
(1999) 05 NCDRC CK 0073

In the National Consumer Disputes Redressal Commission

SHOBHA GUPTA

APPELLANT

Vs

MICKY MALHOTRA

RESPONDENT

Date of Decision : 13-05-1999

Acts Referred:

Citation : 1999 2 CLT 42 : 1999 2 CPC 214 : 1999 2 CPJ 673

Hon'ble Judges : J.B.Garg , P.K.Vasudeva , Devinderjit Dhatt J.

Final Decision : Appeal allowed with costs

Judgement

1. A complaint for the refund of Rs. 5,000/-, the price of electric machine called Slimmer has been dismissed by the District Forum-II, Chandigarh on 9.2.1999. Aggrieved against it, the present appeal has been preferred.

2. BRIEFLY the facts are that the complainant purchased an electric machine called Slimmer in response to an advertisement, which was published in the newspaper and it was also assured that if the customer was not satisfied the price shall be returned. It was alleged in the complaint that Mr. Micky Malhotra, proprietor of Prime Bodies assured that this machine would reduce the body in inches as well as weight. The complainant used this machine for about six months but instead of reducing weight it created side effects such as irregular menstruation periods. On her complaint the machine was once changed but even thereafter it does not give the required result. In reply filed on behalf of the respondent it was averred that without following proper diet as advised while it was delivered the said machine could not give the required result. The machine was only for the purpose of reducing excess fat lying deposited in the body and at the same time intake of fatty, high calorie diet, etc. was prohibited. The respondent denied non-functioning/working of the machine. It has been denied that the complainant came to the respondent with her grievance at any time. The receipt of the legal notice was also denied.

The sale of the Slimmer for Rs. 5,000/- on 16.6.1996 has been admitted by the respondent and there is receipt dated 16.6.1996 in this regard on the printed letterhead of the respondent. A copy of the legal notice dated 1.11.1996 and

receipt of registered A.D. dated 1.11.1996 is on record. Paras 2 to 5 of the affidavit of the complainant dated 23.4.1998 are reproduced as under : "2. That as per the advertisement given in "The Tribune" the machine was supposed to reduce the weight without exercises and medicine. It is further mentioned in the advertisement that the money paid by the customer would be returned if not satisfied. The opposite party further assured that this machine will reduce the body in inches as well as weight without exercise and medicine."

3. That the deponent used the machine strictly according to the instructions given by the party and also took the diet strictly to the instructions chart supplied at the time of purchase of the machine. The opposite party also issued a warranty for one year from the date of purchase against defects in parts or workmanship (copy enclosed). 4. That the machine was regularly used by the deponent for about six months but the machine failed to give the result as assured by the opposite party and rather created side effects on the body of the deponent.

3. THAT the deponent made several oral complaints on the telephone to the opposite party regarding the complications and side effects of the use of the machine. The opposite party changed the machine and further assured that the machine will give fruitful results in future. The machine was changed three times within the same assurances but to no results." Besides this in order to establish the promise made by the complainant and assurance given by the respondent, the advertisement published in the newspaper is reproduced as under : "Health and Physical Fitness Reduce 10,20,30 kilo in few sittings without exercise, without medicine. Free home demonstration. Prime Bodies, Showroom 364/32D, 614406. Fully air-conditioned. 16705AB Loose 10,15,30 kg. at home, Shape up your loose sagging body and breasts with imported Electronic machine without exercise. Free home demonstration, money back if not satisfied. Prime Bodies, Showroom 364/32D, Ph 614406. 17172AB"

5. Thus it is a case where the respondent sold this Slimmer machine on the assurance that the complainant shall loose weight as a consequence of its user, the complainant did have the result which was assured and she is obviously entitled to refund of the price on account of "money back" assurance given in the advertisement. The learned Counsel for the appellant has stressed that it is a case of unfair trade practice especially where the respondent has denied receipt of notice sent to him by registered post and also that the complainant contacted the respondent under instructions of the District Forum for settlement of the grievance. The conclusion is that the appeal succeeds and the impugned order is set aside. It is ordered that the sum of Rs. 5,000/- shall be refunded to the complainant by the respondent together with interest @ 18% per annum from the date of institution of the complaint till realisation. Besides this the respondent is also ordered to pay costs of Rs. 1,500/-. Appeal allowed with costs.