

District Consumer Disputes Redressal Commission-I (North District)

[Govt. of NCT of Delhi]

Ground Floor, Court Annexe -2 Building, Tis Hazari Court Complex, Delhi- 110054

Phone: 011-23969372; 011-23912675 Email: confo-nt-dl@nic.in

Consumer Complaint No:10/2020

IN THE MATTER OF:

Mohit Sood

**S/o Late Sh. M.L. Sood,
C-1/2, Rana Pratap Bagh,
Delhi-110007.**

... **Complainant**

Vs

M/s Siyaram Silk Mills Ltd.

[Unit Oxemberg] etc.

Through its MD/CEO/ Company Secy./

Manager or any other Principal officer(s) Delhi,

Shop No. UB-40,

Jawahar Nagar, Kamal Nagar,

New Delhi-110007.

Also at:

A-49/4, 1st floor,

Industrial Area, Phase-I

Maya Puri, South West,

Delhi-110064.

... **Opposite Party**

ORDER
21/11/24

Ashwani Kumar Mehta, Member:

1. The present complaint has been filed on 28/01/2020 under the provisions of the Consumer Protection Act, 2019. Since the CP Act, 2019 was not applicable on the day of filing the complaint, the complaint has been examined under the provisions of CP Act, 1986. The brief details of facts, as alleged by the Complainant in the Complaint in hand, are that:-

- a) the 'Complainant purchased 2+ 2 white shirts, under promotional scheme of OP [i.e. total four white shirts), (i.e. pay the amount of two shirts only and get four shirts), for his personal use, from opposite party, as per OP's promotional scheme displayed at Shop/Showroom at Jahawar Nagar, (near Kamla Nagar), Delhi; vide Invoice/Receipt No.RCRC-02421 dt. 28.01.18; Time: 21:03:51. (Copy of invoice has been annexed with the complaint as 'Annexure-A').
- b) The Opposite party, through its Salesman/ Manager, Incharge of Showroom at Jawahar Nagar, near Kamla Nagar, Delhi -7 informed the 'Complainant'

that there is a scheme of OP/Company in January 2018 for purchasing two pieces of shirts or other product, customer/consumer is/was entitled (at that point of time) for other two pieces of shirt as free; meaning thereby customer has to pay full payment of two shirts and customer shall be entitled for another 2 shirts free (besides two shirts for which he made the payment in full). Believing the Opposite party assurance in good faith, as well as the Goodwill of M/s. Siyaram Company and brand, the complainant ordered four pieces of white shirts of Rs.999/- each (brand OXMSF999). The Opposite party through its Salesman/shopkeeper informed the complainant that the 'Complainant' had to pay cost of two shirts i.e. Rs.1998/- and round off Rs.2000/- for said four shirts under above-mentioned scheme of OP but later on the Opposite party informed and shown the 'Complainant' one shirt of higher amount of Rs. 1049/-; and the Opposite party thereby misled malafidely & asked Rs.50/- extra from the 'Complainant', that extra amount by misrepresenting the facts, malafidely, unreasonably, which the 'Complainant', although felt unreasonable, and dishonest on the part of OP, but agreed to pay that extra Rs.50/- since amount was very meagre. Hence the complainant had actually paid Rs.2050/- in cash, but Invoice/Bill was raised, electronically, for Rs. 2048/- total for 2+2 shirts i.e. total four shirts. (out of which one is/was at the rate of Rs.1049/- and others at the rate of Rs.999/- as cost to the Opposite party, believing bonafidely that other three shirts were/are at the rate of Rs.999/- each) but on reaching home, he found that two shirts were/are of lesser amount i.e. at the rate of Rs.799/- each.

- c) Complainant invokes and relied upon other bill(s) of same day of opposite party under that scheme at that point of time but the Opposite party put two shirts of lesser amount in the packet and charged higher amount from the 'Complainant', hence, committed, deficiency in services and unfair trade practice deliberately and malafidely, with a view to give wrongful loss to the "Complainant and wrongful gain to OP/Company, which has caused mental agony, mental torture, mental harassment and financial losses, to 'Complainant'/consumer.

2. It has been alleged that the OP is guilty of misrepresentation of the facts, deficiency in services, misleading advertisement, vague & ambiguous advertisement in the eyes of law as well as Consumer Protection Act. The 'Complainant' had served legal notice to Opposite party. The 'Complainant' immediately reported the matter of deficiency in services, facts, unfair trade practice and negligent services to OP legally and demanded his money back but no avail. Even on 31-1-2018, the 'Complainant' again visited to the showroom of the OP but OP refused to attend "Complainant". Therefore, the complaint has been

filed praying that the OP be directed to return and refund the bill amount i.e. of Rs.2,048/- alongwith pendente lite and future interest @ 24% p.a. w.e.f. 28.01.2018, as well cost/damage/compensations as case may be, viz. Harassment, mental agony, litigation charges financial losses & mental torture to the tune of Rs.50,000/-.

3. The Complainant has also filed copy of Tax invoice dated 28.01.2018, email dated 28.01.2018, identity card and Certificate 65-B of evidence by way of Affidavit along with the three photographs.

4. Accordingly, notice was issued to the OP to defend the complaint before the commission but OP neither appeared nor did send any communication despite service of the notice. Since the OP has chosen not to contest the allegations levelled in the complaint despite service and has been proceeded Ex-parte, the allegations made by the Complainant have remained un-rebutted. Therefore, the complaint has been examined on the basis of the documents/evidences and material available on records. We have also gone through the definition of unfair trade practice as provided u/s 2(r) of the Consumer Protection Act, 1986 which states that:-

"unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely;-

(1) the practice of making any statement, whether orally or in writing or by visible representation which,-

(i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model.

(ii) falsely represents that the services are of a particular standard, quality or grade;

(iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(viii) makes to the public a representation in a form that purports to be-

(i) a warranty or guarantee of a product or of any goods or services; or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or 'are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally. in the relevant market unless it is clearly specified to be .the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(x) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation.-For the purposes of clause (1), a statement that is-

(a) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

Explanation.-For the purpose of clause (2), "bargaining price" means-

- (a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or
- (b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

(3) permits-

- (a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged, in the transaction as a whole;
- (b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(3A) withholding from the participants of any scheme offering gifts, prizes or other items free of charge on its closure the information about final results of the scheme.

Explanation: for the purpose of this sub clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time published, prominently in the same newspaper in which the scheme was originally advertised;

(4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

(6) Manufacture of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services.

5. The allegations of Unfair trade practice levelled in the complaint has also been examined in view of the above provisions and it has been found that the act of the OP falls under the provisions of section 2(r) 1 and 2 of CP Act 1986 . Besides, the OP has chosen not to contest the allegations levelled in the complaint despite service, it is considered as deemed acceptance of the allegations of deficiency of service, unfair trade practice and harassment to the complainant by the OP. In view of the above observations, we are of the considered view that the complainant has suffered directly due to deficient service and unfair trade practice on the part of the OP in terms of the deficiency & unfair trade practice defined under the provisions of the Consumer Protection Act, 1986. This deficiency in service & unfair trade practice on the part of OP has also caused mental pain, agony and harassment to the complainant for which the OP is also liable to pay the compensation.

6. Therefore, we feel appropriate to direct the OP to pay the Complainant:-

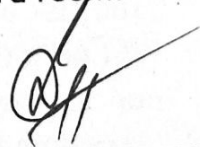
- i. Rs.400/- (Rupees Four Hundred Only), with interest at the rate of 9% p.a. from 28.01.2018 (the date of purchase) till the date of the payment to the complainant;
- ii. Rs.25,000/- (Rupees Twenty Five Thousand only) to the complainant as compensation for the mental pain, agony and harassment caused due to deficiency in service and unfair trade practice.

7. It is clarified that the aforesaid awarded amount shall be paid by the OP, within 30 days from the date of receipt of this order as directed above at para 6 (i) & (ii) and In case, the abovesaid amount is not paid by the OP to the Complainant within the period as directed above, the OP shall be liable to pay interest @12% per annum on the entire awarded amount from the date of expiry of 30 days period.

8. Order be given dasti to the parties in accordance with rules. Order be also uploaded on the website. Thereafter, file be consigned to the record room.


ASHWANI KUMAR MEHTA
Member
DCDRC-1 (North)

Received by the Consumer (Consumer Commission Procedure) Regulation, 2000 Sent by Post dated 14/02/2020 1828-20 25/1/2024 Authorized Signatory DCDRC 1 (N), Delhi
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DIVYA JYOTI JAIPURIAR
President
DCDRC-1 (North)