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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Apr-17-1993

Judge : A. Venkatarami Reddy, President, the Honourable Mr. Pothuri Venkateswara Rao, Member & the Honourable Mrs. J. Ananda Lakshmi, Member

Appeal No. : C.D. No. 246 of 1991

Appellant : P. Krishna Kumar

Respondent : The Mitra Agencies and Another

Judgement :

A. Venkatarami Reddy, President:

1. This case coming on for hearing upon perusing the petition and upon hearing the arguments of Mr. Ch. Jagannadha Rao Advocate for the petitioner and Mr. Y.N. Lohita Advocate for the respondents. The court made the following ORDER :

2. The complainant booked a Maruthi Omni Flat roof Van with the first opposite party on 16-5-1991. He paid the entire cost of the van prevailing as on 16-5-91. According to the complainant the first opposite party informed him that the van would be delivered within a period of 8 weeks and the same was confirmed in the order booking form. But the opposite party did not deliver by 24-7-1991 i.e., within 8 weeks. On account of the Union Budget, there was enhancement of the price of

the van by about Rs. 30,000/-. The opposite party, therefore, insisted on payment of the difference in price consequent on the Union budget. The Complainant got a legal notice issued on 9-8-91 for release of the Omni Flat roof van for the price stipulated at the time of booking. To the said notice the first opposite party issued a letter of intimation on 16-8-91 stating that the vehicle is ready for delivery and demanded the payment of enhanced rate of Rs. 30,000/-. Therefore, the complainant was constrained to pay the enhanced rate of Rs. 29,117.72 ps. on 23-8-1991 and also further a sum of Rs. 6,857. 38 on 23-8-1991 in favour of the first opposite party. As the 1st opposite party did not deliver the vehicle as promised by his letter 16-8-91 the Complainant filed this complaint stating that he was entitled to the car at the rate when it was booked on 16-5-91 and sought a direction to the opposite party to forthwith release the van as it was booked by the complainant according to the agreement and promise made by the opposite party on 16-5-91 without insisting on the enhanced amount rate; to direct the opposite party refund the enhanced amount of Rs. 30,000/- and he claimed Rs. 10,000/- towards mental agony suffered and Rs. 5,000/- as costs.

3. It is submitted for respondents that time stipulated for delivery of the van is not the essence of the contract. Moreover, that according to the terms and conditions, the complainant agreed to pay the rate prevailing as on the date of the delivery. It was also stated that inspite of intimation, the Complainant has not taken delivery of the vehicle.

4. During the pendency of the Consumer dispute, interim direction was given by this Commission on 7-12-91 to the effect that if the amounts as demanded by the opposite party have been made the opposite party shall deliver the vehicle to the Complainant forthwith.

5. It is submitted by the Counsel for the first opposite party that the van was delivered to the complainant as directed by this Commission. Hence the prayer relating to the delivery of the vehicle no longer subsists.

6. With regard to the contention time is the essence of contract, it has been decided by the National Commission in similar cases that time is not the essence of the contract.

7. The Counsel appearing for the first opposite party brought to my notice a letter written by the complainant informing him that he would withdraw the case unconditionally since the first opposite party is going to deliver Maruti Omni Flat Roof Van within 10 days from 26-12-1991. As the van was delivered to the complainant on the same day, he informed the first opposite party that he will withdraw the complaint. Even otherwise, since the terms and conditions stipulate that the complainant agreed to pay the price prevailing, as on the date of the delivery of the van, the opposite party rightly demanded the difference in price due to enhancement of the same consequent on the presentation of union budget, we see no merits in the complaint.

8. In the result the complaint is discussed but there shall be no order as to costs.

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