

**IN THE CONSUMER DISPUTES REDRESSAL COMMISSION,  
THRISSUR**

Present : Sri. C.T. Sabu, President  
Smt. Sreeja. S., Member  
Sri. Ram Mohan R., Member

26<sup>th</sup> day of March 2025  
CC 570/10 filed on 18/11/2010

Complainant : Geo Johnson, Mathala House, Sreyas Nagar,  
Ollukkara P.O., Thrissur District.  
(By Adv. A.D Benny, Thrissur)

Opposite Party : Proprietor, Ideal Agencies, Jacob Oil  
Mill Building, Ollukkara P.O., Paravattani,  
Thrissur.  
(By Adv. V. Suresh Kumar, Thrissur)

**FINAL ORDER**

**By Sri.Ram Mohan R, Member :**

1) Complaint in brief, as averred :

The complaint is filed under Section 12(1) of the Consumer Protection Act 1986. The complainant on 31/07/2010, statedly purchased “Marbomax Vitrified Tiles” from the opposite party dealer, paying them a sum of Rs. 24,600/- (Rupees twenty four thousand and six hundred only) vide their invoice no. 2604. Allegedly, the opposite party claimed that the tiles in question bore high standards of quality. After laying, the tiles allegedly exhibited extensive fading at their edges. The impugned tiles were statedly laid in the hall and the bed room of the complainant’s house. Having been informed by the complainant of the said defect, the opposite party came and inspected the laid tiles. The opposite party had statedly admitted the low quality of the tiles and offered the complainant a compensation worth Rs. 5,000/- (Rupees five thousand only). The complainant, who paid no heed to the said offer, caused a

lawyer notice to the opposite party which statedly elicited no result. The fading of tiles statedly dented the cosmetic feel and appearance of the complainant's house. The complainant claims to have also undergone agony and hardship owing to the opposite party's sale of low quality tiles and alleges deficiency in service on their part. Hence the complaint. The complainant prays for an order directing refund of the purchase price that he paid, apart from other reliefs of compensation and costs.

## 2) NOTICE :

The Commission having issued notice, the opposite party filed their written version and contested the complaint.

## 3) Version of the Opposite Party :

The opposite party admits the sale of the impugned tiles to the complainant, but alleges non-joinder of the manufacturer. The opposite party also claims that no other consumers who bought tiles of the same batch from his shop did have raised any similar complaint. The opposite party also avers that no allegation regarding fading was reported by the complainant at the time while the packages containing the tiles were opened. The opposite party further alleges that the fading seen at the edges of the tiles is attributed either to the cement or clay used by the complainant for laying the tiles or to the chemicals used by him for cleaning the same and avers that, the liability arising from which cannot be fastened with them. They also deny the alleged offer on their part to pay the complainant a compensation worth Rs. 5,000/- (Rupees five thousand only).

#### 4) Evidence :

The complainant produced documentary evidence that had been marked Ext. P1 to P3, apart from deposition, affidavit and notes of argument. The opposite party filed version and notes of argument. The opposite party adduced no documentary evidence but swore affidavit through their power of attorney holder, the power of attorney holder having undergone cross as well. The report submitted by the Expert Commissioner appointed by the Commission at the instance of the complainant is marked Ext. C1. The complainant as well as the power of attorney holder of the opposite party underwent cross by the other side, concerned.

#### 5) Deliberation of facts and evidence of the case

The Commission has very carefully examined the facts and evidence of the case. Ext. P1 is Invoice No. 2604 dated 31/07/2010 issued by the opposite party in favour of the complainant, receiving from him a sum of Rs. 24,600/- (Rupees twenty four thousand and six hundred only) towards the sale of 'Marbomax Vitrified tiles' and other materials. Ext. P2 is copy of Lawyer Notice. Ext. P3 is Postal Acknowledgement Card. Ext. C1 is the report submitted by the Expert Commissioner appointed by the Commission at the instance of the complainant.

The complainant as well as the power of attorney holder of the opposite party underwent cross by the other side, concerned.

#### 6) Points to be deliberated:

- (i) Whether the complainant had discharged his initial onus to prove the alleged defect?
- (ii) Whether the complaint is bad in law for non-joinder of necessary party? Also whether the complainant's claim for refund of the purchase price is sustainable in law?

- (iii) Whether there is any deficiency in service or adoption of unfair trade practice on the part of the opposite party?
- (iv) Whether the complainant is entitled to receive any compensation from the part of the opposite party? If so its quantum?
- (v) Costs?

7) Point No.(i)

The complainant alleges extensive fading of tiles at their edges. Ext. C1 report affirms that there was fading of tiles at their edges resulting in their scratched view, as well. The report further states that 30% of the whole area where the tiles were laid, bears the defect. Given the Expert Commissioners conclusive finding regarding fading of tiles and their scratched view, the complainant is found to have discharged his initial onus to prove the alleged defect.

Point no. 1 is, therefore, proved in favour of the complainant.

8) Point No.(ii)

The complainant, inter-alia, alleges the opposite party's sale of tiles with inferior quality and claims for refund of the purchase price that he paid to the opposite party. In so far as the quality of a tile is concerned, it is governed by the manufacturing standards which its manufacturer maintains. Resultantly, any allegation in respect of the quality of a tile is as good as one pertaining to its manufacturing defect/insufficiency. The opposite party also had raised the question of non-joinder of the manufacturing company. The complainant who inter alia alleged low quality of tiles and claimed refund of purchase price, ought to have arraigned the manufacturer, concerned, as a party to the complainant, in so far as his allegation pertaining to low quality and claim for refund, are concerned. As referred to supra, the opposite party had raised the question of non-joinder of manufacturer. But during cross examination by the

complainant, the power of attorney holder of the opposite party who swore affidavit on their behalf, unequivocally deposed that the impugned tiles neither suffer any manufacturing defect nor are of any low quality. He had further deposed that the manufacturer need be impleaded only if such manufacturing flaws are there in the tiles. He also affirmed during cross that he had been the person in charge of the opposite party shop and the opposite party's instrument of power of attorney affirms that the power of attorney holder/donee is the husband of the opposite party shop-proprietor and the power of attorney holder by petition, filed on 09/02/2018 admits to have been directly aware of the case specifics, as well. The deposition of the person who has the rich experience of running the opposite party shop in question, commands an undisputable degree of credibility. Thus, the opposite party had on cross vitiated their contention of non-joinder of manufacturer. Given the peculiar nature of the case at hand, we wish to give a pointed analysis of the case specifics and the question of law involved. It is trite law that 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. It also thus becomes imperative that if the 'necessary party' is not impleaded, the suit or complaint itself is liable to be dismissed. At the same time, 'proper party' is a party who though not a 'necessary party', is a person whose presence that enables the Court to completely, effectively and adequately adjudicate upon all the matters in dispute in the complaint, though it need not be a person in whose favour of or against whom the decree or order is to be made. Undoubtedly, in the case at hand, the manufacturing company was a 'proper party' whose presence would certainly have enabled the Commission to completely, effectively and adequately adjudicate upon all the matters involved. In view of the opposite party's having categorically affirmed during cross that there is neither any manufacturing defect nor any inferior quality in respect of the tiles in question and that the necessity of impleading the manufacturer exists only in the event of such manufacturing flaws, the

manufacturing company's presence turns to be desirable to the extent as a 'proper party' only, and not at all as a 'necessary party'. We are, therefore, of the view that the complaint is, not bad in law for non-joinder of necessary parties.

Ext. C1 report which affirms the defect in the tiles does not state the cause of the defect. In the absence of any concrete evidence to prove the manufacturing defect in tiles and also in the absence of the manufacturer as a party to the case, the complainant's claim for refund of the purchase price is found not sustainable in law.

Therefore, point no. 2 is found partly in favour of the complainant.

#### 9) Point No.(iii), (iv) & (v)

As elaborated under point no.1 above, there is fading as well as scratched view at the edges of about 30% of the area where the impugned tiles were laid. But the opposite party avers that no other consumers who purchased the same batch of tiles from them, had made any similar complaints. The said contention is not found tenable, as it is common place that every aggrieved consumer does not necessarily litigate. The opposite party also avers that no defects regarding fading were reported by the complainant at the time while the packages containing the tiles were opened. This contention of the opposite party also does not hold any water, in view of the fact that the defect of a tile can only be noticed only after its laying and further exposure to use for a period of considerable length. The opposite party during cross examination by the complainant, admitted that a staffer of his had inspected the impugned tiles and had noticed the defect in tiles. The opposite party who averred non-joinder of the tile manufacturer is seen to have categorically admitted during cross by the complainant that there is neither any manufacturing defect nor any low quality in respect of the impugned tiles. The opposite party by version and affidavit affirms that the alleged fading is attributed either to the cement/clay used for

laying or to the chemical used for cleaning. It is common place that tiles are to be laid using cement/clay and also that they are subjected to cleaning /washing with chemicals. If the fading of tiles, as claimed by the opposite party, is attributed to the use of cement/clay or chemicals, the opposite party did have the bounden duty to suitably advise the complainant of, either forbidding the use of any undesirable materials or adhering to the use of desirable ones. The opposite party had not claimed to have done so at the time while the tiles in question were sold to the complainant. Section 6 (b) of the Consumer Protection Act, 1986 invests the consumer with a right to be informed, amongst others, about the quality, purity, potency, standard etc of the goods that he purchases, so as to protect himself against any unfair trade practice. This right of his, helps the consumer take informed decisions. A retail shop is not a centre meant merely to collect money from the end consumers, whose duties and responsibilities to the consumers extinguish once the transaction is accomplished. The retailer is expected to help the consumers take informed decisions in respect of the purchase, concerned, and hence owes a duty to furnish the consumers with such information relating to safe and hassle free use of the products that he sells. In the instant case, the opposite party is seen to have deprived the complainant of this right of his to take informed decision in respect of the purchase, though the opposite party was admittedly well aware of the fact that the use of certain cement/clay/chemicals may cause harm to the tiles, which in turn constitutes deficiency in service on their part. Hence we are inclined to hold that there is deficiency in service on the part of the opposite party in so far as their having not properly furnished the complainant with the information sufficient to forbid the use of undesirable clay/cement/chemicals on the impugned tiles.

Had the opposite party suitably advised the complainant of the stipulations either forbidding the use undesirable materials or permitting the use of product-friendly ones, the situation could have been different and the impugned fading of tiles could have been averted. Such fault or imperfection

on the part of the opposite party, had inflicted agony and hardship on the complainant. The opposite party has necessarily to compensate the complainant. We are of the considered view that the complainant is entitled to receive from the opposite party a sum of Rs. 10,000/- (Rupees ten thousand only) towards compensation for the agony and hardship that he underwent, and a sum of Rs. 5,000/- (Rupees five thousand only) towards costs.

In the result, the complaint is partly allowed and the opposite party is directed to pay the complainant:

- a) a sum of Rs. 10,000/- (Rupees ten thousand only) towards compensation for the agony and hardship that he underwent, and
- b) a sum of Rs. 5,000/- (Rupees five thousand only) towards costs.

The opposite party shall comply with the above directions in 30 days of receipt of a copy of this order, failing which the entire sum mentioned above shall carry interest at the rate of 5% per annum from the date of order.

Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in the open Commission this the 26<sup>th</sup> day of March 2025.

Sreeja S.  
Member

Ram Mohan R  
Member

C. T. Sabu  
President

#### Appendix

##### Complainant's Exhibits :

Ext. P1 is Invoice No. 2604 dated 31/07/2010 issued by the opposite party in favour of the complainant, receiving from him a sum of Rs. 24,600/- (Rupees twenty four thousand and six hundred only) towards the sale of 'Marbomax Vitrified tiles' and other materials.

Ext. P2 is copy of Lawyer Notice.  
Ext. P3 is Postal Acknowledgement Card.

Opposite party's Exhibits :  
Nil

Ext.C1: Expert Commissioners Report

Ram Mohan R  
Member

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//True Copy//

Assistant Registrar

Auk

Auk

//True Copy//

Assistant Registrar