

Date of registration : 05.02.2024  
Date of order : 30.09.2024

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION  
NO.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)  
Member

Monday, the 30<sup>th</sup> day of September, 2024

Consumer Complaint No. 47/2024

Between:

Dr. Vikas Pandey, National President, Consumer Rights Council Society,  
Visakhapatnam, Andhra Pradesh.

... Complainant

Mr. Alla Siva Prasada Rao S/o Alla Appa Rao, aged 43 years, residing at D.No.2-  
108, Allavariveedhi, Somalingapalem, Yelamanchili, Anakapalli District-  
531055.

... Defacto Complainant

And

1. M/s Consulting Rooms Pvt. Ltd., rep. by its Authorised Signatory, No.B/12,  
Community Spaces, Jahuvimal, Jahu lane, Andheri West, Mumbai,  
Maharashtra-400058.

2. M/s Jeeves Consumer Services Pvt. Ltd., rep. by its Authorised Signatory, L-  
169, 13<sup>th</sup> Cross, 5<sup>th</sup> Main, Sector-6, HSR Layout, Bengaluru, Karnataka-560012.

3. M/s Flipkart Internet Pvt. Ltd., rep. by its Authorised Signatory, Buildings  
Alyssa, Begonia & Clove Embassy Tech Village, Outer Ring Road,  
Devarabeesanahalli Village, Bengaluru-560103, Karnataka.

... Opposite Parties

Complainant Dr. Vikas Pandey appeared in person

Counsel for Opposite parties 2 & 3 : Sri Bhamidipati Ramesh Babu,  
Sri Awinsh Srivastav &  
Smt.N.Amaravathi

1<sup>st</sup> opposite party remained absent.

Date of Hearing : 18.09.2024

ORDER

(As Per Sri. V. Krishna Murthy, Member on behalf of the bench)

1. The present complaint is filed to direct the Opposite Party to (a) refund the cost of Television of Rs.19,207/- with interest @ 24% p.a. from the date of purchase of television i.e., dt:19.10.2020 till the date of realisation (b) refund the cost of Rs.1,799/- together with interest @ 24% p.a. from the date of purchase of television i.e., dt:19.10.2020 till the date of realisation (c) Pay an amount of Rs.2,00,000/- to the complainant towards compensation for unfair trade practice, deficiency of service, pain and harassments (d) Pay Rs.25,000/-

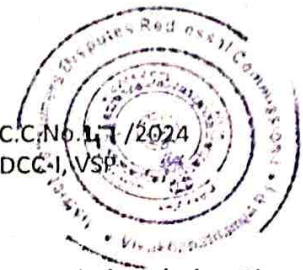


towards litigation expenses and costs of the complaint (e) for such other relief or reliefs as the Honourable Commission may deem fit and proper in the circumstances of the case.

2. The contentions of the complainant:

The Complainant submits that he has received a complaint from Mr. Alla Siva Prasad Rao S/o A.Apparao (herein after referred to as defacto complainant) that he ordered a television of Kodak 108 cms (43 inches) ultra HD (4k) LED Smart Android TV with 5000 plus apps and games in the website of 3<sup>rd</sup> opposite party dated 19.10.2020 vide order ID No.OD 119998642074656000 and Invoice No.#FAC5DK2100035618 dated 24.10.2020 and paid an amount of Rs.19,207/- to the 1<sup>st</sup> opposite party along with three years of complete protection plan by paying an extra amount of Rs.1,799/- vide Invoice No.#EAAAAB-04992654 dated 19.10.2020 to the 2<sup>nd</sup> opposite party. In the month of April, 2023 during the warranty period the said product started giving trouble i.e., two black horizontal lines appeared on the screen causing inconvenience to view the Television. He immediately gave a complaint with the customer care of 2<sup>nd</sup> opposite party on 25.04.2023. A technician visited the complainant's house who informed him that the product was to be sent to the service center. The technician conveyed that if the problem is not resolved, he would receive the cost of the television to his account through online. A person from service center collected the television and promised to resolve the issue within a week. But even after 15 days, the complainant did not receive any message or phone call from the service center of 2<sup>nd</sup> opposite party. Later, the complainant sent a mail on 30.05.2023 to the customer care of 2<sup>nd</sup> opposite party mentioning that the issue is not resolved even after more than 35 days, for which the opposite party replied that the issue would be resolved within a couple of days. Since the problem was not resolved the defacto complainant has sent number of <sup>mails</sup> ~~dates~~ on various dates in the month of June 2023. Despite the product was under warranty by way of protection coverage, the 2<sup>nd</sup> opposite party have failed to resolve the complaint of the television which caused severe mental agony to the defacto complainant. Further, the 1<sup>st</sup> opposite party being the seller of the product and 3<sup>rd</sup> opposite party being the online platform through which the product was bought are solely responsible for the mental agony and pain of the defacto complainant. The acts and deeds of the opposite parties tantamount to deficiency of service for selling a defective and non-functioned product. Hence, the complaint by the defacto complainant.





3. Contentions of the 2<sup>nd</sup> Opposite Party:

The 2<sup>nd</sup> opposite party denied all the allegations contained in the complaint. The answering opposite party was ready to provide 70% of the product to the complainant up to the extent of terms of the extended warranty. The complainant himself was adamant and outrightly denied the offered refund. The complainant filed consumer cases in his name i.e., Consumer Rights Organisation, hence, the complaint is not maintainable under law. The answering opposite party acts as an independent 3<sup>rd</sup> party service provider who provides after sale services for household products and the answering opposite party is neither a manufacturer or a product seller. Hence, the complainant failed to establish any cause of action under the provisions of Consumer Protection Act against the answering opposite party since they were ready to provide refund as per the terms of the extended warranty and the complainant himself denied to take the amount provided. Hence, the relief claimed under the present complaint is not maintainable against the answering opposite party. Hence, prays to dismiss the complaint against the answering opposite party with exemplary costs and to pass such order or further orders as the Honourable Commission may deem fit under the facts and circumstances of the present case.

4. Contentions of the 3<sup>rd</sup> Opposite Party:

The 3<sup>rd</sup> opposite party denied all the allegations contained in the complaint. The answering opposite party is not a seller of any product including the product under the present complaint, but mere an online intermediary which provides a common platform to the buyer and independent 3<sup>rd</sup> party seller. The answering opposite party is an online market place, e-commerce entity as defined under Consumer Protection Act, 2019 and consumer Protection (E-Commerce) Rules, 2020. The answering opposite party falls within the definition of an "Intermediary" under Section-2(1)(w) of the Information Technology Act, 2000 and Section-5(1) of Consumer Protection (E-commerce) Rules, 2020. The answering opposite party does not directly or indirectly sell any product on the flipkart platform and the answering opposite party are merely an online platform for marketing services provided by the 3<sup>rd</sup> opposite party upon terms decided by the respective sellers only. The answering opposite party neither offers nor provides any assurance and/or offers pickup or refund facility to the end buyers of the product. The subject product purchased by the defacto complainant had not been sold by the answering opposite party but by the 1<sup>st</sup> opposite party. It is pertinent to

mention that the Department of Industrial Policy and Promotion, Ministry of Commerce & Industry, Government of India vide its Press Note No.3 (2016 series) in Clause-2.3(viii) has clarified that in a market place model of e-commerce (such as Flipkart.com) any warranty/guarantee of goods and services sold is by responsibility of the seller. Hence, there is no privity of contract between the complainant/defacto complainant and the 3<sup>rd</sup> opposite party. Therefore, the answering opposite party cannot be held liable for the alleged grievance of the complainant/defacto complainant in the present complaint. Hence, prays to dismiss the complaint against the answering opposite party with exemplary costs and to pass such order or further orders as the Honourable Commission may deem fit under the facts and circumstances of the present case.

5. Documents as per available record.

During the course of inquiry, Exhibits A1 to A6 are filed by the Complainant and Ex.B1 & B2 are filed by Opposite Parties 2 & 3. The Opposite Parties 2 & 3 filed their Written Version and both the complainant as well as Opposite parties 2 & 3 filed their Evidence Affidavits and Written Arguments. Heard the Oral arguments of the Counsel of the complainant and the Opposite Parties. Perused all the documents brought on record.

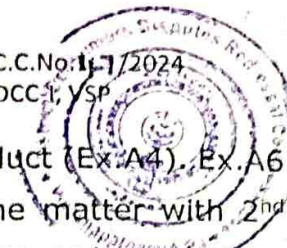
6. Points for Determination:

- (i) Whether there is any deficiency of service on the part of Opposite Parties?
- (ii) If so to what extent relief/reliefs are payable to the Complainant by the Opposite Parties?

Law and Analysis:

7. Point No.1:

The defacto complainant bought a Television make of Kodak 108cm (43 inch) Ultra HD(4K) LED Smart Android TV with 5000 plus apps and games vide IME Serial No.KA43CA2022202001007812 vide Tax Invoice No.#FAC5DK2100035618 for an amount of Rs.19,207/- (Ex.A3) from the 1<sup>st</sup> Opposite Party through Opposite Party No.3 on 24.10.2020. The Warranty for the product is for 1 year. The defacto complainant took three years complete protection from 2<sup>nd</sup> opposite party vide Invoice No.#EAAAAB-04992654 by paying an amount of Rs.1,799/- (Ex.A4). Ex.A5 is the testimony that the subject product was under repair from 26.04.2023, therefore, the product was



under repair within the extended warranty period of the product (Ex.A4). Ex.A6 is the testimony the defacto complainant was pursuing the matter with 2<sup>nd</sup> opposite party on various dates viz., 30.05.2023 & 31.05.2023, 2<sup>nd</sup> June, 2023, 3<sup>rd</sup> June, 2023, 5<sup>th</sup> June, 2023 and 7<sup>th</sup> June, 2023 which shows that the problem still persists and is not rectified by the opposite party No.2. Vide para-2 of the written version of 2<sup>nd</sup> opposite party admitted that an expert technician after thorough inspection confirmed that the product is beyond repairable condition, hence, the 2<sup>nd</sup> opposite party has agreed to refund 70% of the cost of the product but the same was not accepted by the complainant. Whereas, it is evident that the product was under complete protection plan for three years (Ex.A4) besides warranty for one year as per Ex.A3. Hence, it is evident that the product was under complete TV protection warranty as on the date of repair i.e., 26.04.2023 for which the 2<sup>nd</sup> opposite party who is the service provider and sales support provider for all electronics, electricals and IT products during warranty and out of warranty period as admitted by the 2<sup>nd</sup> opposite party vide Para-3 of the written version. In fact none of the opposite parties has any dispute with regard to the existence of complete TV protection warranty as on the date of the repair i.e., 26.04.2023(Ex.A4).

8. In the instant case the 1<sup>st</sup> Opposite Party is the seller of the product to the customer who was in receipt of the consideration (Ex.A3). 2<sup>nd</sup> Opposite Party is the service provider of the product. The 3<sup>rd</sup> opposite party is the online intermediary which provides a common platform to the buyer and independent 3<sup>rd</sup> party seller. It is evident that the TV had problem within the extended warranty period for complete TV protection vide Ex.A4 issued by service provider i.e., 2<sup>nd</sup> opposite party and it is not rectified to the satisfaction of the customer which forced the complainant to institute a complaint for refund of cost of the TV. It is not understood why the 2<sup>nd</sup> opposite party has offered 70% of the product when their own technician certified that the product was beyond repair. Whereas, as per Ex.A4, the 2<sup>nd</sup> opposite party is bound to refund the complete tax invoice amount i.e., Rs.19,207/- as per the promise made by them vide Ex.A4 after taking the consideration of Rs.1799/-. Hence, the 2<sup>nd</sup> opposite party being the service provider falls under deficiency of service and unfair trade practice under Sections-2(11) & 2(47) of Consumer Protection Act, 2019 respectively. Hence, Point No.1 is answered in favour of the complaint and against the 2<sup>nd</sup> opposite party.

9. The commission is of the considered opinion that 2<sup>nd</sup> Opposite party being the service provider is responsible for the product liability under the Product

Liability Act (for the sake of convenience which is reproduced below) since they have failed to rectify the defect in the subject product which was well within the extended warranty period (Ex.A4).

Section-85 deals with the liability of product service provider :-

A product service provider shall be liable in a product liability action, if-

(a) the service provided by him was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance which is required to be provided by or under any law for the time being in force, or pursuant to any contract or otherwise; or

(b) there was an act of omission or commission or negligence or conscious withholding any information which caused harm; or

(c) the service provider did not issue adequate instructions or warnings to prevent any harm; or

(d) the service did not conform to express warranty or the terms and conditions of the contract.

10. In view of the above discussion and record observation in the instant case the Commission is of the considered opinion that 2<sup>nd</sup> opposite party has reneged its promise of complete TV protection after having taken consideration amount to Rs.1799/- vide Ex.A4 and cannot shirk their full liability for the product and mere offering of 70% of the cost of the product does not disentitle the defacto complainant for full cost of product.

11. Point No.2:

Based on the discussions in point No.1, the complaint is allowed in part directing the 2<sup>nd</sup> opposite party to refund to the defacto complainant, the cost of the Television Rs.19,207/- (Ex.A3) with simple interest @ 8% p.a from the date of 1<sup>st</sup> repair i.e., 26.04.2023 (Ex.A5) till the date of realisation besides compensation of Rs.10,000/- and Rs.5,000/- towards costs.

12. Result:

In the result the complaint is allowed in part directing the 2<sup>nd</sup> opposite party to refund to the defacto complainant, the cost of the Television Rs.19,207/- (Ex.A3) with simple interest @ 8% p.a from the date of 1<sup>st</sup> repair i.e., 26.04.2023 (Ex.A5) till the date of realisation besides compensation of Rs.10,000/- (Rupees Ten thousand only) and Rs.5,000/- (Rupees five thousand only) towards costs.

Time for compliance is 45 days from the date of receipt of this Order, failing which the cost of the Television i.e., Rs.19,207/- shall carry simple interest @ 12% p.a. from the date of 1<sup>st</sup> repair i.e., 26.04.2023 (Ex.A5) till the date of realization.

The defacto complainant is directed to return the defective Television to the 2<sup>nd</sup> Opposite Party on full satisfaction of the award. The rest of the claim is dismissed.

The Complaint against the Opposite Parties 1 & 3 stands dismissed.

Dictated to the Shorthand Writer, transcribed by her, corrected and pronounced by us in the open Forum on this the 30<sup>th</sup> day of September, 2024.

Ghanija 1.10.24  
President

Male Member

APPENDIX OF EVIDENCE

NIL  
NIL

1. Witnesses examined for the complainant:
2. Witnesses examined for the opposite parties:

Exhibits Marked for the Complainant:

Doc.No	Date	Description	Remarks
Ex.A1	28.08.2023	Certificate of Registration	True copy
Ex.A2	30.11.2023	Authorisation Letter issued to the complainant by the defacto complainant.	Attested copy
Ex.A3	19.10.2020	Tax Invoice issued by 1 <sup>st</sup> opposite party in the name of defacto complainant.	Attested copy
Ex.A4	19.10.2020	Tax Invoice issued by 2 <sup>nd</sup> opposite party in the name of defacto complainant.	Attested copy
Ex.A5	26.04.2023 13.05.2023 30.05.2023	Automated messages showing the status of complaint lodged by the defacto complainant with the customer care center of the 2 <sup>nd</sup> opposite party.	Attested copy
Ex.A6	30.05.2023 31.05.2023 02.06.2023 03.06.2023 05.06.2023 07.06.2023	E-mail communication with opposite parties.	Attested copy

Exhibits Marked for the Opposite Parties 1 & 2:

Doc.No	Date	Description	Remarks
Ex.B1	29.03.2016	Press Note-3 issued by Joint Secretary, Ministry of Commerce & Industry, Department of Industrial Policy & Promotion, Government of India.	Photocopy
Ex.B2	22.06.2022	Resolution regarding Modification of Authority to sign legal related documents and statutory related matters.	Photocopy

Ghanija 1.10.24  
President

Male Member