

Udyog Sadan Qutub Institutional Area New Delhi-16
Heading2

Complaint Case No. CC/141/2020
(Date of Filing : 29 Sep 2020)

1. RENUKA KHANNA
C 642, NEW FRIENDS COLONY, NEW DELHI-110025.

.....Complainant(s)

Versus

1. FOOD HALL CHANAKYA MALL
FOOD RETAIL LTD BRANCH, LOWER GROUND FLOOR, YESHWANT PLACE COMMERCIAL
COMPLEX, INTERSECTION OF SATYA MARG AND AFRICA AVENUE, NEW DELHI-110021.

.....Opp.Party(s)

BEFORE:

Monika Aggarwal Srivastava PRESIDENT
Dr. Rajender Dhar MEMBER
Ritu Garodia MEMBER

PRESENT:

Dated : 22 Mar 2024

Final Order / Judgement
CONSUMER DISPUTES REDRESSAL COMMISSION – X

GOVERNMENT OF N.C.T. OF DELHI

Udyog Sadan, C – 22 & 23, Institutional Area

(Behind Qutub Hotel)

New Delhi – 110016

Case No.141/2020

RENUKA KHANNA
RESIDENT OF C642
NEW FRIENDS COLONY
NEW DELHI - 25

.....COMPLAINANT

Vs.

FOOD HALL @ CHANAKYA MALL
FOOD RETAIL LTD BRANCH
LOWER GROUND FLOOR
YESHWANT PLACE COMMERCIAL COMPLEX
INTERSECTION OF SATYA MARG AND AFRICA AVENUE
NEW DELHI 21

.....RESPONDENTS

Date of Institution-29.09.2020

Date of Order-22.03.2024

ORDER

RITU GARODIA-MEMBER

1. The complaint pertains to defect/contamination in food product sold by OP.
2. Brief facts as stated in the complaint are that the complainant placed an order for food item namely Roasted Garlic and Parsley Cheese spread on 16.08.2020. The item was delivered to the complainant on 19.08.2020.
3. It is claimed that upon opening the container, the complainant discovered pieces of white-coloured rubber gloves among the food items. Following discovery, the complainant sent an email to OP and received an acknowledgment. Assurances were given that the matter would be addressed, but no resolution was achieved. Subsequently, the complainant made a telephone call to OP and visited their shop on 28.08.2020. At the shop, the complaint was discussed with Mr. Sumit Chandan and Mr. Nikunj Jagannath, both of whom denied sending defective or non-consumable food items. Later, the complainant received a call from Mr. Nikunj Jagannath on 20.09.2020, who declined to resolve the matter.

4. It is claimed that due to COVID-19, the complainant was avoiding going out, and it is alleged that the rubber gloves might have been contaminated. Complainant prays for compensation of Rs.10,00,000/- with interest.
5. Notice was issued to OP but none appeared. OP was proceeded Ex-parte on 03.02.2023.
6. Complainant has filed an affidavit and has exhibited the following documents:
 - i. Copy of bill is exhibited as Exhibit CW-1/1.
 - ii. Copy of mail is exhibited as Exhibit CW-1/2.
 - iii. Photograph of product package is exhibited as Exhibit CW-1/3.
 - iv. Photograph of contaminated food inside the package is exhibited as Exhibit CW-1/4.
 - v. Photograph of contaminated gloves found inside food product is exhibited as Exhibit CW-1/5.
 - vi. Copy of e-mail is exhibited as Exhibit CW-1/6.
 - vii. Photo of close up of contaminant retrieved from food item is exhibited as Exhibit CW-1/7.
 - viii. Photograph of package details is exhibited as Exhibit CW-1/8.
 - ix. Details on complaint ID is exhibited as Exhibit CW-1/9.
 - x. Certificate under Section 65-B of the evidence act is exhibited as Exhibit CW-1/10.
7. Having reviewed the materials and documents provided, the Commission notes that the complainant has submitted an invoice dated 18.08.2022 indicating the sale of Roasted Garlic Cheese Spread for Rs. 375/-. Additionally, photographs attached display pieces of gloves found in a tin labeled "roasted garlic and parsley."
8. Thus, the factum of purchase of Container of "Cheese Spread" is established. The evidence regarding the presence of foreign bodies, supported by photographic documentation, is also validated. In an affidavit, the complainant attests to refraining from going out due to COVID-19. The discovery of foreign objects, specifically pieces of rubber gloves, within the food item, heightens the potential risk of exposing her family to this hazardous infectious disease.
9. Despite being given the opportunity, OP did not bother to appear and refute the allegations made by the complainant. OP, being a reputable retail service, failed to address the complaint or offer an apology for the negligence in selling contaminated food products. With no denial or rebuttal from OP, the complainant's submissions are deemed to be proven.
10. The relevant sections of Consumer Act are as follow :

Sec.2(10) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any advertisement or in relation to any goods or product and the expression "defective" shall be construed accordingly;

Sec.2(11)(i) "deficiency" means 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 in relation to any service and includes –

(i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer.

Sec.2(47) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or services, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely-

(viii) refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient goods or to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days."

11. Hon'ble State Consumer Disputes Redressal Commission, Chandigarh, in **M.K. Malhotra Vs. Asianlak Health Foods Ltd. and Ors.**, **II(2010)CPJ277(UT Chd.)** had made the following observations:

"Thus, after going through the material brought on file and observations made by the District Forum, we are also of the considered opinion that there is no scope to deviate from the findings and observations given in para-9 of the impugned order and the same is also reproduced as follows:-

"The cold drinks are purchased and consumed by the public in large numbers. Everybody expects that the contents thereof would be free from foreign objects and the same would have been manufactured and filled up under proper hygienic conditions. If a foreign substance is noticed in a cold drink bottle (even if it is not consumed) it gives a great shock to the purchaser and he starts thinking about the standard of the company which manufactured the cold drink by which is being consumed by him day in and day out. Otherwise also, selling cold drink bottles in which there are foreign objects is an unfair trade practice by which the OPs sell sub standard cold drinks but charge the consumer for a cold drink which is free from such defects. The deficiency in service is, therefore, made out even if the contents of the bottle are not consumed by the purchaser or if the bottle is not analysed from a chemical examiner. We have seen the bottle of the cold drink and the foreign substance like a mosquito is visible in the bottle. A mosquito could enter the capsuled bottle only if it was not prepared by the OP under proper hygienic conditions. We do not expect that the OP would not take care of the hygienic requirements. We do not agree with the arguments of the learned Counsel for the OP that it can sell with impunity such like sub standard material in the market which if consumed may leave no record of its contamination and if not consumed the OP may not be liable for any action simply because it has not caused any bodily damage.

12. When a manufacturer produces consumable goods and introduces them to the market, it is imperative for them to ensure that all consumers receive products of excellent quality. Failure to deliver goods of satisfactory quality to consumers holds the manufacturer accountable for any resulting damages or harm experienced by consumers.

13. Considering the entirety of the facts and circumstances surrounding the case, it is deemed necessary to hold those responsible for selling contraband food products accountable by imposing exemplary and punitive compensation. This measure is aimed at ensuring that claims made by sellers are in practice and that packets of consumables containing foreign materials are not offered for sale. Therefore, a total compensation of Rs. 50,000 is deemed appropriate to serve the interests of justice. Of this amount, 50% (Rs. 25,000) shall be awarded to the complainant, while the remaining shall be deposited with the Secretary, State Legal Services Authority, within 30 days from the date of this order. Failure to comply will render the complainant liable to pay the outstanding amount with interest at a rate of 9% per annum from the date of filing this complaint i.e., 29.09.2020 until the actual receipt of payment.
14. File be consigned to record room. Order be uploaded and complied with 30 days.

[**Monika Aggarwal S**
PR

[**Dr. Rajen**
J

[**Ritu**
J