

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, ERNAKULAM

Dated this the 24th day of November, 2025

Filed on: 07. 12. 2023

PRESENT

Shri. D.B. Binu
Shri. V. Ramachandran
Smt. Sreevidhia T.N

Hon'ble President
Hon'ble Member
Hon'ble Member

CC.No. 943 of 2023

COMPLAINANT:

Noble Mathew, Anthinattu House, Pareekanni, Kothamangalam-686693.
(Adv. Tom Joseph, Court Road, Muvattupuzha)

VS

OPPOSITE PARTY:

M/s Pothen Autos, Rep by its Managing Director, Ashok Pothen, Flat No.2B,
Kawadiyar Manor, Jawahar Nagar-1, Thiruvananthapuram-695003.

FINAL ORDER

D.B. Binu, President:

1. A brief statement of facts of this complaint is as stated below:

The complaint was filed under Section 35 of the Consumer Protection Act, 2019. The complainant booked a Mahindra Thar SUV with the opposite party on 18.07.2022 by paying a booking amount of ₹21,000/- from his bank account. Later, the complainant came to know that delivery of the vehicle would be indefinitely delayed due to internal issues of the opposite party. In view of this, the complainant cancelled the booking and requested a refund of the advance amount. He thereafter purchased a Mahindra Thar from another dealer, M/s PPS Mahindra, Kalamassery.

However, despite repeated telephonic requests by the complainant, the opposite party has not refunded the booking amount to date. It is further stated that the

opposite party has closed down its offices in the Ernakulam district, making it more difficult for the complainant to secure redress.

The complainant contends that the deliberate failure of the opposite party to refund the booking advance, even after cancellation and repeated demands, constitutes a clear deficiency in service and unfair trade practice under the Consumer Protection Act. As a result, the complainant has suffered financial loss, hardship and mental agony. He, therefore, seeks a refund of ₹21,000/- with interest at 12% per annum from the date of payment, along with compensation of ₹10,000/- and costs of the proceedings.

2. NOTICE:

Notice was issued to the Opposite Party on 10.01.2024 and the same was duly served on 15.01.2024. However, despite service of notice, the Opposite Party failed to file its written version within the statutory period. Accordingly, the Opposite Party was set ex parte, and the matter was ordered to proceed ex parte on 17.02.2025.

3. EVIDENCE:

The complainant filed a proof affidavit and produced two documents in support of his case, which were marked as Ext. A1 and Ext. A2.

Ext. A1 – Copy of bank transaction details dated 18.07.2023.

Ext. A2 – Copy of the letter sent to the Opposite Party.

4. POINTS FOR CONSIDERATION:

- i) Whether there is any deficiency in service or unfair trade practice by the opposite parties?
- ii) If so, whether the complainant is entitled to any relief?

iii) Costs of the proceedings, if any?

5. SUMMARY OF WRITTEN ARGUMENT OF THE COMPLAINANT

The present complaint relates to the reluctance of the opposite party to refund the amount paid by the complainant towards booking of a car.

The complainant has adduced evidence and produced documents, which have been marked as **Ext.A1 and Ext.A2**. The opposite party has been set ex parte.

As evident from **Ext.A1**, the copy of the bank transaction details dated 18.07.2022, the complainant paid a sum of ₹21,000/- on 18.07.2022 towards booking a Mahindra Thar vehicle with the opposite party.

Ext.A2 is the copy of the letter issued by the complainant to the opposite party requesting cancellation of the booking and refund of the advance amount.

In spite of the above letter (**Ext.A2**) and repeated requests, the amount paid as booking advance, evidenced by **Ext.A1**, has not been refunded by the opposite party. Such reluctance and failure to refund clearly amounts to a deficiency in service under the Consumer Protection Act. In the above circumstances, it is humbly prayed that this Commission may be pleased to allow the complaint.

The Complainant has produced two documents, **Ext.A1 and Ext.A2**, in support of the case. Notice was issued to the Opposite Party on 10.01.2024, and service was duly effected on 15.01.2024. Despite such service, the Opposite Party failed to file its written version within the statutory period prescribed under Section 38(2)(a) of the Consumer Protection Act, 2019 (30 days + 15 days). Accordingly, the Commission set the Opposite Party ex parte and proceeded with the matter.

The conscious failure of the Opposite Party to file a written version, despite due notice, warrants an adverse inference and, in the circumstances, operates as an admission of the averments in the complaint. The Complainant's case thus remains unrebutted, and we find no reason to disbelieve the Complainant's version. A similar view has been taken by the Hon'ble National Commission in **2017 (4) CPR 590 (NC)**.

The Commission has meticulously perused the evidence adduced by the Complainant. The Complainant has also filed written argument notes. The Opposite Party has not filed any written argument notes despite being afforded sufficient opportunity.

Point (i): maintainability

The complainant booked a Mahindra Thar for his personal use, paying a consideration of ₹21,000/- as booking advance through his bank account. **Ext.A1** corroborates this payment. By booking the car for personal use, the complainant squarely falls within the definition of "consumer" under Section 2(7) of the Consumer Protection Act, 2019.

The Opposite Party, being an authorised dealer/vehicle seller, is engaged in providing "services" connected with the sale and delivery of a motor vehicle for consideration, thereby falling within the definition of "service" in Section 2(42) of the Act. Hence, the complaint is maintainable.

Point (ii): deficiency in service or unfair trade practice

Section 2(11) of the Act defines "deficiency" as any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance required to be maintained under law or under contract.

In the present case:

- **Ext.A1** shows that the complainant paid ₹21,000/- to the Opposite Party on 18.07.2022 for booking the Mahindra Thar.
- **Ext.A2** evidences that the complainant cancelled the booking and specifically requested a refund of the booking advance.
- The complainant's unrebutted affidavit and the argument notes show that, despite repeated requests, the Opposite Party has not refunded the booking amount.

There is no material to show that the Opposite Party delivered the vehicle, nor any contractual clause placed on record to justify withholding the booking amount after cancellation. The Opposite Party has not entered an appearance or filed any written version to contest the complainant's assertions or to explain the non-refund.

The act of retaining the booking advance even after cancellation and repeated demands, without rendering the contracted service (i.e., delivery of the vehicle within a reasonable time), clearly amounts to a deficiency in service and also constitutes an unfair trade practice under Section 2(47) of the Act.

The Hon'ble Maharashtra State Consumer Disputes Redressal Commission in **M/s Ekvira Enterprises v. M/s Bavaria Motors**, A/16/3058 dtd.29.01.2020 held that non-refund of car booking amount, even where cancellation was at the option of the consumer, amounts to unfair trade practice and deficiency in service, and directed refund of the booking amount with interest and compensation.

In the present case, the Opposite Party has not only failed to deliver the vehicle within a reasonable time but also refused/omitted to refund the booking advance after cancellation. No explanation is forthcoming as to how they can

lawfully retain the amount. Such conduct is squarely covered by the aforesaid principles and clearly amounts to a deficiency in service and unfair trade practice.

Further, as already noted, the Opposite Party has failed to file any written version within the statutory period despite due service of notice. The intentional non-filing of a written version despite service of notice amounts to admission of the allegations in the complaint and justifies drawing an adverse inference against the Opposite Party. In such a situation, cogent, unrebutted evidence led by the complainant can safely be accepted.

We have meticulously perused the complainant's affidavit and **Ext.A1 and Ext.A2**. There is no reason on record to disbelieve the complainant's version, which is consistent, supported by documents, and unrebutted.

Accordingly, Point (ii), there is a clear deficiency in service and unfair trade practices on the part of the Opposite Party.

Point (iii) & (iv): Entitlement to Relief and Costs

The complainant has sought a refund of the booking advance with interest, compensation for mental agony, hardship and financial loss, and costs of the proceedings. Once it is found that the Opposite Party has retained the booking amount without either supplying the vehicle or refunding the amount upon cancellation, the complainant is entitled to be restored, as far as money can do it, to the position he would have been in had the Opposite Party acted lawfully, in line with the principle of restitutio in integrum.

The Opposite Party has unjustly retained the complainant's money for a prolonged period, causing mental agony and forcing him to pursue avoidable litigation. In similar matters, interest has been granted to compensate for the loss of use of money and to deter arbitrary retention, and compensation has been

awarded for harassment and inconvenience. Since the complainant has been compelled to initiate and pursue these proceedings solely due to the Opposite Party's failure to refund, he is also entitled to reasonable costs.

Accordingly, these points are answered in the affirmative. The complainant is entitled to a refund of the booking advance with appropriate interest, together with just compensation and reasonable costs, as specified in the operative portion of this order.

We hold that Points (i) to (iv) stand answered in favour of the complainant, in view of the clear deficiency in service and unfair trade practice on the part of the Opposite Party. As a consequence of the Opposite Party's negligence, the complainant has suffered considerable inconvenience, mental distress, hardship and financial loss.

In light of the above facts and circumstances, we are of the considered view that the Opposite Party is liable to compensate the complainant.

Hence, the prayer is partly allowed as follows:

- I. The Opposite Party shall refund to the complainant a sum of **₹21,000/-** (Rupees Twenty-One Thousand only), being the booking advance paid for the Mahindra Thar, together with interest at the rate of 12% (twelve per cent) per annum from 18.07.2022 till the date of actual realisation.
- II. The Opposite Party shall pay to the complainant a sum of **₹10,000/-** (Rupees Ten Thousand only) as compensation for the deficiency in service and unfair trade practice on its part and for the mental agony, hardship and financial loss suffered by the complainant.
- III. The Opposite Party shall further pay **₹5,000/-** (Rupees Five Thousand only) towards the costs of these proceedings.

The Opposite Party is solely liable for the fulfilment of the above directions. These amounts shall be paid within 45 days from the date of receipt of a copy of this order. In case of default, the amounts awarded under Points II above shall carry further interest at the rate of 9% (nine per cent) per annum from the date of filing of the complaint (07.12.2023) till full realisation.

Pronounced in the Open Commission on this the 24th day of November, 2025.

**Sd/-
D.B. Binu
President**

**Sd/-
V. Ramachandran
Member**

**Sd/-
Sreevidhia T.N,
Member**

Forwarded/By Order

Assistant Registrar

APPENDIX

Complainant's Evidence:

Ext.A1 - Copy of Bank Transaction details dtd. 18-7-2023
Ext.A2 - Copy of the Letter sent to the oppsoite party

Opposite party's Evidence:-

Date of Despatch
By Hand::
By post::BR/