

Date of registration: 22.10.2021
Date of order: 27.06.2023

BEFORE THE DISTRICT CONSUMERS DISPUTES REDRESSAL
COMMISSION-I, VISAKHAPATNAM : AP

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

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

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

Tuesday, the 27th day of June, 2023

Consumer Complaint No: 245/2021

Between:

Dr.Vikas Pandey, President of Andhra Pradesh State rep. The Consumer Rights
Organization (CRO)/Upbhokta Adhikar Sangthan.
... Complainant

Manga Shashank S/o M.Kesava Rao, Door No.4-70/11, Sri Sai Nilayam, Near
Comfort Homes, Purushottapuram, Visakhapatnam-51.
... Defacto-Complainant

and

1. Managing Director/Authorized Signatory - Realme Mobile
Telecommunications (India) Private Limited, 3rd Floor, Tower-B, Building
Number 8, DLF Cyber City, Gurugram-122002, Haryana, India.
2. Managing Director/Authorized Signatory - Flipkart Internet Private Limited,
Buildings Alyssa, Begonia & Clove Embassy Tech Village, Outer Ring Road,
Devarabeesanahali village, Bengaluru-560 103, Karnataka.
... Opposite Parties

This case came up for final hearing on 12.06.2023 in the presence of
Sri P.Sreenivasa Appa Rao, Advocate for Complainant and Sri S.M.Valli,
Advocate for 1st Opposite Party; Sri B.Ramesh Babu, Advocate for 2nd Opposite
Party and having stood over till this date, the Commission delivered the
following:

: O R D E R :

(Per Smt.Dr.Gudla Tanuja, President on behalf of the Bench)

1. Complaint filed under Se.35 of C.P.Act praying this Commission to direct
the Opposite parties to refund the cost of the Television Rs.21,999/- collected
by Opposite Parties with 24% interest p.a. from 2.6.2020 till the date of
realisation besides Rs.2 Lakhs towards compensation for mental agony, Rs.2
Lakhs towards unfair trade and misleading Rs.2 Lakhs towards compensation
for deficiency in service and Rs.1,00,000/- towards pain and harassment and
Rs.25,000/- towards costs of the litigation and such other relief or reliefs with
the following averments.

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2. The defacto-Complainant purchased "realme" brand smart Television through Flipkart platform on 02.06.2020 with order ID: OD118793496562885000, Invoice No. FAC3B52100013559, IMEI No. 01UFTV4362003 for Rs.21,999/-. The product is having domestic warranty of one year and panel warranty for two years. Within few months after purchase the TV started malfunctioning i.e. flickering and the picture started appearing like a Barcode straining the eyes. Therefore, a Complaint was raised with the Opposite Party vide registration No. **6303092253** on dated 15.5.2021. The Opposite Parties sent technician on 19.5.2021 in response to the Complaint and after inspection he informed that there is a problem with panel and it should be replaced. Therefore, Opposite Party-1 stopped responding. However, on 10.8.2021 a message was received from Opposite Party-1 that they are going to replace the TV through Opposite Party-2 but in vain. Hence the services of Opposite Parties are deficient in nature and as such approached this Commission through the Complainant organization seeking redress.

3. Opposite Party-1 filed reply stating that the defacto-Complainant approached the Commission false and suppression of material facts. Upon receipt of the Complaint from the defacto-Complainant, they deputed service team to rectify the defects, but the defacto-Complainant did not cooperate with the service team and he did not even responded to the calls on multiple occasions when Opposite Party-1 tried to contact defacto-Complainant through text message for technician visit, the defacto-Complainant did not consent their request. Hence there is no deficiency of service on part of the Opposite Party and prayed this Commission for dismissal of Complaint.

4. Opposite Party-2 filed reply inter alia contended that the grievance of the defacto-Complainant is Television that was received through this Opposite Party started displaying manufacturing defects 10 months after purchase. This Opposite Party is only a Logistics Service provider which has nothing to do with the products manufactured by Opposite Party-1. As part of their business the sellers who were registered on the platform were provided 10 days replacement policy on products purchased through Opposite Party-2 beyond which the responsibility to redress any grievance passes on to the manufacturer of the product under the manufacturers warranty. Even as per the admitted case, the products started showing problems after 10 months of purchase and it is not the case of the defacto-Complainant that the seal packed box delivered to the defacto-Complainant was tampered which is the root cause of displaying

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defects. The dispute involved in this case is between the purchaser and the manufacturer and this Opposite Party being intermediary not responsible for the alleged defects in the product. Hence prayed this Commission to dismiss the complaint.

5. During the course of enquiry, the Complainant filed Evidence Affidavit and got marked Exs.A1 to A7. On behalf of Opposite Party-1 authorised representative filed Evidence Affidavit and got marked Ex.B4 and On behalf of Opposite Party-2 one Ms.Sanchi Chapra authorized signatory filed Evidence Affidavit and got marked Exs.B1 to B3. Both parties filed their respective Written arguments reiterating their version besides advancing oral arguments.

6. Based on the rival contentions, the points that would arise for consideration are as follows:

- 1) Whether there is any deficiency of service on the part of the Opposite parties ?
- 2) Whether the Complainant is entitled for the reliefs claimed in the Complaint ?
- 3) To what relief?

Point Nos.1 to 3:

7. Perused the record. The Tax Invoice Ex.A3 goes to show that the defacto-Complainant purchased Realme 108 cms 43" Full HD Smart Android TV, IMEI/Serial No.01UFTV436200309834 manufactured by OP-1 by paying an amount of Rs.21,999/-. The manufacturer provided one year domestic warranty and two years panel warranty. Ex.A5 is the warranty details. The said TV was delivered to the defacto-Complainant through Flipkart Internet Private Limited. Ex.A7 is the order details. After using the TV for 10 months it started giving troubles like picture on the TV screen started flickering and picture appeared like a Barcode. The photographs marked as Ex.A4 shows the malfunctioning of TV set purchased by the defacto-Complainant. Later the defacto-Complainant lodged complaint with Opposite Party but neither of the Opposite Parties redressed the grievance. On 19.5.2021 some of the technicians visited the house and inspected the TV and informed that there is a problem with panel and should be replaced. Immediately an order was placed on the same day but the Opposite Parties have not replaced the panel. Though the said problem surfaced within the period of warranty as mentioned in the Ex.A3 Invoice. On the other hand Opposite Party-1 contended that the

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representatives of the Opposite party-1 tried to contact with the defacto-Complainant, but the defacto-Complainant did not extend cooperation and even failed to answer the call made by the Technicians. The Technicians tried to contact the defacto-Complainant through text messages but the defacto-Complainant denied the same. As such there is no deficiency of service on the part of the Opposite Parties.

8. While coming to Opposite Party-2 version it is their case that they are only logistics providers and are not manufacturers of the product supplied to the defacto-Complainant. It is not the case of the defacto-Complainant that the product was damaged during transit so as to attribute fault or imperfection of service on part of Opposite Party-2 and the defacto-Complainant said to have been surfaced problem after 10 months. The liability cannot be fastened to the Opposite Party-2 transporter and hence prayed for dismissal.

9. Based on the above rival contentions, points that would emerge for adjudication before this Commission is whether the liability attributed to the defacto-Complainant can be fastened to both one & two or one alone who is manufacturer of the Television set sold to the defacto-Complainant. Exs.A3 to A7 goes to show that the TV set purchased by the defacto-Complainant was manufactured by Opposite Party-1. Opposite Party-1 given warranty of 2 years for panel and one year for domestic. Admittedly during Warranty period the TV set started malfunctioning but the Opposite party has not rectified the defects even after complaint. Ex.A6 the Screen shot of call list goes to show that the calls made by the defacto-Complainant to resolve the defects surfaced to the TV but their grievance was not redressed. Since the said defects surfaced during the continuance of warranty the Opposite Party is bound to attend the repairs or replace the product. Failure will lead to definite conclusion that the services of Opposite Party-1 are deficient in nature.

10. At this juncture it is appropriate to refer the Judgements relied on by the Opposite Party-2 :

- P.Nazeer etc. Vs Salafi Trust & anr in Civil Appeal No.3132-3133 of 2016 decided on 30.3.2022 (SC)
- SGS India Ltd Vs Dolphin International Ltd in Civil Appeal No.5759/2009 decided on 06.10.2021 (SC)
- Ravneet Singh Bagga Vs KLM Royal Dutch Airlines and Ors in C.A.No.8701/1997 decided on 02.11.1999 (SC)

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11. In support of their contentions, that deficiency of service cannot be fastened to the intermediary transporter like Opposite Party-2. Placing the reliance on the Judgements we hold that the services of the Opposite party-2 cannot be held deficient in a case of this nature.

12. With the above observations we hold that Opposite Party-1 is liable to refund the amount paid by the defacto-Complainant with interest @ 9% from 2.6.2022 till the date of realization or replace the product with same configuration besides damages for mental agony to a tune of Rs.15,000/- and costs of Rs.5,000/-. The case against Opposite Party-2 is dismissed.

We answered the points accordingly.

13. In the result the Complaint is allowed in part, directing the 1st Opposite Party to refund Rs.21,999/- (Rupees Twenty one thousand one hundred and ninety nine) to the defacto-Complainant towards cost of the Television with interest @ 9% p.a. from 2.6.2020 till the date of realization. Further directed to pay Rs.15,000/- towards compensation besides Rs.5,000/- (Rupees Five thousand) towards cost of litigation expenses. Time for compliance is one month from the date of receipt of this order.

The claim against 2nd Opposite Party is dismissed with no costs.

Dictated to the Shorthand Writer, transcribed by him, corrected and pronounced by us in the open Commission on this the 27th day of June, 2023.

RB
4/6/23
Woman Member

Member
30/6/23

Blaraja
30.06.23
President

APPENDIX OF EVIDENCE

Exhibits Marked for the Complainant:

Doc.No.	Date	Description	Remarks
Ex.A1	--	Incorporation certificate of the organization	Original
Ex.A2	07.09.2021	Letter from the defacto-Complainant to the Complainant	Original
Ex.A3	02.06.2020	Tax Invoice	Photostat copy
Ex.A4	--	Photographs of the defective and malfunctioning television	Photostat copy
Ex.A5	--	Warranty terms	Photostat copy
Ex.A6	--	Screen shots of Calls made to the Opposite Parties	Photostat copy
Ex.A7	02.06.2020	Screenshots of Order placed and confirmed by Opposite Parties	Photostat copy

Exhibits Marked for the Opposite Parties:

Doc.No.	Date	Description	Remarks
Ex.B1	--	Press release No.3 issued by Department of Industrial Policy & Promotion regarding Guidelines for Foreign Direct Investment (FDI) on E-commerce	Photostat copy
Ex.B2	--	Terms of use for using the online portal www.flipkart.com	Photostat copy
Ex.B3	13.06.2020	Extract of Resolution passed by Board of Directors of Flipkart Internet Pvt Ltd.	Photostat copy
Ex.B4	--	Screen shot of Reply from Complainant	Photostat copy

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Woman Member
4/07/23

[Signature]
Member
30/06/23

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President 30.06.23

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