

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL  
COMMISSION-II, VISAKHAPATNAM**

**Date of Registration of the Complaint: 02.11.2022**

**Date of Final hearing: 10.04.2024**

**Date of Pronouncement: 21.06.2024**

**CONSUMER CASE No.356/ 2022**

**In the Matter of:**

Dr. Vikas Pandey, S/o Late Mohan Pandey, Hindu, aged 42 years, Rajeev Nagar, Visakhapatnam-530040., National Secretary and In-Charge (Organization & Complaint), represented by the Consumer Rights Organization (CRO)/ Upbhokta Adhikar Sangathan.

... Complainant

Katari Sateesh, S/o Sriramulu, Hindu, residing at MIG-105, APHB Colony, Pedagantyada, Gajuwaka, Visakhapatnam.

(Through: Sri D. Jeeva Ratnam/ Smt. S. Sukanya Priya)

... Defacto-Complainant

**Versus:**

1. SONO VISION ELECTRONICS PVT LTD., represented by its Managing Director/ Authorizing Signatory, Opp. Sri kanya Theatre, Gajuwaka, Visakhapatnam.
2. SAMSUNG INDIA ELECTRONICS PVT LTD., represented by its Managing Director/ Authorized Signatory, Registered Office Address: 6<sup>th</sup> Floor, DLF Centre, Sansad Marg, New Delhi-110001.

(Through: Smt P. Sakuntala for Opposite party-2  
& Opposite party-1 is set Exparte)

... Opposite parties

**CORAM:**

Smt. G.Venkateswari, M.Sc, LLB., President, Smt. P.Vijaya Durga, B.Com, B.L., Women Member., Sri. Karaka Ramana Babu, M.Com, M.B.A., LL.B., Member

**P r e s e n t:**

1. Smt. G Venkateswari, M.Sc, LLB.,  
President
2. Smt. P Vijaya Durga, B.Com, B.L.,  
Women Member
3. Sri Karaka Ramana Babu, M.Com, M.B.A., LL.B.,  
Member

*P. Durga*

## JUDGEMENT

(As per Smt. P. Vijaya Durga, Honourable Women Member, on behalf of the Bench)

I. The complainant has filed complaint under Section-35 of Consumer Protection Act, 2019 against the opposite parties, to return the refrigerator cost of Rs.19,500/- (Rupees ninety thousand five hundred only) with interest @24% p.a. from the date of purchase i.e., 15.10.2021 to till realization; to pay compensation of Rs.1,00,000/- (Rupees one lakh only) to defacto complainant for causing mental tension, agony, pain harassment and stress, gross negligence, deficiency of service and unfair trade practice on part of the opposite parties; to pay Rs.15,000/- (Rupees fifteen thousand only) towards litigation charges legal expenses incurred by the defacto complainant; total claim of Rs.1,34,500/- (Rupees one lakh thirty four thousand five hundred only) and for such other relief or reliefs.

### II. Brief facts of the Complainant:

1. The complainant is the CRO- Consumer Rights Organization is an NGO Organization (voluntary organization) registered before Registrar of Societies vide Reg.No.05/23/01/08574/10 is being represented by its Vikas Pandey National Secretary and In charge has received this complaint from the defacto complainant.
2. The defacto complainant Katari Sateesh is resident of Visakhapatnam has purchased Samsung Refrigerator Model No.23A2F3X4RN from opposite parties for Rs.19,500/- vide Invoice No: GWK14554 having 10 years warranty on 15.10.2021 since from the purchase of refrigerator, it started giving troubles i.e., all the edible items got spoiled which were kept in the fridge, even the vegetables in the lower chambers were getting spoiled due to the lack of cooling. No cooling inside the refrigerator and freeze box has formed ice crystals and there was no place in the freezer for items to be kept.
3. Upon receiving the complaint from the complainant, the 1<sup>st</sup> opposite party mechanic came and did some adjustments/ repair work but the same problem has started again. Subsequently, the engineer of the opposite party checked thoroughly but same defect was found and stated that there was some manufacturing defect in the fridge and same has to be replaced and the same was informed to the company.

*P.V. Durga*

4. It is submitted that the issue has been noticed by the 2<sup>nd</sup> opposite party with their customer care dated 18.06.2022, 25.06.2022 and 16.09.2022 vide reference numbers 1177713652, 4350312929 and 4355766221. The defacto complainant informed over phone to the opposite parties several time for rectification of the defects with the refrigerator but the service engineers neither responded nor rectify the defect in the fridge.

5. It is to be noted that the refrigerator itself has manufacturing defect and is a failure model, if it is rectified again the problem would arise, the purpose of purchase not served.

6. Further the defacto complainant came to know that the product was a failure model and has manufacturing defects. Then the complainant requested the opposite parties to refund the invested amount. It is clear from the acts of the opposite parties indicates that there is a willful negligence and deficiency of service and unfair trade practice on the part of the opposite parties. Hence, the complaint.

### **III. Version of Opposite parties:**

1. The Opposite party-2 deny all the material allegations in the complaint and submitted that M/s Samsung India Electronics Pvt. Ltd. is a reputed manufacturer of goods, including Television, Mobiles, A.C, Washing machine etc., and selling its products all over the world. The quality and the products are checked before delivery of this product. The Authorized service engineers are well trained and upgrade their skills.

2. It is submitted that the complaint is not maintainable either in law or on facts and liable to be dismissed as there was no manufacturing defect or deficiency in service under C.P. Act. "As preliminary issue, it is most respectfully submitted that the complaint is liable to be dismissed on the sole ground that the product was purchased by one M. Srinivas and the instant complaint is filed in the name of Dr. Vikas Pandey claiming to be Addl. Secretary and In charge of Consumer Rights Organization which is not maintainable."

3. It is submitted that the complainant purchased refrigerator on 15.10.2021 delivered and installed in good condition. Subsequently on 21.12.2021 the complaint

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was raised that no cooling and sensor was replaced. Again on 17.06.2022 there was a leakage in the fridge but not it is a product defect and set that the fridge it was working in good condition and delivered the same to the complainant. Against on 25.06.2022 over freezing of the fridge has a raised. Again, complaint was registered vide No.43503129229 and again lodges complaint on 16.09.2022 and 24.11.2022 with regard to "Low Cooling and no cooling" respectively. The service center person wants to attend the complaint but the call was cancelled by authorized service center as the complainant was out of station. Subsequently another complaint was lodged for the same problem and the same was rectified.

4. The C.R.O filed this complaint as the complaints were not attend by the opposite parties but it is not correct. Opposite party-2 pleads when the defacto complainant is available the complaint cannot be filed by C.R.O.

5. The allegations in the complaint were denied as the repairs were done properly and the chilling tray has also replaced now the unit was in working condition.

6. It is submitted that documents relating to above said CSR calls are filed which proves that the complaints were attended promptly. Therefore, the allegations with regard to non-attending the repairs are not true.

7. The allegations in the complaint are in general in natures no specific allegations and complaints for the refrigerator. Therefore, the entire allegations are denied.

8. If there is any manufacturing defect the complainant has to file an expert evidence so the refrigerator cannot be replaced as asked by the defacto complainant. It is a violation of warranty conditions.

9. There is no gross negligence as contended by the complainant neither the deficiency of service or unfair trade practice. Hence, the complaint is not maintainable. The complainant is not entitled for any relief prayed and the complaint is to be rejected.

IV. The commission served notices to Opposite parties-1 and 2. Opposite party-2 filed counter. In spite of service of notice to Opposite party-1 no representation and not filed any counter. Hence Opposite party-1 is set exparte.

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V. Both the parties filed Evidence affidavits and Written arguments. Ex.A-1 to A-5 are marked for the complainant and Ex.B-1 to Ex.B-5 are marked for the opposite parties. Oral arguments submitted by the complainant in support of his case. Opposite party-2 called absent for Oral arguments. Despite chances were given. Written arguments of Opposite party-2 is treated as Oral arguments.

**VI. Issues:**

- i. Is there any deficiency of service on part of the Opposite parties?
- ii. Is the complainant entitled for the relief asked for?

**VII. Discussion:**

1. Ex.A-1 to Ex.A-5 are marked for the complainant. Ex.A-1 is Incorporation Certificate of the organization, True translation along with Trade License; Ex.A-2 is AADHAR Card of complainant Vikas Pandey; Ex.A-3 is Authorization Letter from the defacto Complainant to the complainant dated 22.09.2022 ; Ex.A-4 is Samsung Refrigerator Tax Invoice of No.GWK14554 dated 15.10.2021; Ex.A-5 is Email communication between defacto complainant and opposite party.
2. Ex.B-1 to Ex.B-5 are marked for the Opposite parties. Ex.B-1 is Customer Service Card dated 27.06.2022; Ex.B-2 is Customer Service Card dated 16.09.2022; Ex.B-3 is Customer Service Card dated 24.11.2022; Ex.B-4 is Customer Service Card dated 21.06.2022; Ex.B-5 is Warranty Card.
3. Ex.A-4 is the Original invoice bill regarding the purchase of refrigerator, dated 15.10.2021 issued by the Opposite party-1 which is not in dispute.
4. Ex.A-1 is the incorporation certificate of the organization. As the opposite parties pleaded that when the complainant is available, organizations cannot file case against opposite parties on har say evidence. But the consumer associations are now extended their activities of consumer awareness programs, negotiating and settling the issues and representing consumer issues before the government by filing complaints and representing consumer issues before commissions. In this regard the consumer need not be a member in the association.

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5. In this case the defect complainant has given authorization letter to the complainant to solve the issue and in turn the complainant has filed complaint which is marked as Ex.A-3. Moreover, the defacto complainant has appeared before the commission in person.

6. As per Ex.A-5 and Ex.B-1 to B-4 proves that the refrigerator has problem and is not working properly from the purchase. Though the authorized service center replaced the chilling tray repaired and adjusted the refrigerator, the problem of non cooling/ over freezing still persisted. Hence the acts of opposite parties fall under the deficiency in service. All the complaints of fridge a raised within one year of purchase and itself deems that the refrigerator has manufacturing defect.

7. In this case the Opposite party-2 filed their counter and evidence affidavit stating that they attend the repairs promptly and the unit is in good condition. Opposite party-2 file Ex.B-1 to Ex.B-4 reveals that they attended the problem but still the problem is continued. This has happened all within one year only because of this we are of the view that the refrigerator is a defective one. The Opposite parties falls under deficiency in service coupled with negligent acts as such the burden is on the opposite parties to prove that the same problem does not comes under the manufacturing defect, the opposite parties failed to rectify the defect of this fridge it is deemed as defective product.

8. The commission opines that opposite parties rendered deficiency of service and also they are negligent while attending their service to the complainant and therefore acts comes under the purview of unfair trade practice and deficiency of service coupled with unfair trade practice due to which the complainant suffered a lot of mental agony. Hence, he is entitled for compensation.

#### **VIII. Result:**

**In the result,** the complaint is allowed partly. The opposite parties-1 and 2 are jointly and severally directed to pay an amount of Rs.19,500/- (Rupees nineteen thousand five hundred only) towards the costs of fridge to the defacto complainant within 45 days from the date of receipt of this order, failing which interest @6% p.a. shall be paid on Rs.19,500/- (Rupees nineteen thousand five hundred only) together with

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cost of fridge from the date of filing the complaint till realization; further directed to pay an amount of Rs.10,000/- (Rupees ten thousand only) towards compensation for causing mental agony on account of deficiency of service, apart from Rs.3,000/- (Rupees three thousand only) is awarded as costs. Time for compliance of this order is 45 days from the date of receipt of this order.

**IX.** Applications pending, if any, stand disposed of in terms of the aforesaid judgement.

**X.** A copy of this judgement be provided to all the parties free of cost as mandated by the Consumer protection Act 1986/2019. The judgement be uploaded forthwith on the website of the Commission for the perusal of the parties.

**XI.** File be consigned to record room along with a copy of this judgement.

Dictated to the Stenographer, and transcribed by him, corrected and pronounced by us in the Open Commission, the 21<sup>st</sup> day of June, 2024.

P.V. Durga  
21.6.24  
Smt. P Vijaya Durga

Pronounced on: 21/06/2024

Women Member

### Appendix of Evidence

#### For the Complainant:

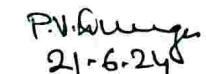
No	Date	Description of Documents	Remarks
Ex A-1	----	Incorporation Certificate of the organization, True translation along with Trade License	Photostat Copy
Ex A-2	----	AADHAR Card of complainant Vikas Pandey	Photostat Copy
Ex A-3	22.09.2022	Authorization Letter from the defacto Complainant to the complainant	Original
Ex A-4	15.10.2021	Samsung Refrigerator Tax Invoice of No.GWK14554	Original
Ex A-5	----	Email communication between defacto complainant and opposite party	Internet Copy

**For the Opposite parties:**

No	Date	Description of Documents	Remarks
Ex B-1	27.06.2022	Customer Service Card	Downloaded Copy
Ex B-2	16.09.2022	Customer Service Card	Downloaded Copy
Ex B-3	24.11.2022	Customer Service Card	Downloaded Copy
Ex B-4	21.06.2022	Customer Service Card	Downloaded Copy
Ex B-5	----	Warranty Card	Photostat Copy

  
21/6/24  
President

  
Member 21/6/24

  
21-6-24  
W. Member

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