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IN THE COURT OF CONSUMER PROTECTION COURT/
CIVIL JUDGE &JUDICIAL MGISTRARE,HYDERABAD

Consumer Complaint No. 12 of 2023

Muhammad Hassan S/O Wahid Bux,
By caste Mari, Adult Muslim, R/O House No. 230,
Mohalla Gulshan Shahbaz Kotri, District Jamshoro,
Currently residing Muslim Cooperative Housing Society
Limited, Deh Sari, Taulka Qasimabad, District HyderabadComplainant

Versus

1. Farhan S/O not known, Director Proton South Motors, Address
Plot No. 3 Sector 27 Korangi Industrial Area, near Bilawal Round about Karachi.
2. Sidra Nayar S/o not known,Deputy Manager Sales,South Motors,
Address Plot No. 3 Sector 27 Korangi Industrial Area, near Bilawal
Round about Karachi.
3. M/S Al-Haj Automative Pvt. Ltd, Throughits Chief Executive Office,
Address Plot No. 3 Sector 27 Korangi Industrial Area, near Bilawal Round
about KarachiRespondents.

Miss.Sindh, Learned counsel for complainant
Mr.Rajesh Kumar Khagaija, Learned counsel for Respondent No-03
Respondent No.01 & 02 declared Ex-parte.

ORDER

15.05.2025

This is an application under Order VII, Rules 10 and 11 CPC filed on behalf of Respondent No. 03, praying for the rejection of the complaint mainly on the grounds that the instant complaint is neither maintainable nor entertainable by this Court, as the complainant has approached this Court with unclean hands.

2). Upon notice of this application to the complainant, the learned advocate for the complainant filed objections in shape of a counter affidavit, to this application.

3). Briefly, the facts of the complaint, as narrated therein are that that the respondents, being a business entity, deal with the sale of vehicles for the purpose of entering into contracts to provide specific vehicles on specified terms and within a specified duration. The consumer/complainant booked a vehicle, *Proton X70 AWD Executive* variant, on 21-01-2021 (white color) for a total consideration of Rs. 4,690,000/- and at the time of booking, an initial payment of Rs. 500,000/- was paid via Pay Order No. 02067851 in favor of M/s Al-Haj Automotive Pvt. Ltd., A/C NTN No. 5125111-7, on behalf of the complainant. The said pay order was received by the authorized dealer, Proton South Motors, located at Plot No. 3, Sector 27, Korangi Industrial Area, Main Korangi Road, Karachi (respondents), and an acknowledgment receipt letter was handed over to the complainant. At the time of booking, the respondents promised that the vehicle would be delivered in the third quarter of 2021 however, this commitment was not fulfilled. Upon inquiry, the complainant was misled with various excuses and false hopes by the respondents and the entire year of 2021 passed without the promised delivery of the vehicle. The respondents again assured delivery at the beginning of 2022 and on this assurance, and to demonstrate goodwill, the complainant paid an additional Rs. 400,000/- via Pay Order No. 8224860, dated 24-12-2021, in favor of M/s Al-Haj Automotive Pvt. Ltd., A/C NTN No. 5125111-7. On 01-06-2022, during a joint meeting, the respondents again promised, in writing, that the vehicle would be handed over to the complainant in July 2022 however, the respondents once again failed to deliver the vehicle without providing any reasonable justification. Despite repeated assurances, the respondents have failed to fulfill their commitments and the amount paid by the complainant/consumer has been used by the respondents without justification, which is against policy and practice. As per the terms, the respondents were bound to deliver the vehicle within one month and, in case of failure, were liable to pay damages however, even after the lapse of more than a year, the respondents have failed to deliver the vehicle. The complainant/consumer booked the above-mentioned vehicle for personal use and due to the respondents' irresponsible and unprofessional behavior, and the delay in delivery, the complainant has suffered both mental agony and financial loss. From the conduct of the respondents, it is evident that the delay in delivery has been deliberate and willful and on 27-11-2021, the price was increased by Rs. 224,000/-, and it has since been increased more than twice and that now, the cost of the vehicle is nearly double the original contract price. The respondents are demanding the enhanced price illegally before delivery and are also violating the SOPs issued by the Government of Pakistan for car manufacturing companies. The Government has clearly instructed that vehicles must be delivered within two months from the date of booking. It has become a routine practice for the respondents to receive advance payments from customers and then unjustly delay delivery to benefit from the use of consumers' money. Despite the agreement executed at the time of booking, in which the respondents undertook to deliver the vehicle within a specific time frame, they have *breached the agreement terms*. The conduct of the respondents has disrupted and disgraced the complainant/consumer, causing mental torture and agony for which, he reserves the right to claim damages of Rs.1,000,000/- for each of the above-stated wrongful acts. The agreement was executed at the office/showroom of the respondents, and the payment was received at the same location while the second payment of Rs. 400,000/- was made by the complainant through a demand draft from his bank (Bank Islami, Hyderabad, Account No. 107100073070001), hence, part of the cause of action arose at Hyderabad, giving this Honorable Court the jurisdiction to try and adjudicate the matter. The complainant/consumer served a legal notice to Respondent No. 1 on 12-10-2022, followed by a reminder on the same date, to settle the issue amicably however, the respondent has not responded or informed the complainant about the delivery of the vehicle. The complainant has no other speedy remedy but to seek the intervention of this Honorable Court for the enforcement of his legal rights hence, filed the present complainant prays as under:

a. To deliver the booked vehicle immediately to the complainant/consumer as promised by respondents.

b. To pay compensation of five million to the complainant/consumer as he has suffered damages due to advance payment to the respondents, which the respondents have utilized and earn profit and benefits from the advance money of complainant/consumer.

c. To pay Rs. 15,000/- per day rent of the vehicle to the complainant/consumer from the 21-01-2021 till the day the delivery of the vehicle or on the day of disposal of this complaint/petition.

d. To pay Rs. 10 million for damages and mental agony suffered by the complainant/consumer.

e. To pay five Million professional fees for advocate engaged in above mentioned complaint by the complainant/consumer.

f. To deliver the possession complainant/consumer in same agreement at the time of booking of vehicle to the amount according to

g. Any other relief deems fit and proper.

4). After the admission of the complaint, notices were issued to the respondents, which were returned unserved however, the respondents No. 1 and 2 were served through substituted service, as such, service upon them was declared held good. However, despite providing sufficient time, the respondents No.1 & 2 failed to file written statement, therefore, they were debarred from filing written statement and were declared ex-parte vide order dated 18-11-2023. Subsequently, on 18-11-2023, the respondent No. 3 appeared through his counsel and, instead of filing a written statement, filed the instant application under Order VII, Rules X and XI CPC.

5). I have heard the arguments of learned advocate for the applicant/Respondent No.03, learned advocate for the opponent/complainant and perused the record. Learned advocate for the applicant/respondent No.03 has contended that booking a vehicle does not fall within the ambit of 'product' as defined under Section 2(n) of the Act, 2014 nor does it qualify as 'services' under Section 2(q) of the Act as such, this matter pertains exclusively to the contractual rights and obligations emanating from the sale/purchase of a vehicle and not to 'services' as described under Section 2(q) of the Act. He has further argued that the complainant should have filed a suit in the Civil Court of competent jurisdiction under the Specific Relief Act for the enforcement of contractual obligations, instead of approaching this Court. He has concluded his arguments that the instant complaint is neither maintainable nor entertainable before this Court, and has prayed for dismissal of the complaint. On the other hand, learned advocate for the complainant contends that booking a vehicle should indeed be considered a service under Section 2(q) of the Act, 2014, as it is an integral part of the consumer transaction that facilitates the sale of the vehicle. She argues that the complainant's grievances regarding booking terms and conditions fall within the purview of the Sindh Consumer Protection Act 2014. She further contends that the Consumer Protection Court has jurisdiction over this matter, and the complaint is maintainable, before this Court. She lastly, prayed for dismissal of this application.

6) I have given due consideration to the arguments advanced at bar and have perused the record. Precisely, it is the claim of the complainant is that he booked a vehicle viz. Proton X70 AWD Executive variant on 21-01-2021 for Rs. 4,690,000/-, making an initial payment of Rs. 500,000 to M/S AL Haj Automotive Pvt Ltd through an authorized dealer, Proton South Motors. Despite promises of delivery in the third quarter of 2021, the vehicle was not delivered, and the complainant was misled with various excuses throughout the year. In December 2021, the complainant paid an additional Rs.400,000/- yet the vehicle remained undelivered, with the respondents later assuring delivery in July 2022, which also did not materialize. The complainant faced continuous price increases, with the total cost nearly doubling, and suffered mental agony and financial loss due to the respondents' unprofessional conduct and failure to adhere to government SOPs mandating timely delivery. On 12-10-2022, the complainant served a legal notice to the respondents seeking resolution regarding the delivery of the vehicle, but the respondents did not respond. Consequently, the complainant filed the instant complaint. At the very outset, it is observed here that this Court is under legal obligation to examine the allegations raised in the complaint in order to determine its jurisdiction and whether the claimant is eligible to be **Consumer** within the meaning of section 2 (e) of The Sindh Consumer Protection Act 2014 (hereinafter referred as SCPA 2014). For ready reference, I hereby reproduce the relevant sub-section:-

2 (e) "Consumer" means a person or entity who:-

(i) buys or obtains on lease any product for a consideration and includes any user of such product but does not include a person who obtains any product for resale or for any commercial purpose; or

(ii) hires any service for a consideration and includes any beneficiary of such services,

Explanation: For the purpose of sub-clause (i) "Commercial purpose" does not include use by a consumer of products bought and used by him only for the purpose of his livelihood as a self-employed person.

A detailed examination of the mentioned law shows that clause (i) of subsection 2(e) refers to 'product,' which is explained in Section 2(n) and is the same as 'goods' defined in the Sale of Goods Act, 1930. On the other hand, clause (ii) of subsection (2)(e) refers to 'services,' as defined in Section 2(q) of the same Act. I deem it appropriate to reproduce it as under:

“(q) "Services" includes the provision of any kind of facilities which encompasses all services such as communication, or advice or assistance such as the provision of medical, legal, or engineering services but does not include---

(i) the rendering of any service under a contract service;

(ii) a service, the essence of which is to deliver judgment by Court of law or Arbitrator;”

7). In the the like case ,the Hon'ble High Court of Sindh, Circuit Court Larkana in the case of (Prof: Dr. Kheo Ram Vs. Messrs Changan Mehran Motors Ltd. through CEO & another)(2025 CLC 393[Sindh (Larkana Bench],, while elaborating the above provisions of the law, it was held, in para No.18, as under:

“18. A scrupulous exegesis of these statutory provisions reveals that, for a claim to be cognizable under Section 26 of the Act of 2014 before the Consumer Court, the claimant must incontrovertibly establish their status as a 'consumer' who has incurred damage due to a defective product procured from a service provider. This entails that the claimant must have either purchased or leased any product for consideration or engaged in any services for consideration. The 'services' delineated under Section 2(q) encompass the provision of facilities, advice, or assistance in the domains of medical, legal, or engineering services. However, Section 2(q)(i) imposes a statutory constraint, precluding claims pertaining to personal service contracts from being adjudicated before the Consumer Court.”

8). Perusal of the relief sought by the complainant, in the complaint, shows that the main grievance of the complainant is that the respondent did not deliver the booked vehicle to the complainant. However, it is relevant to mention here that a consumer's claim for damages under Section 26 of the Act must meticulously align with the provisions of Section 29, which mandates that such a claim be predicated on damages incurred due to defective or faulty products obtained for consideration. The facts indicated that the complainant procured a vehicle from Respondent on 21.01.2021 and remitted the payment of Rs.90,0000/- out of Rs.4,690,000/- and the dispute arose when Respondent refused to deliver the vehicle, citing the non-payment of the residual balance. In the the like case ,the Hon'ble High Court of Sindh, Circuit Court Larkana in the case of (Prof: Dr. Kheo Ram Vs. Messrs Changan Mehran Motors Ltd. through CEO & another)(2025 CLC 393[Sindh(Larkana Bench], it was held that:

“Crucially, booking a vehicle does not fall within the ambit of 'product' as defined under Section 2(n), nor does it qualify as 'services' under Section 2(q) of the Act. Consequently, this matter pertains exclusively to the contractual rights and obligations emanating from the sale/purchase of a vehicle and not to 'services' as delineated by Section 2(q) of the Act. Therefore, the complainant should have sought recourse through a Civil Court of competent jurisdiction under the Specific Relief Act for the enforcement of contractual obligations if so advised, rather than approaching the Consumer Court, unless it is unequivocally established that he is a consumer who has purchased a defective or faulty product or engaged any service from a service provider.”

It is thus clear from the above that at present, the complainant does not fall within the category of a consumer. As such, the complainant has no *locus-standi* to file this complaint, therefore, this complaint is not maintainable.

9). In the like case, the Hon'ble High Court of Sindh, Circuit Court Larkana in the case of (Prof: Dr. Kheo Ram Vs. Messrs Changan Mehran Motors Ltd. through CEO & another)(2025 CLC 393[Sindh(Larkana Bench], referred above, it has been held that “Nevertheless, the Consumer Court's action of rejecting the Complaint under Order VII Rule 11 CPC can be construed as effectively being a dismissal under Section 36 of the Act of 2014, read with Order VII, Rule 11 CPC”

10). For the foregoing reasons and discussion, I am of the view that this application merits consideration, therefore, while exercising the provision of Section 36 of the Act of 2014, the instant application is hereby allowed and the consumer complaint is dismissed, with no order as to cost. However, the complainant is at liberty to avail efficacious remedy before appropriate forum having jurisdiction, if so advised.

Announced in Open Court

Given under my hand and seal of the Court, this 15th day of May, 2025

(Muhammad Amir Rajput)

**Civil Judge & Judicial Magistrate/
Judge, Consumer Protection Court,
Hyderabad**