

**CONSUMER DISPUTES REDRESSAL COMMISSION-VII
DISTRICT: SOUTH-WEST
GOVERNMENT OF NCT OF DELHI
FIRST FLOOR, PANDIT DEEP CHAND SHARMA SAHKAR BHAWAN
SECTOR-20, DWARKA, NEW DELHI-110077**

CASE NO.CC/19/19

Date of Institution:- 25.02.2019

Order Reserved on:- 11.12.2023

Date of Decision:- 10.01.2024

IN THE MATTER OF:

Ms. Anushka Arora
D/o Vineeta Bhardwaj
R/o P 20/2, Ministry of Defence
Badarpur, New Delhi - 110044

..... Complainant

VERSUS

Devyani Food Industries
S-44, Plot No.31, Institutional Area Sector – 44,
Gurgaon, Haryana India – 122002
&
Devyani Food Industries
F-2/7, Okhla Industrial Area Phase-I,
New Delhi - 110020

.....Opposite Party

ORDER

Per Dr. Harshali Kaur, Member

1. Brief facts of the complaint are that the complainant purchased a Cream Bell ice cream brick on 26.05.2017 manufactured by the OP from a shop, namely *Popular General Store*, located in Badarpur. She alleges that while consuming the ice cream, she found a foreign substance inside the ice cream, which was a piece of wooden stick. **Exhibit No. 1** is the

picture of the wooden stick the complainant found in the ice cream annexed by the complainant, along with her complaint.

2. The complainant noticed the letters 'CRE' on the stick, which she assumed was a part of another cream bell stick ice cream. She has annexed the picture of the cleaned wooden stick as **Exhibit No.2**. She immediately lodged a consumer complaint online on 26.05.2017 on the portal of the Consumer Fora (**Exhibit No.3**). She also sent an email to the OP customer care detailing the incident on the same day (**Exhibit No.-4**). She also exposed the incident via a Facebook post on her social media channels (**Exhibit No. 5**).
3. Despite several efforts to reach the OP and lodge her complaint, she was unable to get her grievance resolved. She, therefore, reported the matter to FSSAI and wrote an email to the Department of Food Safety (DFS) on 18.07.2017 and the Regulatory Compliance Division (RCD) FSSAI via email on 10.03.2018. On 26.10.2018, she wrote an email to the Food Officer of the concerned district (**Exhibit No.7**). When she did not receive any concrete response from the regulatory departments mentioned above or the OP, she sent a legal notice to the OP dated 10.12.2018 (**Exhibit No.-8**) to no avail.
4. Aggrieved, the complainant filed the present complaint under section 12 of the Consumer Protection Act, 1986, alleging deficiency in service and praying for a sum of Rs.2,00,000/- as compensation on account of mental agony and physical discomfort, Rs.50,000/- towards litigation cost and refund of Rs.115/- with interest of 8% from 26.05.2017 till date which was the amount paid by her for the ice cream brick.

5. On notice, the OP filed their reply stating that, undoubtedly, the OP manufactures ice cream, ice candy and frozen desserts under the name and style of Cream Bell. It is the most reputed brand name in the market, and due care is taken in manufacturing and packaging its product using modern, sophisticated automatic machines involving strict quality checks at various stages of manufacturing and packing. The OP states that the OP company's plants are ISO 9001:2008 and ISO 22000:2005 certified facilities, and they have adopted stringent quality measures of international standards, taking all diligence and care to ensure high-quality products for their consumers.

6. The OP has taken the preliminary objections that the instant case is false, frivolous and malafide in nature with contradictory allegations as the complainant is not a consumer as per Section 2 (d) of the Act since she has neither filed a bill/invoice to evidence the purchase of the alleged ice cream nor has she placed on record any information such as batch no., manufacturing date etc. to establish that the alleged product i.e. "Chocolate Chip Brick Ice Cream" was manufactured and sold by the OP. She has also not filed any proof of the damages allegedly suffered by her or anyone else on account of consumption of the ice cream.

7. Further, the OP states that their products are a mixture of various ingredients and raw materials that go into an automated manufacturing line for pasteurisation, homogenisation, etc. The products are packed at minus temperature directly from the manufacturing machine, and the same goes to minus 20 degrees centigrade, which is the freezing temperature. Therefore, there is zero possibility of any foreign

contamination during the manufacturing of the products. The OP has also filed the catena of judgments regarding the relief prayed by the complainant, which they feel is exorbitant and outside the scope and purview of the Consumer Protection Act.

8. The OP also placed reliance on the judgment passed by the Hon'ble State Commission, Uttarakhand, at Dehradun in the matter of **Hindustan Coca-cola Beverages Pvt. Ltd. vs Nand Kishore Srivastav & Ors.** passed in appeal no. 264/2005 to state that since the alleged product was purchased by the complainant from the shop, namely Popular General Store, the retailer must ensure that the goods are in consumable condition before supplying them to its customers regarding their quality, expiry date, etc. If an inadvertent mistake occurs, the complainant approaches the retailer, who must take the product back and replace it with another or refund the cost. If the retailer fails to fulfil his commitment to supply consumable products, the responsibility of compensation, if any, solely rests on the retailer for providing goods free from any defect and not on the manufacturer.
9. In the present case, the complainant has deliberately not impleaded the retailer/shopkeeper as a necessary party and has colluded with the shopkeeper for monetary gain. Hence, the OP prays for the complaint to be dismissed for non-joinder of parties.
10. The complainant filed her rejoinder denying that she is not a consumer, stating that as per the evidence attached by her, she purchased the ice cream while visiting the store in Badarpur, and the absence of a bill/invoice should not disrupt the finding of the court in

favour of the complainant. Further, the mere presence of the foreign substance is sufficient for adjudicating the matter in favour of the complainant. She also filed her affidavit in evidence, reiterating her statements as made in the complaint.

11. The OP filed the affidavit of Sh. Bhaskar Mishra, Manager Legal who, repeated all the averments as made in the reply filed by the OP. The contesting parties filed their written arguments. We have heard the complainant in person, and Ld. Counsel for OP-1 & 2.
12. We find that the complainant, while visiting Badarpur area, purchased a Chocolate Chip ice cream brick of Cream Bell from a shop there called Popular General Store on 26.05.2017. The ice cream brick was admittedly manufactured by the OP. While consuming the ice cream, the complainant found a wooden stick in the ice cream. She alleges that the same was a health hazard as it could have caused harm to her being a foreign body. She immediately lodged several complaints and wrote emails on the ID of the OP available to get her grievance addressed. However, all her efforts were in vain as neither the OP nor the DFS, the Food Officer of the concerned District or the RCD Division of FSSAI took any concrete action to penalise the OP or to provide her monetary compensation. She, therefore, sent a legal notice dated 10.12.2018 to the OP (**Exhibit No. 8 & 9**). When the OP did not bother to reply to her legal notice, she filed the present complaint on 22.01.2019 before this Forum.
13. The OP denied the complainant's allegation and has taken preliminary objection, stating that the complainant is not a 'consumer'

under the Act as she has not filed an invoice to show the consideration amount paid by her. She has also not impleaded the distributor/shopkeeper from where she allegedly purchased the ice cream brick which makes the present complaint bad for non-joinder of necessary parties. Furthermore, their products are produced and packed by sophisticated, automated machines in freezing temperatures at their ISO-certified plants; hence, such contamination, as alleged by the complainant, is impossible.

14. We have carefully considered all the facts and circumstances of the present complaint and have also perused the documents filed by the contesting parties. We feel it prudent to decide the preliminary objections raised by the OP first.

15. Even though the OP has raised an objection regarding the absence of a bill/invoice towards the purchase of the ice cream brick, a consumer may not always take a bill towards a small purchase of Rs. 115/-, which is the amount the complainant paid for the ice cream brick. She has also not mentioned the manufacturing date or the batch no. However, the presence of the wooden stick in the ice cream remains unrefutably evident as it is not related to the expiry of the edible product, like fungus or microspore growth that may be found if the product is past its expiration date.

16. The complainant would not have purchased the ice cream with the intent to file a case and clearly tried her best to reach the OP to apprise them of her grievance from the emails and notices she sent to the OP

and other regulatory bodies. Hence, in our view, we can overlook the absence of an invoice and Batch No, etc., in such a situation.

17. So far as the impleadment of the retailer of the spurious ice cream, it is the complainant's prerogative to decide whom she holds most responsible for her plight. The OP has not filed any documentary evidence to show that the retailer was barred by them from selling their products or of any collusion between the complainant and the shopkeeper, as alleged in their testimony. Hence, we do not find either of the objections raised by the OP tenable in law.

18. Now, coming to the merits of the case. Undoubtedly, the complainant found a foreign body in the ice cream manufactured by the OP. She tried appraising them for her grievance, but the OP chose not to address her claim for reasons best known to them. Thus, she escalated her claim by filing the present complaint. Edible products must be without any foreign substance, which can cause physical and mental harm to the consumers. It is by no stretch of imagination that she found the wooden stick inside the ice cream while eating it and not on the packing material, for which a retailer could have been held accountable.

19. The OP has not filed any evidence to show that such a foreign body could not have found its way into the ice cream packed by their plants through any inquiry report of the plants that supply the retailers of the area in question. Reliance is placed upon the landmark judgements passed by the Hon'ble Apex Court in **HN Sankara Shastry vs Asst. Director of Agriculture, Karnataka (2004)5 SCC 230** and the Hon'ble State Consumer Disputes Redressal Commission in **M/S Moon**

Beverages Ltd vs Sri Vinod Gupta on 8 January 2010 in Appeal No. FA -08/322, which squarely covers the facts of this case.

20. Hence, allowing the complaint, we find the OP guilty of deficiency in service and direct them to refund to the complainant a sum of Rs.115/-, which is the cost she paid for the ice cream brick along with Rs. 5,000/- as compensation for the mental agony suffered by her along with Rs.1,000/- towards litigation charges.

- A copy of this order is to be sent to all the parties as per rule.
- File be consigned to record room.
- Announced in the open court on 10.01.2024.

(R.C. YADAV)
(MEMBER)

(DR. HARSHALI KAUR)
(MEMBER)

(SURESH KUMAR GUPTA)
PRESIDENT