

Model Form 'D' - Reply by the trader to the complaint

BEFORE THE HON'BLETHE CONSUMER DISPUTES

REDRESSAL FORUM/COMMISSION AT

IN RE: COMPLAINT NO.....OF 20.....

IN THE MATTER OF:

.....Complainant

VERSUS

.....Opposite Party

DATE OF HEARING

WRITTEN STATEMENT ON BEHALF OF RESPONDENTS TO

THE COMPLAINT OF THE COMPLAINANT RESPECTFULLY SHOWETH:

Preliminary Objections:

1. That the present complaint is wholly misconceived, groundless and unsustainable in law and is liable to be dismissed as such. The transaction in question was without any consideration and free of charge.
2. That this Hon'ble Court has no jurisdiction to entertain and adjudicate upon the dispute involved in the complaint in as much as it is not a consumer dispute and does not fall within the ambit of the provisions of the Consumer Protection Act, 1986, hereinafter called the said Act and is exclusively triable by a Civil Court and as such the complaint is liable to be dismissed summarily on this score alone.
3. That the dispute raised by the complainant in the present complaint is manifestly outside the purview of the said Act and in any event, the Act is in addition to and not in derogation of the provisions of theAct. The proceedings initiated by the complainant under the Act are non est, null and void and without jurisdiction.
4. That the definitions of 'Complainant', 'Complaint' 'Consumer Dispute' and 'Service', as defined in section 2(1) of the said Act do not cover the claims arising under the present dispute and that from the aforesaid definitions, the complainant is not 'consumer'

and the controversy involved in the complaint is not a 'consumer dispute'.

5. That the present complaint is baseless and flagrant abuse of process of law to harass and blackmail the answering respondent.
6. That the complaint has no locus standi to initiate the present proceedings.
7. That the complaint is bad for non-joinder of necessary and proper party and is liable to be dismissed on this score alone.
8. That the complainant has already filed a Civil Suit forin a court of competent jurisdiction which is pending disposal in the Court ofand the present complaint has become infructuous.
9. That the present complaint is hopelessly barred by limitation.
10. That this Hon'ble Forum / Commission has no territorial or pecuniary jurisdiction in as much as the amount involved in the subject-matter exceeds / is less than the limit prescribed by section 11(1) section 17(1)(a)(i) / section 21(a)(i) of the Act.
11. That the present complaint is frivolous and vexatious and liable to be dismissed under section 26 of the Act.
12. That the present complaint has not been verified in accordance with law.

On Merits :

In these paragraphs respondent must reply each and every allegation made and contention raised by the complainant, factual and legal as well. In case one has already made good the defect or deficiency, elucidate steps taken. One may have, inter alia, following goods defences as well:

1. That the transaction entered between the parties to the above dispute is a commercial one and the complainant cannot claim any relief from this authority in as much as.....

(give details)

2. That the complainant had purchased the goods as a seller/retailer/ distributor etc. for consideration of resale and as such is barred from moving this Hon'ble Court for the alleged defect / deficiency etc. in as much as

(give details)

3. That the complainant has already availed the warranty period during which the answering respondent has repaired / replaced the goods in question. The complainant is thus legally estopped from enforcing this complaint or to take benefit of his own wrong.

4. That the present complaint is an exaggeration beyond proportion despite the fact that the complainant is himself responsible for delay and laches in as much as he has on several occasions changed his option for class of goods/type of allotment scheme of flats/model of vehicle etc.....

(give details)

5. That the answering respondent is well within his rights to charge extra price for the subject-matter of the above dispute in as much as time was not the essence of delivery thereof. The complainant is liable to pay the increased price w.e.f..... on account of escalation due to excise duty / budgetary provisions etc. in as much as.....

(give details)

6. That the complainant has accepted the goods and / or service towards repair / replacement etc. without protest and the present complaint is merely an after thought.

7. That without prejudice the answering respondent as a gesture of goodwill is prepared to(give details of rectification, if any, which can be done in case of minor or tolerable problems to avoid harassment to consumer and litigation problems)

The allegations of defect/default/negligence and /or deficiency in service are wholly misconceived, groundless, false, untenable in law besides being extraneous and irrelevant having regard to the facts and circumstances of the mater under reference.

Prayer clause with all the submissions made therein is absolutely wrong and is emphatically denied. Complainant is not entitled to any relief whatsoever and is not entitled to claim and recover any thing from the answering respondent in the light of what is stated above. The complaint itself is not maintainable and is beyond the jurisdiction of this Hon'ble Court and is liable to be dismissed summarily on this score alone and more fully set out in the preliminary objections. It is prayed that the complaint may kindly be dismissed with costs.

Place:

Dated :

Sd/-
(Opposite party)
Through
(Advocate)

Verification:

I,, the above named respondent do hereby verify that the contents of parasto.....of the written statement on merits are true and correct to my knowledge. While paras.....to.....of preliminary objections andto.....of reply on merits are true to my information, belief and legal advice received by me and believed to be true while the last para is prayer to this Hon'ble Court.

Verified atthis.....day of.....20.....

Sd/-

(Opposite party)

