

Date of registration : 08.09.2021  
Date of final hearing : 07.06.2024  
Date of order : 24.06.2024

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL  
COMMISSION NO. I, VISAKHAPATNAM : AP

**PRESENT:-**

President : Smt.Dr.Gudla Tanuja, B.Com., M.A (HRSA), LL.M., Ph.D (Law)

Male Member : Sri Varri Krishna Murthy M.A., M.B.A., A.I.I.I.,  
(Associateship in Insurance Institute of India)

Woman Member : Ms. Rahimunnisa Begum, M.Com., LL.M., M.HRM.,(Ph.D)

Monday, the 24<sup>th</sup> day of June, 2024

**Consumer Complaint No: 201/2021**

Between:

Dr.Vikas Pandey, S/o late Mohan Pandey, Hindu, aged 41 years, D.No.2-69,  
Rajeev Nagar, Visakhapatnam-530040, President of the Consumer Rights  
Organization (CRO)/Upbhokta Adhikar Sangthan, Andhra Pradesh State.  
... Complainant

B.Rajya Lakshmi, residing at 39-22-77, Kalinga Nagar, Madhavadhara,  
Visakhapatnam.  
... De-facto Complainant

And

- 1) Alankruthi Jewellery, 585, Avenue Rd, Near Banaras Sweets, Anchepet,  
Chickpet, Bengaluru, Karnataka-560002 rep by its Authorized  
Signatory/Managing Director.
- 2) DTDC, 37-2-10, Opp.Nissan Service Centre, Bowdra Ring Road, Old ITI  
area, Gavara Kancharapalem, Visakhapatnam, Andhra Pradesh-530007  
rep by its Authorized Signatory/Managing Director.
- 3) Facebook India Online Services Pvt. Ltd., Building No.20, Raheja  
Mindspace, K.Raheja I.T.Park, Hitech City Road, Vittal Rao Nagar, HITEC  
City, Hyderabad, Telangana-500 081 rep by its Authorised  
Signatory/Managing Director.

... Opposite Parties

Advocate for Complainant : Sri P.Srinivasa Apparao  
Opposite Party No.1 : Appeared in person  
Opposite Party No.2 : Called absent  
Advocate for Opposite Party No.3 : Sri V.Ravindra Prasad

*Rahimunnisa Begum*

**: ORDER :**

**(Per Ms.Rahimunnisa Begum, Woman Member on behalf of the Bench)**

**1. Contentions of the Complainant:**

The defacto Complainant paid a sum of Rs.12,590/- by using PhonePe vide Transaction No.P2105270843410251161219 dated 27.05.2021 for imitation jewellery to the 1<sup>st</sup> Opposite Party. The de-facto Complainant enquired from the 1<sup>st</sup> Opposite Party about the Order and delivery date, initially the 1<sup>st</sup> Opposite Party responded that there was some delay. The ceremony date was over, laments the Complainant. The 1<sup>st</sup> Opposite Party neither tracked the purchase order nor informed the de-facto Complainant about the delivery. The 2<sup>nd</sup> Opposite Party responded saying that we are not going to provide any details 'do whatever you want to do'. The de-facto Complainant informed the same to the 1<sup>st</sup> Opposite Party but in vain. Being aggrieved by the conduct of the Opposite Parties this Complaint was lodged by the de-facto Complainant with the prayer for the following set of reliefs before this Commission.

**2. Prayer of the de-facto Complainant:** To direct the Opposite Parties

- 1) To order to the Opposite Parties that not to misguide/mislead customers with attractive product advertisement on social platform.
- 2) To order Facebook to scrutinize any of the commercial advertisement and company profiles before advertising on their social platform.
- 3) To refund Rs.12,590/- to the Complainant being the value of the purchase order along with interest @ 24% p.a. from 27.05.2021 till the date of realisation.
- 4) For compensation of Rs.10,00,000/- towards mental agony and suffering.
- 5) To pay sum of Rs.10,000/- towards compensation for deficiency of service.
- 6) To pay Rs.50,000/- towards litigation/legal expenses/costs.
- 7) Such other relief or reliefs as the Hon'ble Commission deems fit.

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### 3. Contentions of the Opposite Parties:

- a) The 1<sup>st</sup> Opposite Party sent the counter by DTDC Courier to the Commission on 15.12.2021 as per available records, the Opposite Party did not choose to contest in furtherance, remained silent and absent, several adjournments being accorded by the Commission.
- b) As per the Counter, the 1<sup>st</sup> Opposite Party submits that the Complaint is not maintainable on the ground of suppression of material facts. This Commission lacks jurisdiction to entertain the Complaint as the Consumer is not a Consumer within the meaning of this Act. As admittedly the jewellery in question were for commercial purpose to carrying out business and hence the complaint deserves to be dismissed. The averments were vague, baseless and misconceived. The order was placed by the Complainant through whatsapp, after receipt of payment through online payment i.e. PhonePe, the items were dispatched through DTDC Courier vide No.B77415587, booked by Chamarajapet Branch of DTDC weighing parcel of 1.89 kgs on 27.5.21. On 28.5.21 again the same was informed to the Complainant over phone via whatsapp message with full details along with the bill to the Complainant. On 11.06.2021 after lapse of 15 days as soon as the complaint was received the same was forwarded to the concerned DTDC Courier agency for immediate necessary follow up which is indicative that there is no fault of the 1<sup>st</sup> Opposite Party, the said parcel was in the custody of the courier services without tracing the address of the Complainant. Hence the liability is lying on the Courier states the 1<sup>st</sup> Opposite Party, the Complaint be dismissed against them.
- c) The 2<sup>nd</sup> Opposite Party remained absent inspite of receipt of notice from the Commission.
- d) The 3<sup>rd</sup> Opposite Party submits that the Facebook is neither the necessary nor a proper party. The proper relief cannot be provided. Specifically META is the relevant data controller. The de-facto

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Complainant has not paid any consideration to the 3<sup>rd</sup> Opposite Party, thus there is no Consumer and Service Provider relationship between the de-facto Complainant and the 3<sup>rd</sup> Opposite Party. Hence the complaint against the 3<sup>rd</sup> Opposite Party may be dismissed, prayed the Opposite Party.

4. Records before this Commission:

- a) Counter of the 1<sup>st</sup> Opposite Party received by Courier on 15.12.2021 as per available office records.
- b) Citations on which reliance was placed by the 3<sup>rd</sup> Opposite Party were filed along with the counter were not marked by the Commission.
- c) Evidence Affidavit filed by the de-facto Complainant and the 3<sup>rd</sup> Opposite Party.
- d) Exs.A1 to A6 marked by the de-facto Complainant
- e) Written arguments filed by the de-facto Complainant & the 3<sup>rd</sup> Opposite Party.
- f) Heard the de-facto Complainant.
- g) The 3<sup>rd</sup> Opposite Party was accorded an opportunity to advance hearing by the Commission, but in vain.

5. Record Observation:

- a) Ex.A1 is the Incorporation certificate of the Complainant.
- b) Ex.A2 is the Complaint letter from the de-facto Complainant.
- c) Ex.A3 is the payment confirmation copy of payment made by the de-facto Complainant by PhonePe.
- d) Ex.A4 is the invoice soft copy provided by the Opposite Party.
- e) Ex.A5 is the Whatsapp chatting details with 1<sup>st</sup> Opposite Party.
- f) Ex.A6 is the advertisement on Facebook of the 1<sup>st</sup> Opposite Party.

6. Crux of the case:

- g) Non-delivery of the imitation jewellery inspite of repeated requests as alleged by the de-facto Complainant against the Opposite Parties.

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7. Points that would arise for determination before this Commission:

- 1) Whether the Opposite Parties are deficit in extending their services as alleged by the de-facto Complainant?
- 2) Whether the Opposite parties are liable to compensate the de-facto Complainant?
- 3) Can the prayer of the de-facto Complainant be allowed?
- 4) If so, to what extent of reliefs will the de-facto Complainant be eligible?

8. Point No.1:

The case of the de-facto Complainant is that the de-facto Complainant did not receive the imitation jewellery from the Opposite Parties inspite of payment of Rs.12,590/- as was evident as per Ex.A1 & A2. There is no dispute as regards to the factum of placing an order of the imitation jewellery from the 1<sup>st</sup> Opposite Party. The de-facto Complainant in the complaint stated that the 1<sup>st</sup> Opposite Party failed to deliver the items. The de-facto Complainant sent several whatsapp messages in pursuit of the Order placed with the 1<sup>st</sup> Opposite Party. Thus records per se speaks in the form of the Exs.A1 & A2 that the de-facto Complainant paid the consideration amount of Rs.12,590/- along with Rs.299/- as per Ex.A3 to the 1<sup>st</sup> Opposite Party, inspite of the payment done the imitation jewellery was not delivered to the de-facto Complainant tantamounts to deficiency of service coupled with unfair trade practice. There is sufficient documentary evidence in the form of leaflets of Ex.A5 via whatsapp conversation that inspite of repeated correspondence from de-facto Complainant to the 1<sup>st</sup> Opposite Party on 20.05.2021, 12.06.2021, 14.06.2021 respectively. The Opposite Party did not fulfil their contractual obligations. For the reasons recorded above the Commission is of the considered opinion that the 1<sup>st</sup> Opposite Party failed to perform their part of the contractual obligation. Thereupon were deficit in extending their services as well resorted to unfair trade practice is rightly alleged by the de-facto Complainant.

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9. Point No.2:

As regards to the prayer part, the de-facto Complainant putforth set of reliefs to direct all the parties to be held liable. The Commission gave a thoughtful consideration whether all the 3 answering parties are liable to compensate the de-facto Complainant? As discussed supra that it was the 1<sup>st</sup> Opposite Party who was in receipt of the consideration amount from the de-facto Complainant subsequently failed to deliver the imitation jewellery. Therefore, the contract is between the de-facto Complainant and the 1<sup>st</sup> Opposite Party. The 2<sup>nd</sup> Opposite Party comes into picture once the goods are delivered by the 1<sup>st</sup> Opposite Party through the 2<sup>nd</sup> Opposite Party. The 1<sup>st</sup> Opposite Party did not adduce any documentary evidence that the package is lying with the 2<sup>nd</sup> Opposite Party, absence of such vital evidence the liability cannot be fastened on the other parties. The 3<sup>rd</sup> Opposite Party is a popular social media platform wherein the 1<sup>st</sup> Opposite Party is one out of the million subscribers. In absence of specific contractual agreement as to nexus between the 1<sup>st</sup> Opposite Party which is a business entity and the 3<sup>rd</sup> Opposite Party to be held liable in this case in hand. The liability cannot be fastened upon the 3<sup>rd</sup> Opposite Party. Thus the 2<sup>nd</sup> & 3<sup>rd</sup> Opposite Parties are exempted from liability. The 1<sup>st</sup> Opposite Party is the main party with whom the de-facto Complainant had entered into a contractual obligation. The 1<sup>st</sup> Opposite Party did not fulfil their part of contract inspite of the payment made by the de-facto Complainant which inturn gave birth to this legal proceedings. Suffice is to say that the 1<sup>st</sup> Opposite Party is liable to refund the amount to the Complainant. Scrutiny of citations filed by Opposite Parties does not arise.

10. Point Nos.3 & 4:

As regards to the reliefs sought by the de-facto Complainant, the de-facto Complainant prayed for an exemplary amount of Rs.10,00,000/- each amounting to Rs.20,00,000/- towards compensation for mental agony and deficiency of services from the Opposite Parties. It is well settled principle of law that compensation must commensurate with the facts and

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circumstances of the case, the inconvenience caused to the Consumer. In this case in hand the de-facto Complainant failed to adduce substantial evidence as to how, why and on which grounds such an exemplary damages were sought. The Commission is of the considered view that the Complainant is eligible for nominal damages. The 1<sup>st</sup> Opposite Party is liable to compensate the de-facto Complainant for being deficit in extending services in spite of receipt of the consideration amount of Rs.12,590/- towards the imitation jewellery from the de-facto Complainant on 27.3.2021 itself. Thereafter failed to deliver the same tantamount to deficiency in extending services and thereupon resorted to unfair trade practice. The Commission directs the 1<sup>st</sup> Opposite Party to refund the amount of Rs.12,590/- with 6% interest from the date of receipt of the amount i.e. 27.3.2021 till the date of realisation with an additional amount of Rs.5,000/- towards compensation besides litigation expenses of Rs.5,000/- to the de-facto Complainant. The case against the 2<sup>nd</sup> & 3<sup>rd</sup> Opposite Parties stands dismissed with no costs.

We answered the points accordingly.

11. In the result the complaint is allowed in part directing the 1<sup>st</sup> Opposite Party to refund the amount of Rs.12,590/- with 6% interest from the date of receipt of the amount i.e. 27.5.2021 till the date of realisation with an additional amount of Rs.5,000/- towards compensation besides litigation expenses of Rs.5,000/- to the de-facto Complainant. The case against Opposite Parties 2 & 3 stands dismissed with no costs.

Time for compliance is one month from the date of receipt of this Order.

12.a) Applications pending if any, stands disposed of in terms of the aforesaid order.

b) A copy of this judgment be provided to all parties free of cost as mandated by the "Consumer Protection Act", 2019.


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- c) The judgment be uploaded forthwith on the website of this Commission for the perusal of the parties.
- d) File be consigned to record room along with copy of the judgment.

Dictated to the Shorthand Writer, transcribed by him, corrected and pronounced by us in the open Commission on this the 24<sup>th</sup> June, 2024.

  
Male Member  
24/06/24

  
President 24.06.24

  
Woman Member  
24/06/2024


APPENDIX OF EVIDENCE

Exhibits Marked for the Complainant:

Doc.No.	Date	Description	Remarks
Ex.A1		Incorporation certificate of the Complainant	Photostat copy
Ex.A2	08.07.2021	Letter addressed by the de-facto Complainant to the Complainant	Original
Ex.A3	--	Payment confirmation copy of payment made by the de-facto Complainant by Phonepe	Original
Ex.A4	27.05.2021	Invoice soft copy provided by Opposite Party	Photostat copy
Ex.A5	28.05.2021 to 16.06.2021	Whatsapp chatting details with 1 <sup>st</sup> Opposite Party	Photostat copy
Ex.A6	--	Advertisement on Facebook of 1 <sup>st</sup> Opposite Party	Photostat copy

Exhibits Marked for the Opposite Parties: -NIL-

  
Male Member  
24/06/24

  
President 24.06.24

  
Woman Member  
24/06/2024.