

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
KOLKATA UNIT - II (CENTRAL)
8-B, NELLIE SENGUPTA SARANI, 7TH FLOOR,
KOLKATA-700087.**

**Complaint Case No. CC/405/2019
(Date of Filing : 27 Sep 2019)**

1. Abishek Kabir

Anubhab Apartment, 1st
Floor, 1113, Madurdah, Hossainpur, P.S. Anandapur, Kolkata-
700107, Dist-Kolkata.

.....Complainant(s)

Versus

1. Apple India Pvt. Ltd.

Regd. office 19th Floor, Cobcorde Tower C, UB
City, No. 24, Vittal Mallya Road, P.S. Cubbon Park, Bangalore-
560001, India.

2. Systematix Media (Imagine)

Srishti Apartment, 1st Floor, 12, Ho Chi Min
Sarani, P.S. Shakespeare Sarani, Kolkata-700071, India.

3. Reliance Digital , Reliance Retail

44/2, Sarat Bose Road, P.S. Ballygunge, Kolkata-700020, West
Bengal, India.

.....Opp.Party(s)

BEFORE:

**HON'BLE MRS. Sukla Sengupta PRESIDENT
HON'BLE MR. Reyazuddin Khan MEMBER**

PRESENT: Self, Advocate for the Complainant 1

Dated : 02 Jan 2024

Final Order / Judgement
FINAL ORDER / JUDGEMENT

SMT. SUKLA SENGUPTA, PRESIDENT

This is an application filed by the complainant U/s 12 of CP Act, 1986.

The fact of the case in brief is that the complainant is a student pursuing his education in Kolkata in addition to being an unwavering customer of OP-1 which is multi-national technology company offering customer electronic through the sub continent.

It is further stated by the complainant that on the basis of advertisement made by the OP-1, an International Consumer Electronic Provider of immense repute and took special pride in their trade practice, transparency, product quality and longevity. The complainant resolved to buy a laptop from the OP-3, Reliance Digital Store located at 44/2, Sarad Bose Road, Kolkata-700020, West Bengal on March 31, 2017. The laptop is model Mac Book Air, screen size-13 inches, Product serial No. C1MTC1HBH3QD. It was protected with a warranty period of 1 year (Apple Care Protection Plan). The copy of invoice of the product is annexed herewith as annexure "A". The original amount of valuation of the subject device was Rs. 61,990/- only. However, due to an offer which the complainant availed. He was entitled to total cash back of Rs. 7,000/- post of a specific period of purchase. So, the valuation of the subject laptop purchased by the complainant was reduced to the amount of Rs. 54,990/- post entitlement of cash back. Being a student for the payment of subject laptop, the complainant has to depend upon EMI and he used to pay EMI from his meagre savings.

It is alleged by the complainant that after getting a laptop from the OP-3, it was found to be faulty since inception nearly 1.5 month post purchase ie on May 17, 2017. The key board and track pad (mouse pad) of device ceased to work.

Thereafter, the complainant informed the matter to the OP-2 who claims to be an authorised service centre of the OP-1 look into the matter and treated the subject device but the technician of the OP-2 failed to restore the former efficiency of the brand new device and a few minor glitches still remained which was quite unexpected to the complainant from the OP-1. The copy of service of the OP-2 is annexed as annexure "B".

Frequent faults which arose in the device in question thereafter caused agony to the complainant and despite being intensive care of the device within 2 months again the defect arose in the track pad and key board. The settled complaint of the subject device arose in respect of his battery within 3.5 months from the date of purchase. The complainant again compelled to appear before the office of the OP-2 for the second consecutive time i.e . 17.07.2017 . The issue was subsided after some days by the technician of the OP-2.

Thereafter on the basis of query of the complainant, the representative of the OP-2 assured the complainant that there was no issue with the component of the subject device post repair of charging issue which convinced the complainant. Subsequently, the complainant somehow lodged the second service repairing report and collected the duplicate one from the OP-2 through email dated 11.12.2018 which is annexed as annexure "C".

It is further stated by the complainant that the cursor of the alleged laptop was abruptly disappeared from the screen upon switching on and repaired after a prolong period. But due to his examination he could not visit office of the OP-2 to settle the malfunction of the product and sent email to give intimation to the OP-1 dated 17.12.2017 to settle the issue which is annexed as annexure "D". The service report bearing service No. HC15638 for the logic board issue and tax invoice of the inspection charge has been annexed herewith as annexure "E and F" respectively. Having no other alternative, the complainant after exhausting all forms of communication with the OPs sent a legal notice dated 12.02.2019 to the OPs. But the OPs 1 and 2 did not reply to the legal notice despite receiving the same and the OP-3 did not receive the letter. The copy of legal notice is annexed herewith as annexure "I".

Under such circumstances, having no other alternative, the complainant has filed the case with a prayer to give direction to the OPs to refund a sum of Rs. 57,890/- as the price /or charge paid by

the complainant for the laptop in question and also prayed for compensation of Rs. 17,367/- as loss of interest and discontinuation of unfair trade practice along with punitive damage and litigation cost of Rs. 25,000/-.

The OP-1 has contested the case by filing a WV denying all the material allegations levelled against it and the OPs 2 and 3 did not appear and contest the case by filing a WV. Thus, the case runs ex parte against them vide order dated 06.01.2020 passed by this commission.

The OPs-1 admitted in its WV that the complainant purchased the Apple Macbook Air bearing serial No. C1MTC1HBH3QD (Device) on 31.03.2017.

It is alleged by the OP-1 that the complainant has no cause of action to file the case. It is further stated by the OP-1 that the Apple products sold in India by OP-1 through their dealers/resellers are known for their cutting edge technology and utmost customer satisfaction, the products undergo straight quality test to ensure that the said products maintained high standard to ensure that they do not fail to meet industry standard. The Apple is world-renowned market and innovation leader and has being the flag bearer of technological advancement in the telecommunication devices, computing and communication space.

The further case of the OP is that admittedly, the complainant purchased the subject laptop from the OP-2 and approached the OP-2 on 31.03.2017 and again approached the OP-2 on 17.05.2017 with issues pertaining to track pad and key board not working, the OP-2 being an Apple Authorised Service Provider (ASP) of the OP-1 issued a service report to the complainant remarking status of device upon diagnosis of ASP replaced the track pad and resolved the issue. The subject device was handed over to the complainant on 23.05.2017 and the copy of service report dated 17.05.2017 is annexed as annexure "A" for the OP-1.

It is further case of the OP-1 on 14.07.2017. The complainant approached AASP reporting issue charging of device. The AASP upon diagnosis of subject device found no such issue as reported by the complainant. Accordingly, the AASP performed reset setting of logic board, and informed the complainant by next day to collect the subject device. The complainant lodged service report issued by AASP. Hence, he collected the subject device on 21.07.2017 after furnishing her ID proof. The copy of service report dated 14.07.2017 is annexed as annexure "B". Thereafter, on 12.07.2018, the complainant approached that the subject device being dead. Upon diagnosis, it is found by AASP that there was issue of logic board of the subject device and they offered the complainant with an exchange of Rs. 39,900/- to replace the defective part as the subject device was out of warranty. Accordingly, the AASP informed the complainant on 22.10.2018 about the diagnosis report but the complainant disputed the fact and tried approaching the OP-1 through mail and calls finally on 16.12.2018. The complainant collected the subject device from AASP. The service report dated 12.10.2018 is annexed as annexure "C" for the OP-1.

It is alleged by the OP-1 that the complainant demanded free service but the OP-1 explained the complainant on several occasion that free repaired cannot be processed since the subject device is out of warranty. The copy of Apple terms of warranty is annexed as annexure "D".

Admittedly, the OP received a legal notice dated 12.02.2019 from the complainant demanding free repairs. It is the claim of the OP-1 that there is no deficiency in service on the part of the OPs. Because they attended all the issues reset by the complainant and when required so, the allegation of the complainant is baseless and question of refund of Rs. 57,890/- as advance for device in service and Rs. 79,367/- as compensation being the loss of interest along with Rs.

25,000/- towards litigation cost does not arise at all. The complainant has no cause of action to file the case and his claim is frivolous and vexatious and the same is liable to be dismissed.

In view of the above fact and circumstances, the points of consideration are as follows.

1. Is the case maintainable in its present form?
2. Has the complainant any cause of action to file the case?
3. Is the complainant a consumer?
4. Is there any deficiency in service on the part of the OPs?
5. Is the complainant entitled to get relief as prayed for?
6. To what other relief or reliefs is the complainant entitled to get?

Decision with Reasons

All the points of consideration are taken up together for convenience of discussions and to avoid unnecessary repetitions.

On a close scrutiny of material on record and also considering the evidence adduced by the parties of this case, it is revealed that admittedly, the complainant is a consumer and the OPs are the service provider.

It is also revealed from the material on record and position of law that the case has been filed by the complainant within the period of limitation and it is well within the pecuniary and territorial jurisdiction of this commission.

It is also proved from the fact and circumstances of the case and evidence on record that the complainant has sufficient cause of action to file this case.

It is settled principle of evidence act is that the admitted fact need not be proved.

It is admitted fact that the complainant purchased the subject device being model Macbook Air, screen size-13 inches, product serial No. C1MTC1HBH3QD as per Apple Care Protection Plan from the OP-3. It was protected with a warranty period of 1 year with a price of Rs. 61,990/- but due to an offer availed by the complainant he was entitled to a total cash back of Rs. 7,000/-. So the complainant purchased the subject device i.e. laptop from the OP-3, a Reliance Digital Store situated at 44/2, Sarad Bose Road, Kolkata-700020, West Bengal on March 31, 2017 at a consideration of Rs. 54,990/- only.

It is also admitted fact that on several occasions, the complainant knocked the door of the OP-2 firstly on 17.05.2017. The authorised service provider (AASP) of the OP-1 pertaining to track pad (mouse pad) and key board is not working. It is also admitted fact that the OP-2 issued a service report to the complainant remarking status of device and replaced the track pad and resolved the issue. The subject laptop was handed over to the complainant on 23.05.2017 which is revealed from the annexure "A" (submitted by the OP-1).

It is also admitted fact that on again 14.07.2017, the complainant approached the OP-2 reported in issue charging of subject device and AASP performed reset setting of logic board, and informed the complainant to collect the subject device. The complainant collected the subject device on 21.07.2017. It is also admitted fact that on 12.10.2018 again the complainant

approached AASP with issue pertaining the subject device being dead. Upon diagnosis, it is found that there is issue with logic board of the subject device and hence, the OP-2 offered the complainant and exchange of Rs. 39,900/- to replace that part as the device at that time was out of warranty. The complainant rightly disputed the fact and served a legal notice upon the OP but the OPs did not pay any heed to his request for permanent solution of the problem of the subject device and ultimately, he requested to refund the price and/or charges paid by him for the said device of a sum of Rs. 57,890/- including the price of subject laptop, service charges of Rs. 2,900/-.

From the admitted position, it is clear that since inception the complainant faced several technical problems with the subject laptop which he purchased with a sum of Rs. 54,990/- from OP-3 and on several occasion, he paid service charge of Rs. 2,900/-. The sum of total amount would be Rs. 57,890/- paid by the complainant along with interest @ 15 % p.a.

Though the OPs in their written argument as well as verbal argument denied that there was no deny in service or negligence or unfair trade practice on their part but from their admission and also from evidence on record, it is crystal clear that the subject device produced by Apple India Pvt. Ltd., the world famous company was defective since inception and the complainant on several occasion approached the authorised service provider i.e. OPs 2 and 1 for servicing the same and they claimed repairing cost from the complainant. Such conduct of the OPs should be considered as deficiency in service, negligence and unfair trade practice. The OP-1 company is one world famous company for electronic devices and ordinary people had blind faith on the product produced by the OP-1 company. In that case on that faith, the unfortunate complainant purchased the subject device with a price of Rs. 61,990/- and after cash back of Rs. 7,000/- actually he paid Rs. 54,990/- by using EMI option. So, the complainant being a mere student suffered mental pain and agony by facing different problem with the subject device and the OP-1 company did not replace the same by a new one, rather they charged the repairing cost from the complainant.

From such conduct of the OPs, this commission is of view that there was negligence and deficiency in service on the part of the OPs for which they are liable to refund the valuation of the subject laptop to the complainant and also are liable to give compensation with litigation cost.

In view of discussion made above, it is held by the this Forum that within the ambit of CP Act, 1986, the complainant is a consumer and the OPs are the service provider and the complainant could be able to prove his case against the OPs beyond all reasonable doubts and is entitled to get relief as prayed for.

The case is properly stamped.

Hence,

Order

that the case be and the same is decreed on contest against the OP-1 and ex parte against the OPs 2 and 3 with cost of Rs. 5,000/-.

The OPs are directed to refund a sum of Rs 57,890/- (Rupees fifty seven thousand eight hundred ninety) only to the complainant towards valuation of the subject laptop and service

charge paid by the complainant either jointly or severally within 45 days from the date of this order .

The OPs are further directed to pay compensation of Rs. 17,367/- (Rupees seventeen thousand three hundred sixty seven) only to the complainant along with litigation cost of Rs. 5,000 /- either jointly or severally within 45 days from this date of order, id the complainant will be at liberty to execute the decree as per law.

Copy of the judgment be supplied to the parties free of cost as per mandate of the CP Act. The Judgement be uploaded forthwith on the website of the commission for perusal of the parties.

**[HON'BLE MRS. Sukla Sengupta]
PRESIDENT**

**[HON'BLE MR. Reyazuddin Khan]
MEMBER**