CC/138/2023

Date of filing: 22.05.2023
Date of Disposal: 06.04.2024

BEFORE THE BANGALORE URBAN II ADDITIONAL DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, SHANTHINAGAR, BANGALORE – 560027

DATED THIS THE 06th DAY OF APRIL 2024

CONSUMER COMPLAINT NO.138/2023

PRESENT:

SRI VIJAYKUMAR.M.PAWALE, B.A., LL.B., (Spl)., ... PRESIDENT

SMT.V.ANURADHA, B.A., LL.B., ... MEMBER

KUM.RENUKADEVI DESHPANDE, B.Com., LL.B., (Spl)., ... MEMBER

COMPLAINANTS:

1) Mr.Shamanth.K,
S/o D.N.Krishnaiah,
Aged about 31 years,
No.236/4 New No.2,
Vijayashree Layout,
Hulimavu Gate,
Behind City Union Bank,
Bangalore – 560 076.

2) Mr.Sachin.R,
S/o Ravindranath R.K.,
Aged about 31 years,
No.3A, Tejaswini Nagar,
Phase 2, Near Vibgyor School,
Bangalore – 560 076.

(Rep. by Sri Aditya.M, Advocate)

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V/s

OPPOSITE PARTIES:

1. Amazon India Pvt. Ltd.,
   Represented by its:
   Authorised Signatory,
   Having its Registered Address at
   No.26/1, 8th Floor,
   Dr.Rajkumar Road,
   Malleshwaram West,
   Near Orion Mall & Brigade Gateway,
   Bangalore – 560 055.

2. BK Enterprises,
   Represented by its:
   Authorised Signatory,
   Having its Registered address at
   109/7 20th Main Road,
   Near Variar Bakery,
   5th Block Rajajinagar,
   Bangalore – 560 010,
   Karnataka.

3. BK Enterprises,
   Represented by its:
   Authorised Signatory,
   Having its Registered Address at
   No.353, Shop No.2, 3,
   BK Enterprises, KR Hospital Road,
   Mandi Mohalla,
   Mysore – 570001,
   Karnataka.

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(Rep. by Sri.Meghana.S.Singh)

(OP No.2 & 3 are deleted in view of memo dated 11.10.2023 filed by complainants)

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By SRI.VIJAYKUMAR.M.PAWALE, PRESIDENT:

//JUDGMENT//

1. This is a complaint filed by the complainants under Section 35 of the Consumer Protection Act, 2019, against opposite parties (hereinafter referred as to OPs) for seeking order directing the OPs to refund Rs.59,990/- along with interest @ 8% p.a. and courier charges of Rs.675/, to pay compensation of Rs.15,000/- per month from the date of request of refund till the date of realization and also prayed for granting such other reliefs as this Commission deems fit.

2. The facts averred in the complaint in brief are as under:

The complainant No.1 is a customer of OP No.1 i.e. Amazon India Private Limited. Complainant No.2 who agreed on a sharing basis with complainant No.1 ordered a Samsung TV (Samsung 125 CM (50 Inches) 4K Ultra

HD Smart Qled TV QA50A60AAKLXL)through OP No.1's application through his Amazon account and the shipping address where the product had to be delivered belonged to complainant No.2 where he is permanently residing. Payment for the same was made by credit card (Payment Transaction ID:Topq7SIgioZtqHwoES3w) through the amazon payment portal.

3. Further in the complaint it is stated that after receiving the product, it was noticed that the delivered product was different model and so immediately complainants taken photographs of the said product and complainant No.1 raised request for the return of the product through amazon application. In response to the said return request OP No.1 sent e-mail to complainant No.1 accepting the return request and issue of refund to original payment method.

4. Further in the complaint it is stated that even after waiting for 40 days from the date on e-mail sent by complainant No.1 to the amazon customer, OPs have not refunded the amount though they have picked up the TV. The complainants got issued legal notice to OPs and OPs have not shown any response to it. Hence, the

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complainants filed this complaint against OPs for the reliefs as prayed in the complaint.

5. After registering the complainants' complaint, notices were issued to the OPs. The OP No.1 appeared through Counsel. It is to be noted here that notices issued to OP No.2 & 3 were not served but ultimately the complainants filed memo on 11.10.2023 stating that OPs No.2 & 3 were deleted from the complaint. So, in view of said memo OPs No.2 & 3 are deleted from the complaint. OP No.1 filed written version to the complainants' complaint admitting that an order was placed by the complainants for a Samsung TV as described in the complaint on 26.03.2022 with an independent third-party seller i.e. BK ENTERPRISES i.e. OP No.2 who have been deleted in view of memo filed by complainants. Further, it is admitted that an invoice dated 26.03.2023 for an amount of Rs.59,990/- was issued by OP No.2. Further, OP No.1 in written version contended that product was delivered to the complainant on 28.03.2023 and complainants had approached OP No.1's concerned team on 29.03.2023 stating that he has received different product.

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6. Further, in the written version of OP No.1 it is contended that upon receipt of complainants grievance, the OP No.1 enquired about the matter and advised the complainant that a replacement request will be created, but the complainant requires to self-ship the product back to the seller, as the product is large and heavy and so it is not eligible for a pick-up and shipping cost has to be borne by complainant which will refunded back upon producing proof of the amount spent by him on shipping the product back.

7. Further, in the written version of the OP No.1 it is contended that after receipt of the grievance raised by the complainant OP No.1 enquired with OP No.2 and OP No.2 stated that product self-shipped by complainant has not reached to him till date and hence OP No.1 has not issued a refund and so there is no any deficiency of service on the part of the OP No.1.

8. Further, in the written version of OP No.1 it is contended that OP NO.1/ASSPL operates and manages the e-commerce market place at www.amazon.in where in lakhs of third-party sellers and buyers interact and conduct their transactions and as such is an

'intermediary' in terms of Section 2(1)(w) of the Information Technology Act, 2000 ("IT Act") and so OP No.1 is not liable. Further, in the written version of OP No.1 it is contended that complainant is not a consumer of OP No.1 and hence prayed for dismissal of the complaint.

9. To substantiate their case the complainants have filed affidavit evidence and produced 25 documents which are marked as Ex.P1 to P25. On the contrary, the OP No.1to substantiate its contentions taken in written version got filed affidavit evidence of its Authorized Representative and got marked documents Ex.R1 to R5. Both parties have filed their respective written arguments. Heard oral arguments from both side. We have perused the entire records including written arguments submitted by both side.

10. The points that arise for our consideration and determination are as under:

1. Whether complainants prove that there is a deficiency of service on the part of the OPs?

2. What order?

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11. Answers to the above said points are as under;

POINT NO.1: In the Affirmative;

POINT NO.3: As per final order for the following;

REASONS

12. **POINT NO.1:-** Looking to complaint averments and written version as well as documentary evidence on record, it appears that there is no dispute that complainant No.1 has ordered Samsung TV (Samsung 125 CM (50 Inches) 4K Ultra HD Smart Qled TV QA50A60AAKLXL) through OP No.1's application through his Amazon account by showing the shipping address of the complainant No.2 for delivering the ordered product and there is no dispute about payment for the same by credit card (Payment Transaction ID:Topq7SIgioZtqHwoES3w) through the amazon payment portal. Further, it is also undisputed fact that the delivered product was different model and so complainant No.1 raised the request for return of the product and further it is also undisputed fact that OP No.1 agreed to refund the product amount of Rs.59,990/- to complainant No.1. It is also undisputed

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fact that till today the OP No.1 has not refunded the amount of Rs.59,990/- to the complainant which was paid by the complainant for purchasing Samsung TV.

13. The main contention taken by the OP No.1 is that OP No.2 has not received the product from the complainant No.1 and so refund of the amount to the complainant No.1 is not made. But to this effect, OP No.1 has not adduced any cogent and acceptable evidence to show that the complainant No.1 has not returned the product for refund of the amount of the said product. On the contrary, the complainants have adduced sufficient documents to show that the complainant No.1 has returned the product to OP No.2 as directed by OP No.1. It is worthwhile to note here that atleast OP No.1 ought to have produced affidavit evidence of OP No.2 to show that the product sent by the complainant has not been reached to him. But admittedly OP No.1 has not done so. Further, looking to entire provisions of Section 79 of I.T.Act, 2000, it appears that there is no any substance in the contention taken by the OP No.1 that the complainant No.1 is not the consumer of OP No.1 and there is no any deficiency of service on the part of OP

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No.1. Therefore, looking to facts and circumstance of the case and evidence on record, we are of the considered view that the complainants have proved that there is a deficiency of service on the part of the OP No.1 since OP No.1 has not refund the amount paid by the complainant No.1 for purchasing Samsung TV though the said product has been returned to the seller for the reason that the said product was not the product ordered by the complainant No.1 and the said act of the OP No.1 amounts to unfair trade practice. Hence, Point No.1 is answered in the affirmative.

14. **POINT NO.2:-** The complainants have prayed for refund of Rs.59,990/- and also compensation of Rs.15,000/- per month for the deficiency of service. The complainants' claim for compensation of Rs.15,000/- per month appears to be exorbitant and abnormal and there is no any base of the same. However, we feel it would meet ends of justice if we direct the OP No.1 to make refund of Rs.59,990/- along with interest @ 8% p.a. from the date of payment made by the complainant No.1 i.e. on 26.03.2023 till realization to the complainant No.1

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and also to pay Rs.2,000/- as compensation towards mental agony and harassment and Rs.2000/- towards cost of litigation expenses to the complainant No.1. Therefore, in view of answer on point No.1and for the foregoing reasons the complainants' complaint has to be allowed in part. In the result, we proceed to pass the following:

ORDER

The complainants', complaint filed under Section 35 of the Consumer Protection Act, 2019 is allowed in part.

The OP No.1 is directed to refund Rs.59,990/- (Rupees Fifty Nine Thousand Nine Hundred Ninety Only) along with interest @ 8% p.a. from the date from the date of payment made by the complainant No.1 i.e. on 26.03.2023 till realization to the complainant No.1.

The OP No.1 is also directed to pay Rs.2,000/- (Rupees Two Thousand only) as compensation towards mental agony and harassment and Rs.2000/- (Rupees Two

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Thousand only) towards cost of litigation expenses to the complainant No.1.

The OP No.1 shall comply the above said order within 45 days, failing which OP No.1 is liable to pay interest @ 10% p.a. from the date of on amount of payment made by the complainant No.1 i.e. on 26.03.2023 Rs.59,990/- (Rupees Fifty Nine Thousand Nine Hundred Ninety Only) till realization.

Supply free copy of this order to both parties. Return spare copies of the pleadings and evidence to the parties.

(Dictated to the Stenographer, typed by her directly on computer, and then corrected, signed and then pronounced by the open Commission on this the **06th day of April, 2024**).

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(RENUKADEVI DESHPANDE)	(V.ANURADHA)	(VIJAYKUMAR.M.PAWALE)
MEMBER	MEMBER	PRESIDENT

//ANNEXURE//

Witness examined for the complainants' side:

Mr.Shamanth.K&Mr.Sachin.R, who being the complainants have filed their affidavit.

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List of documents filed by the complainants:

1. Ex.P1: Copy of the Tax Invoice,
2. Ex.P2: Copy of the screen shot of the approved return request by the seller,
3. Ex.P3& P4: Copy of the e-maildated 29.03.2023 sent by OP No.1 to complainant No.1 regarding acceptance of return request and copy of additional instructions for mailing package etc.,
4. Ex.P5: Copy of the screen shot taken from amazon application from about the confirmation of the sellers address along with the description of the product and return authorisation label,
5. Ex.P6: Copy of the e-mail sent to complainant No.1 from OP informing about the replacement of the product,
6. Ex.P7: Photocopy of the confirmation of the delivery of the product taken by the complainant No.1 during the delivery of the product wherein the description of the product is mentioned,
7. Ex.P8: The Photocopy of the label on the package of the product mentioning wherein description of the product,
8. Ex.P9: Return summary sent by OP to complainant No.1 mentioning about the acceptance of return request of the complainant No.1,
9. Ex.P10: Copy of the invoice and trip details of the product delivered to the seller by thecomplainant No.1 through porter courier services,

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10. Ex.P11: Self-shipping receipt sent by the complainant No.1 to the amazon after the product reached to the seller's address mentioning the receiver's name and phone number given by the amazon,
11. Ex.P12 to P20: Copies of the e-mails correspondence,
12. Ex.P21: The screen shot of the complete details of the seller with regard to the search result based on GSTIN-UIN: 29CDMPK3429A1ZM extracted from goods and services tax,
13. Ex.P22: Screen shots of the whatsappconversation between complainant No.1 and OP No.2 (seller) mentioning that the amazon is already picked up the TV and the refund issue will be resolved within the period of 30 days and informing the complainant No.1 to contact amazon customer care return center,
14. Ex.P23 & 24: Copies of the e-mails,
15. Ex.P25: Certificate under Section 65B of Indian Evidence Act.

Witness examined on behalf of the Opposite Party:

Mr.Rahul Narayanan, who being the Authorized Representative of OP has filed his affidavit.

List of documents filed by the Opposite Party:

1. Ex.R1: Copy of the Authorization,

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2. Ex.R2: Copy of the Tax Invoice,
3. Ex.R3: Copy of the guidelines for self-shipping product,
4. Ex.R4: Copy of the return policy and refund of shipping cost policy,
5. Ex.R5: Copy of conditions of use and conditions of sale.

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(RENUKADEVI DESHPANDE)
MEMBER

(V.ANURADHA)
MEMBER

(VIJAYKUMAR.M.PAWALE)
PRESIDENT