

**IN THE CONSUMER CLAIMS TRIBUNAL MALAYSIA
AT KUCHING, SARAWAK**

CLAIM NO.: TTPM-Q-(B)-29-2023

BETWEEN

CHAN KHENG HUAT

CLAIMANT

AND

OSIM (M) SDN BHD

RESPONDENT

GROUND OF JUDGMENT

Brief background

1. The Claimant bought a massage chair [uDivine V (EP) EM R890X2-08-E04 uDivine V Grey/Blue] (the said chair) from the Respondent on the 22.04.2022 (Exhibit C2).
2. The price of the said chair including the delivery of the same is RM14,088.00 (per Sales Order marked Exhibit C1).

Claimant's claim

3. According to the Claimant he bought the said chair from the Respondent last year on the 04.06.2022.
4. After payment was made, the said chair was delivered to the Claimant's address 4-6 weeks later.

5. According to the Claimant when the said chair was delivered to Claimant it was never tested. The said chair was left at his house and those who brought the chair went back.
6. That night the Claimant tried to use the said chair. The said chair moves for a while then it stops. The Claimant then asked my wife to try it several time but the said chair failed to function. After that the Claimant and his wife were afraid to try the said chair.
7. In October when the Claimant's daughter, Julia Chan came home she also tried the said chair and still the said chair was not functioning even after she read the manual of the said chair.
8. The Claimant's daughter straight away called Respondent office at Vivacity and was informed that the Respondent will sent their technician to come but could promise when.
9. The Claimant's daughter also called the Respondent's hotline and sent email on 22.10.2022.
10. The Claimant also call the Respondent's Customer Service in KL several times and was informed that they will sent their technician but till the day the Claimant made claim on 19.02.2023 no action was taken by the Respondent
11. The Claimant claims that he was disappointed and do not trust the Respondent product and want the Respondent to take back the said chair and want his money (RM14,088.00) back.

Respondent's Defence

12. The Respondent did not dispute the Claimant's claim and the Claimant's testimony during the hearing.
13. The only statement in the Respondent's Defence (Form 2) was - "*Our Osim Customer Service will arrange the technician go to customer house to repair within 28/03/2023 – 04/04/2023. Will complete the all parts service in this period.*"
14. Also, during hearing the Respondent's representative repeated what was stated in their Defence and states that the Respondent will arrange for technician to go to the Claimant's house to repair the chair between 28.03.2023 – 04.04.2023.
15. From the Respondent's Defence and testimony during hearing what was clear and admitted by the Respondent was the said chair needed repair.

Section 32 Consumer Protection Act 1999

16. **Section 32 (1) and (2) Consumer Protection Act 1999** states:

"32. (1) "Where goods are supplied to a consumer there shall be implied a guarantee that the goods are of acceptable quality.

(2) For the purposes of subsection (1), goods shall be deemed to be of acceptable quality –

(a) if they are –

- (i) fit for all the purpose for which goods of the type in question are commonly supplied;*
 - (ii) acceptable in appearance and finish;*
 - (iii) free from minor defects;*
 - (iv) safe;*
 - (v) durable; and*
- (b) a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defects, would regard the goods as acceptable having regards to –*
- (i) the nature of the goods;*
 - (ii) the price;*
 - (iii) any statements made about the goods on any packing or label on the goods;*
 - (iv) any representation made about the goods by the supplier or the manufacturer; and*
 - (v) all other relevant circumstances of the supply of the goods.”*

17. As the massage chair sold/supplied to the Claimant was not functioning and required repair, the said chair clearly:

- a. Was not fit for the purpose that it was commonly supplied for;
- b. Was not free from defects; and
- c. Was not durable.

18. Having regard to the price of the said chair which cost more than RM13,000.00 I am of the view that said chair was not of acceptable quality per Section 32 (1) and (2) of the Consumer Protection Act 1999.

The words “Goods sold are not exchangeable nor refundable. Deposits paid/payments made to reserve products are not refundable” on the Sales Order (Exhibit C1(1-2))

With regards to the words “*Goods sold are not exchangeable nor refundable. Deposits paid/payments made to reserve products are not refundable*” on the Sales Order (Exhibit C1(1-2)) – especially the word “*Goods sold are not exchangeable nor refundable.*”

I am of the view that it is a non-issue because:

- a. The Sales Order (Exhibit C1 (1-2)) was never signed by parties.
- b. Exhibit C1(1-2) was printed on the 05.06.2022 after the purchase/contract was concluded between the parties on the 04.05.2022.

A party (Respondent) cannot unilaterally add new terms to contract already concluded. See *Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd (2015) 2 MLJ 441 (FC)* and *Mintye Properties Sdn Bhd v. Yayasan Melaka (2006) 6 MLJ 420 (COA)* referred to in *TY Auto Car Dealer Sdn Bhd v. Tribunal Tuntutan Pengguna & Anor. (2020) 1 LNS 1944 para 39*

- c. There is also no evidence adduced by the Respondent that the Respondent had ever explained and gave notice to the Claimant of the said words in Exhibit C1(1-2) before the same was printed on the 05.06.2022 and given to the Claimant.

Pronouncement and Order

21. As the massage chair supplied to the Claimant does not function, it is not fit for the purpose that it was commonly supplied for. The said chair was neither free from defect nor durable. Having regard to the price of the said chair which cost more than RM13,000.00 said chair was not of acceptable quality per Section 32 of Consumer Protection Act 1999.
22. As the Respondent has also failed to repair the said chair to date despite knowing of the condition of the said chair and the Claimant's manifold complaints, it is ordered that:
- a. The Respondent is to refund RM14,088.00 to the Claimant within 14 days from the date of the award.
 - b. The Claimant is to return the said chair within 14 days of the refund and the Respondent is to bear the cost of the same.

Joseph Kahell Baleng
President of Consumer Tribunal
Kuching
28.03.2023