

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION (EAST)

GOVT. OF NCT OF DELHI

CONVENIENT SHOPPING CENTRE, FIRST FLOOR,

SAINI ENCLAVE, DELHI – 110 092

C.C. No. 516/2022

Sh. Anil Kumar

S/o Sh. Jaswant Singh

**1 R/o House No. 10/4, Gall no. 10, Saket Block Manadawall
Fazalpur, Delhi-110092**

....Complainant No.1

Sh. Brijesh Kumar

S/o Sh. Rati Bhan Singh

**2 R/o Flat No. 3200, Sector-A Pocket B & C. Vasant Kunj,
New Delhi-110070**

....Complainant No.2

Versus

M/s Amazon Seller Services Private Limited (Through its
Managing Director) Registered office at: Brigade Gateway,
8th Floor, 26/1, Dr Rajkumar Road, Malleshwaram (W).
Bangalore- 560055, Karnataka

.....OP1

VERDICTUM.IN

M/s Appario Retail Private Limited 2

(Through its Managing Director) Kh No. 18/21, 19/25, 34/5, 6, 7/1 min, 14/2/2 min, 15/1 min, 27, 35//1, 7, 8, 9/1, 9/2, 10/1, 10/2, 11 min, 12, 13, 14, Village Jamalpur, Gurgaon, Haryana-122503

Also at:-

M/s Appario Retail Private Limited (Through its Managing Director) Khasra Numbers: 444(P), 445 (P), 459 (P) 460, 461, 462,463,464, 465, 466, 467, 468, 469 470, 471, 472, 473, 474, 475 (P), 476, 477, 478, 479, 480, 481, 482, 483 (P), 491, 492, 493 (P), Village- Bhaukapur, Tehsil- Sarojini Nagar, Mohan Road, Lucknow, Uttar Pradesh - 226401

.....OP2

Date of Institution : **21.09.2022**
Judgment Reserved on : **27.02.2024**
Judgment Passed on : **27.02.2024**

QUORUM:

Sh. S.S. Malhotra (President)
Ms. Rashmi Bansal (Member)
(Member)
Sh. Ravi Kumar

Order By: Ms. Rashmi Bansal (Member)

GMMENT

By the present judgment, this commission would dispose off the complaint of the complainant alleging deficiency of service on the part of OPs and causing him tension, mental agony and harassment.

1. The gist of the case is that complainant has purchased a laptop ASUS ROG Zephyrus G14(2021) by placing an order to OP1 for a sum of Rs.77,990/- sold by OP2. The said product was defective and upon making complaints to OP1, the product price was refunded to the complainant. The only grievance remained is with respect to compensation for deficiency in service on the part of OPs in refunding his amount after more than an year, which has caused him mental agony, harassment, inconvenience and torture.
2. Complainant submits that the laptop was picked up from him on 03.11.2021 and the refund has been given to him on 06.04.2023, almost after one year and five months, that too, after various request made to the OP1. Complainant submits that even the pickup was done on 09.11.2021, after 10 days of the return request generated by the complainant on 29.10.2021, that too without any return slip by the person appointed by OP1 for pick up the item despite requests towards the acknowledgement of pick up and it was told that there is no procedure to give return slips to the customers and that the transaction of the said return pick up will automatically get updated on Amazon prime account ID of the complainant. After picking up, when complainant received no confirmation for five days regarding refund of the amount, he enquired from OP1 and vide email dated 16.11.2021 he was informed that return pick up has not been updated in their system and was asked to wait for another five days, followed by several communication dated 06.12.2021, 11.12.2021 and 28.12.2021 effect. A grievance on the consumer helpline on 21.12.2021 as well as police complaint dated 27.12.2021 was filed by the complainant.
3. The complainant submits that the grievance redressal mechanism of the OP1 is very poor and inefficient as the web site of OP1 neither displays contact details of the senior directors/officers nor contact addresses of the head office of the OP1 or OP2. The grievance redressal mechanism is not mentioned either on the website of OP1 or on the invoice. The said conduct amounts to deficiency in service of OP1 and OP2. Complainant further submits that OP1 plays an active role in selling, storage, warehouse and logistic support and that the said a product is a part of “*Fulfilled by Amazon*” service, which implies that the product is being stored, packed and dispatched by OP1. Not only this, OP1 is responsible for customer care and is duty bound to ensure that it’s delivery/return pick up system should be fool-proof. The OP1 has failed to attend the grievance of complainant, despite regular follow-up and has illegally retained the amount of the complainant, because of which the complainant has suffered lot of mental agony, harassment and loss due to the acts of OP for which he is entitled to be compensated, reasonably by OP1 and OP2.
4. The OPs were served and the written statement filed by the OP1 was beyond the statutory period and was ordered as ‘not to be read for the purpose of its defence’ and the opportunity to file evidence was also denied vide order dated 13.09.2023.OP2 chose not to appear despite service of notice and was proceeded ex parte, vide order dated 10.04.2023.
5. The complainant has filed his evidence and has exhibited the documents in support of his

case by filing invoice dated 28.10.2021, replacement request dated 29.10.2021, picture of return slip dated 09.11.2021, various emails from November 2021 – December 2021 and copy of the complaint lodged with police.

6. The commission has perused the documents on record filed by the complainant. The only grievance with respect to the deficiency of service on the part of OP1 is delay in generating the return request by it and then in refunding the amount within time. The documents show that the item was delivered on 29.10.2021 to the complainant and a return request was generated by him on the same day without any delay, but the product was picked up only on 09.11.2021 i.e. almost after 10 days of the generating the request, as the pick-up schedule date of 03.11.2021 was cancelled by OP1 Suo moto and another request for pick-up was generated by the complainant and ultimately the item was picked up on 09.11.2021. There is no documents on record about the status of refund between 09.11.2021 till 16.11.2021, when upon the complaint he was asked to wait for five days more and then further by various emails to wait for further few days. The emails dated 11.12.2021 of OP1 even informed the complainant that it has no information about the '*product pick up*' confirmation, which obviously must have given lot of tension to the complainant as upto one month, he has been informed that his pickup was not confirmed. More so, when no return slip given by the pick-up person to the complainant the apprehension as to whether pick up has been done by rightful person or whether he has been defrauded again remained a continuous cause of tension for him.
7. Although OP1's WS was beyond limitation and is not to be read for the purpose of its defence. However, the Commission has laid its hands on the conditions of usage filed by the OP1, the '*Conditions of Use*', which states that '*they share information with third-party service providers and use third-party service providers to fulfil orders for products or services and to deliver packages.*' The word 'use' implies that OP1 acts as principal Seller who pass on the orders to the third-party service providers, which technically may be termed as the agent of OP1 to fulfils the order as per directions of OP1.
8. Further, with respect to the conditions of sale between Seller and the customer, under the head of '*Our Contract*' has mentioned that '*we only accept your offer and conclude the contract of sale for a product ordered by you, when the product is dispatched to you and an email confirmation is sent to you that the product has been dispatched to you*' (the "dispatch confirmation, email"). This itself establish that that contract is concluded on the part of OP1 when the product is dispatched to the customer and OP1 is one of the party to the contract by accepting the offer of the customers.
9. Under the head of '*returns*' this is also specifically mentioned that (for the product that are returned) by the customer, '*the refund is issued to the original payment method, (in case of prepaid transactions) or to the bank account/as Amazon pay balance (in case of pay on delivery orders), the details of making such a refund....*' which further establish that the transaction of the money takes place through OP1 only and the remaining amount / any balance to be kept by the Amazon as Amazon pay balance.
10. Further, Under the heading of '*pricing and availability*', OP1 states that '*we list availability information for products sold by us on the website, including on each product information page as we process your order, you will be informed by email if any product you ordered turned out to be unavailable.*' The word "*products sold by us*" leaves no ground to doubt that it is the OP1 who sells the product on their website and they are responsible for processing

the order, which is further corroborated by the other clause under the heading of ‘*alteration or amendments of the conditions*’, which states ‘*we reserve the right to make changes to our policies and these conditions of sale at any time.*’ This condition also establishes that OP1 is involved into the sale of the products and has authority to change the conditions of sale.

11. Though the WS of OP1 is not to be read, but the admitted documents can be looked into. One email of OP1 filed by it without any mention of date or addressee, reveals that OP1 directs someone for looking after the product as it was not picked up till then and requested to make a refund as an exception case. It further states that product has been picked up as per the snapshot attached. From this it can easily be made out that had the snapshot of picking up the product was not attached, the OP1 may not have accepted that the product has been picked up by their pick-up person or right person. This establishes that allegations of the complainant towards deficient pick up mechanism stands proved. The complainant has been left in dilemma for full one month whether the item has been picked up by the right person and has reached the OP1.
12. It is worth noting that the product is a part of FBA i.e. ‘*Fulfilled by Amazon*’ program, which means that the product is being stored with Amazon and delivered by it. This is the responsibility of Amazon to ensure that product being sold on its market place by the third-party is genuine. Further in case of FBA services, OP1 does not break open the seal of the product, but it has a mechanism to ensure that products are genuine and they take photographs of the product before dispatch. As per its terms and conditions, it is admitted position of OP1 that the contract with OP1 concludes, when the product shipped and confirmation email made to the customer, which implies that its OP1’s duty to ensure genuine and defect free item be sold and further if return is made then the same has to be picked up by it and generate refund within reasonable time.
13. Documents on record and the terms and conditions of the OP1 establish that all transactions are routed through OP1, contact also concluded at the end of OP1 and delivery of the product also taken place through the OP1 only, which establishes that OP1 only is responsible and answerable for the supply and delivery of goods and liable for the consequences arising out of the breach of contract. OP1 has also not having any full-proof grievance redressal mechanism and there is nothing on record that shows details of its officers or of the seller. Further, non delivery of the pick-up slip by the pick-up person also amounts to unfair trade practice on the part of OP1 as in case of returns, the customers are left with no option as to the proof that item has been picked up by the right person.
14. Hon'ble NCDRC in **Emerging India Real Assets Private Limited and another versus Kamer Chand and another**, revision, petition number 765/2016, decided on 30.03.2016 “*that it was bounden duty of the facilitator, to ensure that goods sold through any individual or manufactured as per quality standard. If goods purchased through online or phone, not up to the mark, online portal, through which goods were purchased, cannot escape its liability.*”
15. In the light of our discussion, this Commission is of firm view and that it is the OP1 who accepts the orders from the customers, places the order to third party and concludes the contract once the goods are delivered to the complainant and that it is not simple intermediary. Further, the documents on record show that item was picked up on 09.11.2021 and the refund was initiated on 14.04.2023, almost after one year and five months after much deliberation by the complainant. It is also established that OP1 is not having appropriate

grievance redressal mechanism and phone numbers of the concerned persons are not provided on its web site, which act, amounts to deficiency on service on its part. This is also observed from the terms and conditions of the “*Conditions of Use*” of OP1 that it has been using one sided oppressive terms of the contract which amounts to unfair trade practice on its part.

16. Though OP2 is proceeded *Ex.-parte*, it cannot be exonerated from its liability to provide correct and defect free item to the complainant and to redress his grievances by providing a complete grievance redressal mechanism. Therefore, OP2 is also held liable for deficiency in service is on his part for providing a defective product to the complainant.
17. OP1 is not protected under the Section 2(1)(w) of the IT act which is not applicable in the present case.
18. In totality of facts and circumstances of the case, it is directed as follows:
 - OP1 and OP2 are directed to pay a compensation to the complainant for its deficient service and unfair trade practice that has caused mental agony and harassment to the complainant to the tune of Rs. 35,000/- to the complainant jointly and severally along with interest @ 7% p.a. from 09.11.2021 (the date of picking up the item) and Rs.10,000/- towards litigation cost, to be paid within 30 days from the date of passing of the order, failing which OP1 and OP2 shall be liable for the payment of interest on the entire amount of Rs.45,000/- at the rate of 10% p.a. from 09.11.2021 till its actual realisation by the complainant.
 - OP1 is further specifically directed to make the provisions for handing over the receipt of the pick-up item to the customers in all the cases, hence may arise in future and ensure about safe and secure pick up from its customers.
 - In addition to this OP1 is also directed to display on its site the complete detail of the officers dealing with the grievances of the complainant/customers and provide a fool proof transparent grievance redressal mechanism.

Copy of the order be supplied / sent to the parties free of cost as per rules.

File be consigned to Record Room.

Announced on 27.02.2024.