a cheque dated 30.07.2008 for Rs.5.35 Lacs to Opposite Party No.3 and remaining amount of Rs.36 lacs, was financed by Tata Capital Ltd. The car was to be delivered by November, 2008. The Sales Contract was got signed by Opposite Party No.4. It is alleged that the said car was not delivered within the promised period, but appellants had to pay 13 monthly installments of Rs.1,15,020/ - each, to Tata Capital Ltd. On being asked about the delivery of car, appellants were told, that the car was ready to be transported, but due to some problem in high seas, its delivery in India had been delayed. Appellants got prepared a demand draft, for the remaining price of the car but even then the car was not delivered. The appellants approached the Opposite Parties number of times for the delivery of car, but the same was not delivered to them. Ultimately, appellants served a legal notice dated 25.02.2009, requiring the Opposite Parties, to pay Rs.40,16,880/ -, taken as advance, interest, damages etc. It is also alleged that instead of delivering the car, Opposite Party No.3, in order to evade its liability, in connivance with Tata Capital Ltd., started paying the installments of loan of the appellants, to it, despite the fact that it had already taken the cheques, in advance, against the said loan. Thus, due to the non -delivery of car or non -refund of the booking amount, the appellants suffered humiliation, harassment and mental agony. Hence, Opposite Parties were deficient, in rendering service as also, indulged into unfair trade practice. When grievance of the appellants, was not redressed, left with no alternative, a complaint under Section 17 of the Consumer Protection Act, 1986 (Short as, "Act"), was filed, seeking directions to the Opposite Parties to pay Rs.67,80,293/ - alongwith interest @18% per annum from the date of filing the complaint; and Rs.5 Lacs as compensation for harassment, humiliation and mental agony.

4. IN the written statement, Opposite Parties No.3, 4 and 6 took up certain preliminary objections to the effect that the appellants could not be allowed to take advantage of their own wrongs, as despite repeated follow up emails, and telephonic communications, with appellant no.2, to make the balance payment and thereafter take delivery of the car as per the sales contract, no balance payment was received; that this Commission has no territorial jurisdiction to entertain and decide the case, as Opposite Parties No.3 and 6 do not have any branch office at Chandigarh; that the sales contract, was between Opposite Party No.3 and the appellants, which was binding on the parties; that there was no privity of contract between Radian Wheels Private Limited and the appellants as the car booked by the appellants was as per contract dated 31.7.2008, when Radiant Wheels Private Limited was not even in existence and the complaint is barred by limitation, as the contract for purchase of the vehicle in question, was executed on 31.7.2008 and complaint was filed much after two years by the appellants.

5. ON merits, it is stated that officials of Opposite Party No.3, explained the features of products, being manufactured by Dr. Ing. HCF Porsche AG, Germany,

their prices, the terms and conditions of sale including the fact that the prices, as prevalent, on the date of delivery and taxes as prevalent at the time of import and sale of the car. It is further stated that appellants were required to make payment accordingly. It is further stated that the vehicles manufactured by Dr. Ing. HCF Porsche AG, Germany, are luxury vehicles manufactured by it, as per the specifications /choice of the customers, and the delivery dates, thus, could not be confirmed. The delivery of the vehicle, if ordered, was to be made depending on production plans, order book position and receipt of goods in India. It has been admitted that the appellants made payment of Rs.5.35 lacs as an advance payment, for booking of the car, and Rs.34,81,880/- through cheque were received from Tata Capital Ltd. It is further stated, that balance payment of the car was supposed to be made within 5 days, from the receipt of engine no. and chassis no. as per the payment clause of the sales contract. It is denied that the appellants made the balance payment of Rs.29 lacs. It is further stated that the Opposite Parties were always ready and willing to perform their part of the contract, and the delay, if any, was on the part of the appellants. It is further stated that despite repeated follow up e-mails, and telephonic conversations, the appellants failed to make the balance payment, and thereafter to take the delivery of vehicle, as per the sales contract. It is further stated that the loan amount of Rs.34,81,880/- advanced by Tata Capital Ltd. had been refunded to it and the amount of Rs.5.35 lacs was forfeited as per the sales contract. It is further stated that Opposite Parties, paid demurrage/detention charges amounting to Rs.13,26,936/- to the Sea Port, and other authorities, and, as such, suffered loss on account of the fault of the appellants.

6. INITIALLY , appellants have filed complaint against 8 Respondents/Opposite parties. However, during pendency of the complaint before the State Commission, names of Opposite Parties No.1, 2, 7 and 8 were deleted, vide order dated 11.08.2011 passed by the State Commission on the statement made by the counsel for the appellants.

7. THE State Commission, vide impugned order dismissed the complaint.

8. HENCE , present appeal.

9. WE have heard learned counsel for appellants and perused the record.

10. IT has been submitted by learned counsel for appellants that there was no fault on the part of the appellants in not making the balance payment inasmuch as there was no allotment of the vehicle. Thus, there could be no forfeiture of the money. Since, there was default on the part of the respondents in not supplying the vehicle in question, hence, there was deficiency in service by the respondents. Moreover, respondents have adopted unfair trade practice in this case.

11. RESPONDENTS in their written statement have taken the plea that appellants have concealed the material facts, since they had lodged a complaint in the office of the Economic Offences Wing at Chandigarh on 30.04.2009. As per

investigation conducted by that wing, no cognizance of offence was made out. Thus, appellants with malafide intention to extract undue benefits from respondents have filed this complaint. Further, there was no delay on the part of the respondents. It were the appellants who have failed to make the balance payment.

12. STATE Commission in its impugned order observed as under; "24. As per the terms and conditions of the sales contract, 40% payment was to be made by the complainants only when the allotment of car was intimated. Opposite Parties No.3, 4 and 6 in Para 5 of preliminary objections of their written statement have averred that balance payment was to be made within 05 days of notification of allotment of such car to the customer. The relevant clause in the sales contract is to the following effect: - "Against each week's expected vehicle supplies from the importer, intimation of allotment as per priority will be made by the dealer to the applicant. The applicant will be required to make the balance payment within 5 days from the date of this intimation."

Though Opposite Parties No.3, 4 and 6 intimated engine number and chassis number vide email dated 16.10.2008 (Annexure R -1) yet that cannot be construed as allotment of the vehicle in question. Opposite Parties No.3, 4 and 6 have also averred in Para No.3 of their written statement, that the balance payment was supposed to be made within 5 days from the date of receipt of engine number and chassis number as intimation was made available to the complainants on 16.10.2008. In our considered opinion, intimation of engine number and chassis number did not constitute allotment of the vehicle. In fact, as per averment of Opposite Parties No.3, 4 and 6 in Para No.8 of the written statement, it has been stated that " .It is a matter of record that the car in question arrived at Nhava Sheva Sea Port, Navi Mumbai from Germany in the third week of December 2008 and the OP No.3 was ready and willing that Complainant no.2 could go and inspect the vehicle at the Sea Port in Mumbai ". Therefore, by no stretch of imagination, the allotment before the date when the vehicle actually arrived at Nhava Sheva Sea Port, Navi Mumbai from Germany in the 3rd week of December 2008, could have been made by the Opposite Parties. There is force in the argument of the complainants that Opposite Parties No.3, 4 and 6 wanted to have the balance 40% payment even when the vehicle actually did not arrive in India. 25. At the same time, when the complainants did not make balance 40% payment even after receipt of various communications from the Opposite Parties after the arrival of the car, at Nhava Sheva Sea Port, Navi Mumbai, the last being dated 25.5.2009 and 1.6.2009 (Annexures R -14 and R -15), there was clearly breach of terms and conditions of the sales contract. As per the sales contract, balance payment was to be made within 05 days but the Opposite Parties afforded 05 months time to the complainants. Opposite Parties No.3, 4 and 6 were well within their right not to refund the booking amount of Rs.5,35,000/- . The averment of the complainants that the demand draft was ready with them (complainants) and they sent the scanned copy thereof to the Opposite Parties, is of no help because the balance 40% payment was never

made despite promises by the complainants and instead the demand draft made for the same was got cancelled.

26. Thus, the cancellation of vehicle was due to the fault of the complainants in not making balance payment and forfeiture of Rs.5,35,000/- was clearly, in accordance with the terms and conditions of sales contract, entered into between the parties. The complainants could not wriggle out of the terms and conditions of sales contract (Annexure C -2) when complainant No.2 appended his signatures on the undertaking to this effect. In fact, the Opposite Parties have adduced evidence vide Annexure R -16 (Colly) that they incurred expenditure of Rs.13,26,000/- on account of demurrages and detention charges etc. It is also in evidence in terms of Annexure R -17 that a complaint was lodged by the complainants before the Economic Offences Wing. DSP, EOW vide letter dated 11.8.2009, informed the complainant that the complaint was enquired into and after legal opinion, the same had been closed as no cognizable offence was found to have been made out.

27. In view of the aforesaid, the complainants are not entitled to any relief, and the complaint is liable to be dismissed."

13. APPELLANTS in their legal notice dated 25.02.2009 (reference of which is there in para 9 of the complaint) have claimed a sum of ₹40,16,880/- being advance along with interest and damages. However, in the complaint filed before the State Commission, they have prayed for a sum of Rs.67,80,293/- along with compound interest @ 18% per annum from the date of filing the complaint till realization besides payment of ₹5 lacs on account of harassment, humiliation and mental agony. This shows that appellants are taking contradictory stand with regard to their claim.

14. BE that as it may, as per terms and conditions of the sale contract (as reproduced by the State Commission in the impugned order), 40% payment was to be made by the appellants only when the allotment of car was intimated and the balance payment was to be made within five days of notification of allotment of such car. The appellants did not make balance 40% payment even after receipt of communication from the respondents, after the car had arrived at Nhava Sheva Sea Port, Navi Mumbai and the last communication, being dated 25.05.2009 and 1.6.2009. Thus, there was clearly breach of terms and conditions of the sale contract on the part of the appellants themselves. Therefore, respondents were well within their right not to refund the booking amount of ₹5,35,000/-, since there was default on the part of the appellants. When the appellants themselves were the defaulter, no deficiency can be attributed on the part of the respondents.

15. WE are in full agreement with the detailed reasonings given by the State Commission and do not find any infirmity or illegality in the impugned order. The present appeal having no merits is hereby dismissed, with no order as to cost.