

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 566 OF 2022

(Against the Order dated 15/06/2022 in Complaint No. 142/2018 of the State Commission
Rajasthan)

1. FAST ENGINEERS

THROUGH PROPRIETOR DEVI SHANKAR SHARMA,,
162-S.B. VIHAR,SWEZ FARM, NEW SANGANER
ROAD,SODALA, JAIPUR, RAJASTHAN PRESENT
ADDRESS-28/77, ARAVLI MARG, SHIPRA PATH,
MANSAROVAR, JAIPUR, RAJASTHAN-302020

.....Appellant(s)

Versus

1. DEEPSHIKHA KALA SANSTHAN

THROUGH CONVENER AND AUTHORISED
REPRESENTATIVE PRERM SURANA, ADDRESS:-
DEEPSHIKHA KALA SANSTHAN, VARUN PATH,
MANSAROVAR, JAIPUR, RAJASTHAN-302020

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING
MEMBER**

FOR THE APPELLANT :

FOR THE APPELLANT : MR. GAURAV RATHORE, ADVOCATE

FOR THE RESPONDENT :

FOR THE RESPONDENT: MR. VIJAY PAL SHARMA,
ADVOCATE

MS. PRIYANSHI VARSHNEY, ADVOCATE

Dated : 21 November 2024

ORDER

1. The Appellant/OP filed the instant Appeal under section 51 of the Consumer Protection Act, 2019 ("the Act"), against the Order dated 15.06.2022 passed by the learned State Consumer Disputes Redressal Commission, Rajasthan ("State Commission") in Consumer Complaint No. 142/2018, wherein the State Commission allowed the Complaint.

2. For convenience, the parties in the present matter are being referred to as per position held in the Consumer Complaint.

3. Brief facts of the case are that the complainant required installation of a VRF AC system in a building. OP contacted them to install an LG Multi V4 VRF AC System (64 Ton). Pursuant to this, the complainant proceeded with installation and paid Rs.18,50,000/- to OP. The installation and commissioning of the system were to be completed within six months. On 02.09.2016, OP informed the complainant that all necessary material was received, and the installation would commence shortly. However, despite considerable time passing, OP failed to complete the installation, leaving the equipment packed and unused. Mr. Abhishek Dubey, Area Manager of LG, informed them that the cost of the LG Multi V4

VRF AC System (64 Ton), as per company's price list, was about Rs. 10,00,000/-. As a result, the complainant issued a purchase order to LG on 20.04.2017 for installation of an 84-ton AC at another premises for Rs. 9,93,157/-, which was also to be installed by the OP. Despite issue of legal notice for non-performance, OP failed to install the AC system. In spite of receiving full payment, OP failed to fulfill their contractual obligation to install the AC. The complainant sought refund of Rs. 18,50,000/- along with interest, compensation and costs from OP.

4. As per the impugned order, no written submission was made by the OP despite service of notice dated 29.02.2022.

5. The learned State Commission vide order dated 15.06.2022 allowed the complaint with the following order:

“Order

8 Therefore, the complainant, through Deepshikha Art Institute, Rajasthan Society Varun Path sector-3 Mansarovar, Jaipur, by Sansthan Convenor and authorized representative Prem Surana has ordered to accept the complaint against the opposition under Section 17 Consumer Protection act.

1. Opponent has to pay 18,50,000/- to complainant that was paid by him.

2. Opponent has to be pay 9% p.a. interest on given amount 18,50,000 from date 02.09.2016 to till payment to the complainant.

3. Opponent also has to be pay 2,00,000/- for fulfilment of economic and mental damage and 10,000/- as complaint expense to the complainant.

4. Compliance of the order should be done within a period of two months.”

6. Being aggrieved by the impugned order dated 15.06.2022 passed by the Ld. State Commission, OP (Appellant herein) filed this present Appeal No. 566 of 2022 praying:

“a) Allow the appeal and set aside/quash the judgment and order dated 15.06.2022 passed by Ld. State Consumer Disputes Redressal Commission, Rajasthan in consumer case no. 142/2018 titled Deepshikha Kala Sansthan v. Fast Engineers; or

b) Award cost of Appeal in favour of Appellant-Opposite Partys; and

c) Pass such other order/s, as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the instant case.”

7. In the grounds of the instant appeal, the Appellant has mainly contended the following:

- A. The complainant was not a consumer, the State Commission wrongly assumed the bungalow was for residential use, while it was for commercial use as hotel/guest house, as Meenakshi Hotel project. Also, the finding that OP charged for 64-ton AC but installed 32-ton is not correct, as the system's capacity is measured in horsepower, not tons.
- B. The complainant falsely claimed overcharging, ignoring that LG's initial quotation was Rs. 12,02,678.073/-, disproving their lower cost claim of Rs.9,93,157/- or Rs. 10,00,000/-. Majority of the payment going to LG Electronics India Pvt. Ltd., without making them a party, despite LG supervised the work.
- C. The State Commission erroneously passed the order despite a handover report signed by Prem Surana's daughter, who supervised the work and LG's supervisor, both of whom confirmed satisfaction with the quality and completion of the work by the OP.
- D. The State Commission relied on respondent's unsubstantiated claim that the work was to be completed in six months, despite there being no such timeline agreed between the parties.

8. In his arguments, the learned counsel for OP asserted that the complainant had requested a quotation and engaged OP for installation services. Subsequently, through his daughter, Pooja Surana, they added additional machines to the VRF system to enhance efficiency. It was agreed that payment would be based on the actual work done. Despite completing the work, full payment was not made, and this complaint is filed to evade paying the outstanding dues and to pressure the OP into waiving them. He also argued that the ex-parte impugned order was unjust, as notice service was deemed completed through an almost illegible paper publication. The completion and satisfaction certificate viz. Commissioning and Handing Over Report for the project, was signed by both the LG engineer and Pooja Surana. However, Pooja signed in an empty space below the designated area, creating confusion. He further argued that the majority of Rs. 18,50,000/- was paid to LG Electronics India Pvt. Ltd., while the OP was only working for a meagre commission. Despite this, the matter was adjudicated without joining LG as a necessary party. The State Commission erroneously relied on the opinion of a mechanic, Mohd Farid, who falsely claimed to be an AC expert while he lacked any degree, diploma, specialization, or certification to substantiate his claim. His biased opinion was wrongfully accepted. He, therefore, sought the impugned order to be set aside.

9. In response, the learned counsel for the complainant reiterated the arguments made in the complaint and asserted that the ex-parte impugned order was passed only after due notice was served and the OP failed to appear. Further, as per law, the OP was required to deposit fifty percent of the awarded amount to file an appeal. However, in this case, the OP deposited only Rs.35,000/- before this Commission, thereby failing to fulfil the legal requirement. They further argued that the complainant qualified as a consumer. In support of the claim of deficiency in service by the OP, the counsel relied on the affidavit filed by Mohammad Fareed, who is an expert in AC systems. Accordingly, the complainant prayed for the dismissal of the Appeal.

10. I have examined the pleadings and associated documents placed on record, including the order of the learned State Commission and rendered thoughtful consideration to the arguments advanced by learned counsels for both the parties.

11. The main issues for consideration are whether the complainant is a "consumer" under the Act with respect to the OP? Whether there was deficiency in service on the part of OP? If there is any deficiency, what are the liabilities of the parties?

12. As regards the issue whether the complainant is a consumer, Hon'ble Supreme Court in ***Omkar Realtors & Developers Pvt Ltd v. Kushalraj Land Developers Pvt. Ltd. & Anr.***, 2024 LiveLaw (SC) 609, dated 23.08.2024 deliberated the doctrine of "dominant purpose" and held:

"...to determine whether the goods purchased by a person (which would include a legal entity like a company) were for commercial purpose or not within the meaning of the Act would depend upon the facts and circumstances of each case. However, ordinarily "commercial purpose" is understood to include manufacturing/ industrial activity or business-to-business transactions between commercial entities. The purchase of the goods should have a close and direct nexus with a profit generating activity."

13. The court further observed that:

"If it is found that the dominant purpose behind purchasing the goods was for the personal use and consumption of the purchaser and/or the beneficiary, or was otherwise not linked with other commercial activities, the question whether such a purchase was for the purpose of "generating livelihood by means of self-employment" need not be looked into."

14. In the present case, the burden of proving that the installation of ACs was for the commercial purpose of a guest house or hotel rested on the OP. Since there is no reasonable evidence on record to establish that the installation was related to hotel business rather than for the personal use of the complainant's Convener, the argument that the complainant is not a consumer is unsustainable.

15. As regards deficiency in service, the complainant alleged that they ordered for LG Multi V4 VRF Air Conditioning system 64 Ton from the OP and paid Rs.18,50,000 on 02.09.2016. The complainant asserted that the same has not been executed to their satisfaction and thus, the complaint. The learned State Commission passed an ex-parte order dated 15.06.2022 directing the OP to refund Rs.18,50,000 along with 9% interest from the date of payment, Rs.2,00,000 as damages and Rs.10,000 as costs. In this regard it is the complainant's contention that the installation and commissioning of AC system was to be completed within 6 months. This was denied by OP and is unsupported by evidence. As regards the quantities and scope of the work involved, the records reveal that for installation of the 32 HP AC system, the bill of quantities for the equipment for the residence of Poojas Surana at C Scheme, Jaipur was for Rs.13,90,649; Installation, low side work etc

Rs.4,26,600/-; Labour and interior work Rs.15,010; and associated other work for same client was Rs.2565. Thus, the total consideration was Rs.18,57,884. It is the version of the complainant that all the goods have arrived, and the OP had not completed the installation of AC and the goods are lying packed in the boxes. So, they complained again and again and gave legal notice to the OP for non-installation. Also, in the Affidavit filed by Mohammad Farid, an AC mechanic brought on record as an expert it is stated that at 7, Gokhale Marg, C Scheme, Jaipur he observed partly installed VRF unit of LG company. It was not LG Multi VRF Air Conditioning System 64 Ton. It was not installed some part of the installation is still left. It is, however, intriguing as to how a person who is stated to be an AC Mechanic and whose qualifications, training, experience etc are otherwise unstated, could be termed as an 'expert' with respect to the dispute in question. Further, the receipt of the stated quantities of the items are received at the site has been acknowledged by Mrs pooja Surana and others.

16. In view of the foregoing deliberations, it is undisputed that the contract was entered into between the parties voluntarily and quantities of the items as per the scope of the work finalized for establishing the said AC system were delivered at the site. Also, the installation of the system was completed to a certain extent. While the OP repeatedly asserted that the installation was complete and complainant was to pay the balance of Rs.3,43,000, the complainant refuted and asserted deficiency in service. The contention of the complainant with respect to the lower quotation stated to have obtained subsequently from LG directly is of limited relevance to the contract already entered into between the parties. Therefore, deficiency, if any, in this regard is with respect to installation of the AC system which is alleged to have been partly completed, which was refuted by the OP.

17. Thus, even if the contentions of the complainant were to be accepted, the order for refund of entire consideration of Rs.18,50,000, which constitutes the entire consideration for the AC system, along with 9% interest from the date of payment and Rs.2,00,000 as damages and Rs.10,000 as costs is grossly disproportionate. The said Affidavit filed by Mohammad Farid, AC mechanic reveals that, at the site i.e. 7, Gokhale Marg, C Scheme, Jaipur he had observed that the VRF unit of LG was not installed, and some part of the installation is still left. However, how much is left and what are the details of the expenditure incurred, if any, are unclear. Thus, the learned State Commission order dated 15.06.2022 is unsustainable and, therefore, set aside and First Appeal No. 566 of 2022 is allowed.

18. Considering the nature of the case, there shall be no order as to costs. All pending applications, if any, also stand disposed of accordingly.

.....
AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER