

Date of Filing: 05.09.2019

Date of Order: 14.02.2023

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION: RANGA REDDY

P r e s e n tSMT.CHITNENI LATHA KUMARI, PRESIDENT
SRI V.JANARDHAN REDDY, MEMBERTUESDAY, THE FOURTEENTH DAY OF FEBRUARY
TWO THOUSAND TWENTY THREE

[REDACTED]/2019

Between:

Smt.Padm [REDACTED]
[REDACTED]
[REDACTED]

... Complainant

AND

M/s Sree Krishna Automotives Hyd Pvt. Ltd.,
Rep. by its Authorized Dealer for Honda,
Plot No.9, Survey No.64, Sector-I,
Huda Techno Enclave, Madhapur,
Hyderabad – 500 081, Telangana.

... Opposite Party

Counsel for Complainant : M/s [REDACTED], Advocates
Counsel for Opposite Party : M/s [REDACTED], Advocates

This complaint is filed by the complainant U/Sec.12 of Consumer Protection Act, 1986 praying this Commission to direct the Opposite Party (i) to take back the defective second hand Honda Amaze 1.2 V CVT (I-VTEC)-AM029 four wheeler bearing Chassis No.MAKDF [REDACTED] and Engine No.L12 [REDACTED] and to return the entire amount paid by her till date towards loan EMIs to M/s Kotak Mahindra Prime Ltd., together with down payment of Rs.1,85,000/- (ii) to compensate the incidental expenditure incurred by her towards ex-showroom cost, road tax, insurance, registration charges, finance charges etc., cost or to pay its cost of Rs.2,34,900/- (iii) to pay Rs.1,00,000/- towards damages for mental agony (iv) to award costs of the case and pass such other order or orders as this Hon'ble Commission deems fit and proper.

O R D E R(PER SE Smt.CHITNENI LATHA KUMARI, PRESIDENT
ON BEHALF OF THE BENCH)1. Brief averments of the complaint are as follows:


The complainant submits that he approached the Opposite Party on 28.02.2019 for purchase of a Honda make brand new four wheeler as the Opposite Party being the authorized dealer for new Honda Cars. Believing the

Opposite Party, the complainant placed an order for Honda Amaze 1.2 V CVT (I-VTEC)-AM029 of Modern Steel, Metallic (MSM) color bearing chassis No.MAKDF5 [REDACTED] and Engine No.L12B [REDACTED] by paying a token advance of Rs.5,000/- by way of online transfer and also made a down payment of Rs.1,80,000/- on 26.04.2019 through NEFT transfer. The complainant has taken loan from M/s Kotak Mahindra Prime Ltd and entered into a Loan Agreement No. [REDACTED] on 24.04.2019 and as per the repayment schedule fixed by the Bank, the EMIs of Rs.12,450/- towards repayment of the said loan commenced from 05.05.2019 and would end by 05.04.2026. Accordingly, the Opposite Party raised invoice No.070/1920 [REDACTED] on 27.04.2019 for a sum of Rs.7,84,900/-. It is submitted that within ten days of taking delivery of the said vehicle, the complainant noticed certain unusual sounds emanating from the vehicle and also some parts of the axel were rusted. The complainant brought them to the notice of the Opposite Party by way of photographs and producing the vehicle for inspection. The Opposite Party has brushed aside the said defects stating that it is normal in all new Honda Amaze four wheelers and promised to rectify to the extent possible at a later period. Later, after running the vehicle upto 783 kms, the complainant brought the vehicle to the showroom of the Opposite Party on 31.05.2019 for getting first free service done and took delivery of the vehicle after servicing on the same day.

It is submitted that after servicing while looking at the documents of service record of the vehicle, the complainant, to her utter surprise and shock came to know that the vehicle sold to her was the same vehicle which was already sold by the Opposite Party to one Sri Nagesh Charugundla and on enquiry with him, she came to know that he previously purchased the said vehicle, which was delivered to the complainant under the guise of a new vehicle. On verification of the online data maintained by Honda Company, the complainant came to know that the said vehicle was purchased and delivered the said new vehicle to one Mr.Nagesh Charugundla on 28.02.2019 and that the warranty expires on 27.02.2024, whereas, since the complainant purchased a brand new vehicle on 27.04.2019, the purchase date should have been shown as 27.04.2019 besides showing the commencement date of warranty as 27.04.2019 itself. In view the above, the complainant got issued a legal notice to the Opposite Party on 16.07.2019 calling upon the Opposite Party to take back the vehicle as it is already sold to some third party and return the entire amount paid by her by way of advance and also down payment i.e. Rs.1,85,000/- besides the three months EMIs paid by her to M/s Kotak Mahindra Prime Ltd and also the other incidental expenditure incurred by her towards ex-showroom cost, road tax, insurance, registration charges, finance charges etc. On receipt of the said notice, the Opposite Party issued a reply notice dt.23.07.2019 accepting that one Mr.Nagesh Charugundla earlier booked

the said vehicle but cancelled the booking subsequently and his details were inadvertently uploaded by them to Honda Company. The Opposite Party also agreed in its reply that the vehicle has a tendency to have rust formation, which it had failed to bring to the notice of the complainant at the time of purchase and delivery of the vehicle. Though the Opposite Party accepted the said facts, he denied the fact of selling a second hand vehicle to the complainant, which is factually incorrect. As such, the Opposite Party is responsible for deficiency of service and liable to compensate the complainant for the loss and injury caused to her. Hence this complaint.

2. The Opposite Party filed written version and submitted that the complainant has misrepresented the facts and there is no deficiency in rendering service from the Opposite Party and the relief as prayed is not tenable in the eye of law. It is true that the complainant has brought the vehicle after running upto 783 kms for the first service on 31.05.2019 and the same was attended and given the service as per the process of first service of the vehicle and also had test drive after the completion of service. It was noticed that there was no any sound in the vehicle. It is submitted that regarding the rust in the axel of the vehicle is stand correct that the part is called Disc, which was escalated by them to Honda Company. The Honda Company has replied that the Superficial rust on Break Disc is made of cast iron can happen due to atmospheric and usage conditions. However, driving for few kilometers evades this layer on the brake disc when it comes in frictional contact with break pads though it is possible that the noise may also originate if the car is stood for a longer period and it will require a disc skimming process to clean it. It is having a tendency to have rust formation by its nature and property based on the environmental conditions, but does not affect the performance or strength of the vehicle. The same was escalated to the complainant and requested them to visit their workshop to set right the same if there is any such problem in the vehicle.

It is submitted that one Mr.Nagesh Charugundla was intended to purchase the vehicle and was booked the same. But it is submitted that inadvertently the details of this customer has been uploaded by the office of the Opposite Party in the Honda Company app in the notion that the said Mr.Nagesh Charugundla will purchase the vehicle without fail, hence in the warranty records, the name of Mr.Naresh Charugundla is recorded. Whereas, incidentally the said customer has cancelled the booking and not purchased the subject vehicle. Thus, neither the vehicle is delivered nor registered in the name of Mr.Nagesh Charugundla. It is submitted that as of now, the name in the warranty period record is changed in the name of Smt.Padm  The warranty period will be extended for further one year at the cost of the Opposite Party from the date of maturity period i.e. 27.02.2024 and this

information was conveyed to the Opposite Party. It is submitted that the complainant has got registered the subject vehicle on her name on 01.06.2019 vide Regn.No.TS08[REDACTED] against the sale Regn No.TS07AWTR[REDACTED] issued by the Opposite Party. Hence, this fact clearly establishes that the complainant is the first owner of the subject vehicle and not purchased any second hand vehicle. The Opposite Party submits that they had given detailed reply to the legal notice which was agreed by the complainant. As such, the Opposite Party is not responsible for deficiency of service and not liable to compensate for the loss and injury caused to the complainant. Therefore, it is prayed to dismiss the complaint with exemplary costs.

3. The complainant filed Evidence Affidavit along with documents marked as Ex.A1 to A31. The Opposite Party filed Evidence Affidavit and documents were marked as Ex.B1 and B2 on their behalf. Both parties filed their respective written arguments.

4. Now the points for consideration in this case are:

- (i) Whether there is any deficiency in service on the part of Opposite Party?
- (ii) If so to what relief?

5. Point No.1: The main allegation of the complainant is that she purchased the brand new Honda make from the Opposite Party and Opposite Party raised invoice No.070/1920[REDACTED] on 27.04.2019 for a sum of Rs.7,84,900/-. Thereafter, within 10 days of delivery of the said vehicle, he noticed certain unusual sounds emanating from the vehicle and also some of the parts of the Axel were rusted which were brought to the notice of the Opposite Party by way of photographs and Opposite Party after inspection of the vehicle brushed aside the said defects stating that it is normal in all new Honda Amaze four wheelers and promised to rectify to the extent possible at a later period. Later, after running the vehicle upto 783 kms, he visited the showroom of the Opposite Party on 31.05.2019 for getting first free service and took delivery of the vehicle on the same day, after service. After servicing, while looking at the documents of service record of the vehicle, he came to know that the vehicle sold to her was the same vehicle which was already sold by the Opposite Party to one Sri Nagesh Charugundla and on enquiry she came to know that he previously purchased the said vehicle and it was delivered to the complainant under the guise of a new vehicle. Thereafter, on verification of online data maintained by Honda Company, she came to know that the said vehicle was purchased and delivered to one Mr.Nagesh Charugundla on 28.02.2019 and that the warranty period expires on 27.02.2024, whereas, since the complainant purchased a brand new vehicle on 27.04.2019, the purchase date has been shown as 27.04.2019 besides showing the commencement date of warranty as 27.04.2019 itself. The main argument of the complainant is that Opposite Party had sold a second hand vehicle towards suppressing the fact of its previous

sale and it constitutes unfair trade practice and also deficiency of service, as such she got issued legal notice on 16.07.2019 calling upon the Opposite Party to take back vehicle as it is already sold to third party and return the entire amount by way of advance. On receipt of the said notice, the Opposite Party issued a reply legal notice on 23.07.2019 accepting that one Mr.Nagesh Charugundla previously booked the said vehicle but cancelled the booking and his details were inadvertently uploaded by them to Honda Company.

The Manager of Opposite Party-R.Murali Krishna filed affidavit in evidence on behalf of the Opposite Party and contended that one Mr.Nagesh Charugundla, resident of Kukatpally, Hyderabad intended to purchase the vehicle and was booked the same, as such inadvertently the details of the said customer had been uploaded by the office of the Opposite Party in the Honda Company app in the notion that the said Mr.Nagesh Charugundla would take the vehicle without fail. Hence, in the warranty records, the name of Mr.Nagesh Charugundla was recorded. Whereas, incidentally the said customer cancelled the booking and not purchased the subject vehicle. Thus, neither the vehicle was delivered nor registered in the name of Mr.Nagesh Charugundla. As of now, the name in the warranty period record is changed in the name of Smt.Padma [REDACTED]-complainant herein. The warranty period will be extended for further one year at the cost of the Opposite Party from the date of warranty period i.e. 27.02.2024 and this information was also conveyed to the complainant. Further, it is the contention of the Opposite Party that complainant got registered the vehicle on her name on 01.06.2019 vide regn.No.TS08 [REDACTED] against the sale regn.No.TS07AWTR [REDACTED] issued by the Opposite Party which clearly shows that the complainant is the first owner of the subject vehicle and purchased any second hand vehicle and further contended that they never sold vehicle to Mr.Nagesh Charugundla and as such the vehicle got registered in the name of the complainant for the first time. As such, the question of suffering mental agony for any act, deed or thing of complainant does not arise and requested to dismiss the complaint.

It is an admitted and undisputed fact that the complainant placed an order with Opposite Party-dealer on 28.02.2019 for brand new Honda Amaze four wheeler by paying token advance of Rs.5,000/-. Subsequently, in pursuance of the said order, the Opposite Party delivered the vehicle to the complainant by raising invoice No.070/192 [REDACTED] on 27.04.2019 for a sum of Rs.7,84,900/-. Thereafter, here it is the allegation of the complainant that within 10 days of delivery of the said vehicle, she noticed certain unusual sounds emanating from the vehicle and also some parts of the axel were rusted. When she brought them to the notice of the Opposite Party by way of photographs and produced the vehicle for inspection, the Opposite Party has brushed aside the said defects stating that it is normal in all new Honda four

wheeler and also promised to rectify to the extent possible at a later period. Later, after running the vehicle upto 783 kms, the complainant brought it to the showroom of the Opposite Party on 31.05.2019 for getting first free service and took delivery of the vehicle after servicing on the same day. At that time, she came to know that the vehicle sold to her was the same vehicle which was also sold by the Opposite Party to one Sri Nagesh Charugundla, R/o H.No.5-3-77/1, Near Union Bank ATM, Opp. Kukatpally P.S bearing phone No. [REDACTED]. On enquiry, with the said Nagesh Charugundla, she came to know that he previously purchased the said vehicle which was delivered to the complainant herein under the guise of a new vehicle. In support of the said contention, the complainant exhibited the documentary evidence Ex.A4-tax invoices of the Opposite Party which are reproduced herewith for the sake of clarity.

As per the Invoice date 03.05.2019

BILL TO		SHIP TO		VEHICLE INFO		INVOICE INFO	
Name	Nagesh Charugundla	Name	Nagesh Charugundla	Veh. Reg.No.	PH21753	Invoice No.	[REDACTED]
GSTIN		Phone	[REDACTED]	Model	Amaze Petrol	Invoice Date	03-05-2019 02:49 PM
Address	H.No.5-3-77/1, Near Union Bank ATM, Opp. Kukatpally P.S, Kukatpally	GSTIN		Chassis No.	MAKDF5 [REDACTED]	RO No.	SER-RO-DD070-[REDACTED]
		Ship to	H.No.5-3-77/1, Near Union Bank ATM, Opp. Kukatpally P.S, Kukatpally, Telangana	Engine No.	L12E [REDACTED]	RO Type	GR
				Wrnty Start	28.02.2019	Visit Date	03.05.2019 02:40 PM
Place of Supply	Telangana	State	Telangana			Mileage	10
State Code	36	State Code	36				

As per invoice date 31.05.2019

BILL TO		SHIP TO		VEHICLE INFO		INVOICE INFO	
Name	Nagesh Charugundla	Name	Nagesh Charugundla	Veh. Reg.No.	TS07AWTR [REDACTED]	Invoice No.	[REDACTED]
GSTIN		Phone	[REDACTED]	Model	Amaze Petrol	Invoice Date	31-05-2019 04:14 PM
Address	H.No.5-3-77/1, Near Union Bank ATM, Opp. Kukatpally P.S, Kukatpally	GSTIN		Chassis No.	MAKDF5 [REDACTED]	RO No.	SER-RO-DD070B-[REDACTED]
		Ship to	H.No.5-3-77/1, Near Union Bank ATM, Opp. Kukatpally P.S, Kukatpally, Hyderabad-500 072 Telangana, India	Engine No.	L12E [REDACTED]	RO Type	PM
				Wrnty Start	28.02.2019	Visit Date	31.05.2019 11:41 AM
Place of Supply	Telangana	State	Telangana			Mileage	783
State Code	36	State Code	36				

As per invoice date 04.07.2019

BILL TO		SHIP TO		VEHICLE INFO		INVOICE INFO	
Name	Nagesh Charugundla	Name	Nagesh Charugundla	Veh. Reg.No.	TS07AWTR	Invoice No.	
GSTIN		Phone		Model	Amaze Petrol	Invoice Date	04-07-2019 03:02 PM
Address	H.No.5-3-77/1, Near Union Bank ATM, Opp. Kukatpally P.S, Kukatpally	GSTIN		Chassis No.	MAKDF5	RO No.	SER-RO-DD070B-
		Ship to	H.No.5-3-77/1, Near Union Bank ATM, Opp. Kukatpally P.S, Kukatpally, Telangana	Engine No.	L12B440721 1	RO Type	GR
				Wrnty Start	28.02.2019	Visit Date	04.06.2019 03:45 PM
Place of Supply	Telangana	State	Telangana			Mileage	848
State Code	36	State Code	36				

The learned counsel for the complainant vehemently argued that despite handing over the vehicle to the complainant on 27.04.2019 in the name of brand new vehicle, the Honda app/Online Information shows the name of 3rd party i.e. Nagesh Charugundla and his phone No. that is also subsequent to purchase of the said vehicle by her on 27.04.2019. The official Honda App still contains (03.05.2019, 31.05.2019 and 04.07.2019) the information of the third party i.e. Nagesh Charugundla and produced the above printout/copies. One of the said above Ex.A4-tax invoice dated 03.05.2019 shows the vehicle registration number as PH21753 and the chassis number and engine number are one and only the same belongs to the vehicle in question. It is also very surprising/shocking to know that warranty starting date was also mentioned as 28.02.2019, whereas complainant purchased the vehicle on 27.04.2019.

In the background of the said facts and circumstances, being a bonafide purchaser of brand new Honda Amaze car, the complainant herein raised a doubt over the genuinity of representation of brand new vehicle and alleged that Opposite Party handed over the said vehicle representing that as a new vehicle though it was disposed of in the name of third party and it certainly falls into the ambit of unfair trade practice. Further alleged that the Opposite Party is duty bound to disclose the said information of handing over of vehicle to the third party and about warranty start date of 28.02.2019. As they failed to disclose the same and it amounts to the unfair trade practice of selling the used vehicle to her and due to supplying the rusted vehicle, it started emanating unusual sounds. Though the said defects were also drawn to the attention of the Opposite Party immediately after purchase of 10 days, the Opposite Party brushed aside the defects of unusual sounds and admitted the fact of rusting

nature of the Honda Amaze vehicle but simply stated that rusting is normal in all new Honda Amaze four wheelers.

Whereas the Opposite Party contested the case on the following grounds:

The complainant made an allegation of manufacturing defect but failed to implead manufacturer as party to the proceedings, manufacturer is the necessary and proper party to the proceedings, as such the answering Opposite Party is not liable for the manufacturing defect.

The second plea raised by the Opposite Party is that initially one person named Mr.Nagesh Charugundla, resident of Kukatpally, Hyderabad was intended to purchase the vehicle and was took the same but inadvertently the details of the said customer have been uploaded by the office personnel in the Honda Company app with an intention that the said Mr.Nagesh Charugundla will take the vehicle without fail. Hence, the warranty records are in the name of Nagesh Charugundla. However, as the said customer has cancelled the booking and not purchased the subject vehicle, thus neither vehicle is delivered nor registered in the name of Nagesh Charugundla. As such, denied the allegations of deficiency in service and unfair trade practice. Though, the name in the warranty period record is changed in the name of Padm [REDACTED] and the warranty period is extended for further one year at the cost of the Opposite Party from the date of maturity period i.e. 27.02.2024. The said vehicle was also registered in the name of complainant on 01.06.2019 vide Regn.No.TS08[REDACTED] against the sale Regn.No.TS07AWTR[REDACTED], the complainant is claiming refund which is unjustified.

The third contention of the Opposite Party is that infact the complainant brought the vehicle after running the vehicle upto 783 kms on 31.05.2019 i.e. at the first service and at that time it was noticed that there was sound in the vehicle and also rust in the axel of the vehicle and the said problems were escalated by the answering Opposite Party-dealer with Honda Company-Manufacturer. The Honda Company replied that the cast iron is having a tendency to have rust formation by its nature and property based on the environmental conditions, but does not affect the performance or strength. As such, it does not constitutes neither deficiency of service nor unfair trade practice. With the above said contentions, the learned counsel for the Opposite Party vehemently contended that they never sold vehicle to Mr.Nagesh Charugundla as claimed by the complainant and it is the fact that the vehicle got registered in the name of complainant and as such the question of suffering mental agony does not arise and prayed for dismissal of the complaint. Further, with respect to manufacturing defect, the same were not established by the complainant and the car is manufactured by the Opposite Party but the complainant failed to make manufacturer as the party to the proceedings and as such the complaint is dismissed for non-joinder of necessary parties. The

Opposite Party relied on the several judgments of Hon'ble Supreme Court and National Commission.

We have meticulously perused the record and heard the learned counsel for both parties. Initially, in support of her allegations, the complainant herein marked documents Ex.A1 to A12 and thereafter filed an I.A.No. [REDACTED] 2022 for marking additional documents. Whereas, the Opposite Party contended that the said documents cannot be marked on behalf of the complainant due to the reason that subsequent to filing of the complaint, the said documents were submitted to the Commission by the Opposite Party hence cannot be relied upon. The argument of the Opposite Party is not sustainable as the said additional documents are relevant and are pertaining to the vehicle of the complainant in dispute that too the said job cards issued by the Opposite Party herein from time to time are in the name of complainant. Hence, the said documents are marked on behalf of complainant as Ex.A13 to A31.

Though the Opposite Party admitted the fact of containing information of third party name and address on the official website i.e. Honda App warranty cards and date of warranty as 28.02.2019 but denied the allegation of unfair trade practice with a simple statement that inadvertently the personnel of the Opposite Party entered the name of that third party i.e. Mr.Nagesh Charugundla and subsequent to the purchase of the vehicle by the complainant herein, the vehicle is registered in the name of the complainant, as such there is no deficiency on their part.

While enquiry, the complainant displayed the particulars of the vehicle in question in the Honda app as those warranty records still contains the data of Mr.Nagesh Charugundla, as such it clearly establishes the deceptive practice of Opposite Party and hence it certainly amounts to unfair trade practice on the part of the Opposite Party. Here, it is pertinent to mention that the details of the third party in the warranty records prior to selling of the vehicle to the complainant certainly influence the mind of the prospective purchaser and it will also certainly leads to some extent of value/price depreciation, as such Opposite Party is liable on this count also.

The Opposite Party though admitted the rusting in the axel of the vehicle but simply thrown the blame on the manufacturer with the averment that they have escalated the problems to the Honda Company and the Honda Company replied that the *"cast iron is having a tendency to have rust formation by its nature and property based on the environmental conditions, but does not affect the performance or strength"* but did not choose to rectify the said problem, totally. Above point is answered against Opposite Party due to the reason that except throwing blame on the Honda-Manufacturer and their reply. The Opposite Party did not choose to submit any documentary evidence before this Commission to prove their bonafides with respect to escalation of rusting

problem with Honda-Company and their reply. Hence, Opposite Party-dealer can't escape from the liability of rusting of the axel within 10 days of purchase of brand new vehicle.

As per Section 2(1)(g)(r) of Consumer Protection Act, 1986-Unfair Trade Practice means

- (i) *Falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model*
- (ii) *Falsely represents any re-built, second-hand, renovated reconditioned or old goods as new goods*
- (iii) *Gives to the public any warranty or guarantee of the performance, efficiency or length of life of a product or of any goods that is not based on an adequate or proper test thereof".*

The Hon'ble National Commission vide **Revision Petition No.1030 of 2008 in Tata Motors Vs Rajesh Tyagi & Anr.**, has observed as under:

In our view, it is misconceived notion that any vehicle for that purpose any goods can be ordered to be replaced or the cost can be ordered to be refunded only if they suffer from manufacturing defect. There is no such concept of goods suffering from manufacturing defect enshrined by the provision of Consumer Protection Act. Consumer Protection Act only defines the word defect by way of Section 2(1)(f) of the Act which is to the following effect:-

Defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods.

We have also taken a view that onus shifts to the manufacturer to show that the vehicle does not suffer from defect once complainant has proved and discharged the initial onus that the vehicle was defective vehicle on the basis of large number of job cards showing that vehicle was taken on many occasion for removing one defect or the other. Large number of visits to the workshop from the day of purchase of vehicle for removing some or other defects is sufficient to draw the inference that the vehicle is a defective vehicle. The circumstance of the vehicle having been taken for removal of defects within a period of warranty leaves no manner of doubt that the goods sold to the customer is defective.

..Bare perusal of the definition of word defect shows that any kind of fault or imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods.

Thus in our view whenever Opposite Party offers to sell the brand new vehicle to the consumer there is an implied

contract that the vehicle being sold by it does not suffer from and will not suffer from any kind of fault or imperfection or shortcoming in the quality, quantity, potency and standard which is required to be maintained.

For such service provider, the Supreme Court has in Ghaziabad Development Authority Vs Balbir Singh (2004) 5 Supreme Court Cases 65 come down heavily and called upon the Consumer Forum and Commission established under the Consumer Protection Act, 1986 to not only compensate the consumer as to the actual loss suffered by him but also to compensate him as to the mental agony, harassment, emotional suffering, physical discomfort, loss of business, loss of time by taking vehicle time and again to the workshop.

From the entire factual matrix of the case, it is very clearly brought out that the vehicle in question is a defective vehicle when judged from the definition of defect as contained in section 2(1)(f) of the Consumer Protection Act, 1986. In reply to the legal notice dated 18.07.2003, sent by the petitioner to the complainant, there is a non-ambiguous admission on the part of the Opposite Parties that the allegation levelled in the complaint about the defects of rusting and other complaints.

It is further observed that the Consumer Protection Act, 1986 is a benevolent social legislation as held by the Hon'ble Apex court in their judgments from time to time and is aimed at providing for better protection of the interests of the consumers as defined in the preamble to the Act itself. Given the facts at hand, the interests of the consumer in the present case can be protected only if he is provided a vehicle which is free from defects from all angles and he is not subjected to the technicalities of proving whether any manufacturing defect exists or not.

In the present case at hand, the documentary evidence submitted by the complainant clearly discloses that the numerous times, the vehicle was attended by the Opposite Party and inspite of the same, they could not rectify the problems to the satisfaction of the complainant. In the said circumstances, it is pertinent to mention that the brand new purchaser of the vehicle certainly expects not only quality but also comfort and pleasure of owning a new car on their name. Apart from that, in the present case from the 10th day of purchase of the vehicle, the complainant herein lost mental peace after seeing third party name in the website of the Honda Company and also complainant was forced to take the vehicle for 17 times within the span of two years and within warranty period for repairs and still some issues are not yet resolved. Ex.A17 and A21 reveals that Opposite Party themselves reported that still problem is not resolved on that basis, it can be presumed that due to the said defects, the Opposite Party extended their warranty period for further one year, as such the Opposite Party being the dealer is liable for the non-rectification of the defects in the vehicle. There is no merit in the contention of the Opposite Party that for manufacturing defects-Manufacturer Honda is liable. As relationship of

Manufacturer-Honda dealer Opposite Party is principal to principal.

The Hon'ble Supreme Court of India in ***Rajiv Shukla Vs Gold Rush Sales and Service Limited and Anr., in Civil Appeal No.5928 of 2022 IV (2022) CPJ 8 (SC)*** confirmed the orders of District and State Commission wherein the said Commission directed the Respondent-Dealer to replace delivered car and to deliver the new car with an observation that the dealer supplied demo car given to the consumer despite receiving full consideration towards the brand new car. Respectfully following the ratio of the aforesaid two judgments of Hon'ble National Commission and Hon'ble Supreme Court (supra), we held that Opposite Party being a seller/dealer of the vehicle liable for unfair trade practice. However, in the present case, the vehicle of the complainant had already run 37,000 kms. Hence, keeping in view of the above said facts, we are of the considered opinion that directing the Opposite Party to pay compensation of Rs.3,00,000/- towards the physical, financial and mental trauma would meet the ends of justice. Apart from that, we are inclined to direct the Opposite Party to rectify the recurring defects which were noticed and also they failed to rectify the same, within 15 days including placing order for defective spare parts. Here, the Opposite Party is at liberty to claim amount for the defective parts with the Honda Company.

6. Point No.2: In the result, the complaint is partly allowed and the Opposite Party is directed –

(i) To rectify the recurring defects to the satisfaction of the complainant without any charges and the complainant is directed to cooperate with the Opposite Party by handing over the vehicle for inspection, diagnosis and for rectification of the problems. The Opposite Party shall rectify the said problems within 15 days from the date of handing over of the vehicle, including placing order for spare parts and getting the same. At that period, the Opposite Party shall provide spare vehicle to the complainant.

(ii) To extend the warranty for further two years from the date of expiry of warranty i.e. from 28.02.2024, free of cost.

(iii) To pay compensation of Rs.3,00,000/- (Rupees Three Lakhs only) towards physical hardship, financial and mental trauma and further to pay Rs.30,000/- (Rupees Thirty Thousand only) towards costs of litigation to the complainant.

Time for compliance is 45 days from the date of receipt of this orders, failing which the said amount of Rs.3,00,000/- shall carry an interest @ 9% p.a. till realization.

Dictated to the Steno-typist, transcriber by her, corrected by me and pronounced by us in the Open Commission on this the 14th day of February, 2023.

Sd/-
PRESIDENT
Sd/-
MEMBER

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Complainant
Affidavit filed

For Opposite Party
Affidavit filed

EXHIBITS MARKED

For the Complainant

- Ex.A1 – Copy of Bank Entry showing online transfer of Rs.5,000/- from [REDACTED],
[REDACTED] to Opposite Party on 28.02.2019
- Ex.A2 – Copy of Bank Entry showing NEFT transfer of Rs.1,80,000/- to the
Opposite Party on 26.04.2019 from [REDACTED]
Bank Ltd
- Ex.A3 – Copy of Tax Invoice for Rs.7,84,900/- dt.27.04.2019
- Ex.A4 – Copy of Tax Invoices dt.03.05.2019, 31.05.2019 & 04.06.2019
- Ex.A5 – Copy of Legal Notice to the Opposite Party dt.16.07.2019
- Ex.A6 – Copy of Letter to counsel for complainant by Opposite Party
dt.23.07.2019
- Ex.A7 – Copy of Temporary Certificate of Registration together with tax receipt
for Rs.97,325/-
- Ex.A8 – Copy of Proceedings of RTA Medchal dt.30.05.2019 showing payment of
Rs.5,000/- towards reservation for Regn.No.TS08 [REDACTED]
- Ex.A9 – Copy of Certificate cum Insurance Policy Schedule cum Payment
Receipt cum Payment Receipt issued by Iffco-Tokio General Insurance
in respect of Policy No.ITG/[REDACTED], dt.27.04.2019 showing
payment of Rs.39,130/-
- Ex.A10 – Copy of Repayment Details for loan A/c No. [REDACTED] issued by
Kotak Mahindra Prime Ltd
- Ex.A11 – Copy of Certificate of Registration bearing Regn.No.TS08 [REDACTED]
- Ex.A12 – Copy of Aadhar card of complainant
- Ex.A13 – Copy of Tax Invoice dt.31.05.2019
- Ex.A14 – Copy of Tax Invoice dt.04.07.2019
- Ex.A15 – Copy of Tax Invoice dt.07.09.2019
- Ex.A16 – Copy of Tax Invoice dt.16.02.2020
- Ex.A17 – Copy of Tax Invoice dt.19.02.2020
- Ex.A18 – Copy of Tax Invoice dt.27.02.2020
- Ex.A19 – Copy of Tax Invoice dt.29.08.2020
- Ex.A20 – Copy of Tax Invoice dt.18.09.2020
- Ex.A21 – Copy of Tax Invoice dt.23.09.2020
- Ex.A22 – Copy of Tax Invoice dt.02.11.2020
- Ex.A23 – Copy of Tax Invoice dt.25.01.2021
- Ex.A24 – Copy of Tax Invoice dt.30.01.2021
- Ex.A25 – Copy of Tax Invoice dt.03.02.2021
- Ex.A26 – Copy of Tax Invoice dt.12.04.2021
- Ex.A27 – Copy of Tax Invoice dt.24.04.2021
- Ex.A28 – Copy of Tax Invoice dt.11.05.2021
- Ex.A29 – Copy of Tax Invoice dt.30.09.2021
- Ex.A30 – Copy of Tax Invoice dt.11.01.2022
- Ex.A31 – Copy of Repayment Details for loan A/c No. [REDACTED]

Exhibits marked for the Opposite Party

- Ex.B1 – Copy of Form C.R.Tem-Temporary Certificate of Registration
- Ex.B2 – Copy of Email – Technical Team Correspondence regarding Rust issues

Sd/-
PRESIDENT

Sd/-