

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, GURDASPUR  
DISTRICT ADMINISTRATIVE COMPLEX , B BLOCK ,2nd Floor Room No. 328**

**Complaint Case No. CC/169/2022  
( Date of Filing : 05 Aug 2022 )**

1. Armaan Bakshi  
S/o Kanwal Bakshi R/o Happy School Jail road Gurdaspur .....Complainant(s)

Versus

1. Flipkart Internet Pvt. Ltd.  
Building Alyssa Begonia and clove Embassy Tech Village Outer Ring road  
Karnatka India through its M.D .....Opp.Party(s)

**BEFORE:**

**Sh.Lalit Mohan Dogra PRESIDENT  
Sh.Bhagwan Singh Matharu. MEMBER**

**PRESENT: Smt. B.K.Bajwa & Ms.Shubpreet Kaur, Advs., Advocate for the Complainant 1  
Sh.Kamal Kishore Attri, Adv., Advocate for the Opp. Party 1**

**Dated : 08 Nov 2023**

**Final Order / Judgement**

Complaint No: 169 of 2022.

Date of Institution: 05.08.2022.

Date of order: 08.11.2023.

Armaan Bakshi Son of Kanwal Bakshi, resident of Happy School, Jail Road, Gurdaspur, Tehsil and District Gurdaspur, Punjab.

.....Complainant.

VERSUS

Flipkart Internet Pvt. Ltd, Building Alyssa, Begonia & Clove Embassy Tech. Village, Outer Ring Road, Devarabeesanahallu Village, Karnataka, India, through its Managing Director / Authorized Signatory. Pin Code – 560103.

.....Opposite

Party.

Consumer Complaint u/s 35 of the Consumer Protection Act.

Present: For the Complainant: Smt.B.K. Bajwa, Advocate.

For the Opposite Party: Sh.K.K. Attri, Advocate.

**Quorum: Sh.Lalit Mohan Dogra, President, Sh.Bhagwan Singh Matharu, Member.**

**ORDER****Lalit Mohan Dogra, President.**

Armaan Bakshi, Complainant (here-in-after referred to as complainant) has filed this complaint under section 35 of the Consumer Protection Act, (here-in-after referred to as 'Act') against Flipkart Internet Pvt. Ltd. (here-in-after referred to as 'opposite party').

2. Briefly stated, the case of the complainant is that the Complainant ordered a product from the opposite party through the Flipkart mobile application on 01.07.2022. It is further pleaded that product that was ordered is a 25 litre black color backpack namely 'Okami wolf Nomad laptop backpack'. It is pleaded that the product was delivered at the home address of the Complainant on 04.07.2022 at 12:26 P.M and the price of the product was Rs.3,149/- and the payment for the same was made in cash by the option of cash on delivery. It is alleged that immediately after receiving the product package, when the Complainant opened the packaging, it was found out that the packaging was completely empty and the above said backpack along with the necessary documents like bill and warranty card etc. were missing from the packaging and Complainant instantly clicked two photos of the empty package. It is further pleaded that after finding out that the packaging was completely empty and the product was missing, the Complainant raised the issue through the Opposite Party's Flipkart mobile application and made a refund request on the same day i.e. on dated 04.07.2022. It is further pleaded that through E-mail dated 06.07.2022 the Opposite Party asked the Complainant to provide the Opposite Party with a copy of Complainant's I.D proof and consent for the collection, use and disclosure of his information. It is further pleaded that on the same day i.e. on dated 06.07.2022 the Complainant sent a copy of his driving license as ID proof which was requested by the Opposite Party along with Complainant's consent for the collection, use and disclosure of his information. It is further alleged that on dated 06.07.2022 the Opposite Party notified the Complainant on the Flipkart mobile application that his request for refund has been rejected. It is further pleaded that thereafter, the Complainant made a phone call to the customer service of the Opposite Party regarding this issue of rejection of refund request and the Opposite Party's customer service agent provided the solution that he will raise a request for refund from his side once again and asked the Complainant to again send an identity proof along with consent for its usage. It is further alleged that the Complainant followed the instructions of the Opposite Party's customer service agent but all his efforts went in vain as on 08.07.2022 the refund request which was raised by the customer service agent on behalf of the Complainant was again rejected without any reasonable cause. It is further alleged that again on the instructions of the Opposite Party's customer service agent, the Complainant raised another request for refund for the 3<sup>rd</sup> time but the Opposite Party rejected the same on 10.07.2022 without any reasonable cause. It is further alleged that the Complainant has repeatedly asked the Opposite Party to refund his money which was paid towards the above said product but the Opposite Party has illegally rejected his genuine request for three times without giving any reasonable cause. It is further pleaded that due to this illegal act and conduct of the opposite party the complainant has suffered financial loss and also suffered mental agony, Physical harassment and inconvenience. It is further pleaded that there is a clear cut deficiency in service on the part of the opposite party.

On this backdrop of facts, the complainant has alleged deficiency and negligence in service and unfair trade practice on the part of the opposite party and prayed that necessary directions may kindly be issued to the opposite party to refund the product amount of Rs.3,194/-, along with the amount of Rs.50,000/- towards the harassment and mental agony suffered by the Complainant and Rs.20,000/- towards the litigation expenses. In the alternative it is prayed that the Opposite Party may kindly be directed to pay Rs.20,000/- to the Complainant along with an interest @ 18% per annum, from the date of filing the present complaint till its realization in the interest of justice.

3. Upon notice, the opposite party appeared through counsel and contested the complaint and filing their written reply by taking the preliminary objections that the Opposite Party (here-in-after referred to as the "Answering Opposite Party") seeks to submit the following Preliminary Submissions, each of which has been taken in the alternative and is without prejudice to the other. It is pleaded that the Complainant has suppressed

true and material facts from this Hon'ble Commission and cooked all crooked stories of sufferings. It is further pleaded that the present complaint is not maintainable and liable to be dismissed against the Answering Opposite Party. It is further pleaded that the said 'Flipkart Platform' is an electronic platform which acts as an intermediary to facilitate sale transactions between independent third-party sellers and independent end customers. It is further pleaded that the business of the Answering Opposite Party falls within the definition of an "intermediary" under Section 2(1) (w) of the Information Technology Act, 2000, which is reproduced hereunder:

*"Intermediary", with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, webhosting service providers, search engines, online payment sites, online-auction sites, online- market places and cyber cafes;"*

It is further pleaded that the Complainant doesn't fall under the category of consumer of the Answering Opposite Party under the provisions of the Consumer Protection Act as the Answering Opposite Party is neither a 'trader' nor a 'service provider' and there does not exist any privity of contract between the Complainant and the Answering Opposite Party. It is further pleaded that the user(s) of the Flipkart Platform are bound by the Terms of Use enumerated on the Flipkart Platform which clearly state that the contract of sale is a bipartite contract between the buyer and the seller only and the Answering Opposite Party is not a party to it. On the Flipkart Platform i.e. <http://www.flipkart.com/s/terms>, it is clearly mentioned that **"All contractual/commercial terms are offered by and agreed to between the buyer and the seller alone. The contractual/commercial terms include without limitation price, shipping cost, payment method, payment terms, date, period and mode of delivery, warranties related to products and services and after sale services related to products and services. Flipkart does not have any control or does not determine or advise or in any way involve itself in the offering or acceptance of such contractual/commercial terms between the buyer and the seller."** It is further pleaded that the Answering Opposite Party has no knowledge and idea, that the product has been sent intact or allegedly an empty box is delivered to the Complainant because it was delivered by the seller (who is not impleaded as a necessary party) and it is the seller's duty and responsibility to send intact and original product to his customers. It is further pleaded that the return or refund of the product comes under purview of the Seller (who is not impleaded as a necessary party) only and not the Answering Opposite Party. It is further pleaded that the Answering Opposite Party acts as an intermediary to facilitate sale transactions between independent third-party sellers and independent customers and the Answering Opposite Party has no role in providing warranty / guarantee of the product sold by an independent seller through the Flipkart Platform of the Answering Opposite Party. It is further pleaded that the Answering Opposite Party, under the circumstances and for the reasons stated above, is neither liable to refund the cost / replacement of the product nor to pay any compensation to the Complainant. It is further pleaded that there is no deficiency in services on the part of the Answering Opposite Party and by no stretch of imagination, it can be said that the Answering Opposite Party is involved in any unfair trade practices for the reasons enumerated above. It is further pleaded that no dispute, as contemplated under the Consumer Protection Act, is caused to have arisen between the Complainant and the Answering Opposite Party and thus, the relief prayed for, is ought to be dismissed against the Answering Opposite Party.

On merits, the opposite party have reiterated their stand as taken in legal objections and denied all the averments of the complaint and there is no deficiency in service on the part of the opposite party. In the end, the opposite party prayed for dismissal of complaint with costs.

4. Learned counsel for the complainant has tendered into evidence affidavit of Armaan Bakshi, (Complainant) as Ex.CW-1/A alongwith other documents as Ex.C-1 to Ex.C-11.

5. Learned counsel for the opposite party has tendered into evidence affidavit of Ms. Sanchi Chhabra, (Authorized Signatory of opposite party) as Ex.OPW-1/A alongwith other document as Ex.OP-1.

6. Rejoinder filed by the complainant.
7. Written arguments not filed by both the parties.
8. Counsel for the complainant has argued that complainant ordered a product from the opposite party on 01.07.2022 and the product was delivered on 04.07.2022 at 12:26 P.M against price of Rs.3,149/-. It is further argued that when the Complainant opened the packaging, it was found empty and even documents like bill and warranty card etc. were missing and Complainant raised the issue through the Opposite Party's Flipkart mobile application and made a refund request on the same day i.e. on dated 04.07.2022. but all the requests for refund were rejected by the opposite party which amounts to deficiency in service.
9. On the other hand counsel for the opposite party has argued that the 'Flipkart Platform' is an electronic platform which acts as an intermediary to facilitate sale transactions between independent third-party sellers and independent end customers and as such complaint if any has to be filed against the seller and as such compliant is liable to be dismissed.
10. We have heard the counsel for the parties and gone through the record.
11. It is admitted fact that complainant had ordered a product from the opposite party through the Flipkart mobile application on 01.07.2022. It is further admitted fact that product ordered was a 25 litre black color backpack namely 'Okami wolf Nomad laptop backpack'. It is admitted fact that the product was delivered at the home address of the Complainant on 04.07.2022 at 12:26 P.M and the price of the product was Rs.3,149/- and the payment for the same was made in cash by the option of cash on delivery. The disputed question is that whether the opposite party is liable for the loss suffered by the complainant as the complainant has received empty box and the product and documents were missing. This fact is duly proved through photo graphs on record. The plea of the opposite party that opposite party is only online platform available to the buyers and sellers of the product and has no role to play supply of the product, but the said plea is not acceptable as the perusal of documents and e mails and massages shows that the payment of Rs.3149/- has been sent to the account of the opposite party. As such opposite party cannot escape from its liability by taking shelter of plea of only provider of online market place services. Reliance is being place on order of Hon'ble State Consumer Disputed Redressal Commission Pb. Chandigarh First Appeal No.321 of 2019 decided on 22.02.2022 case titled as Flipkart Internet Private Limted. Vs. Arish Juneja etc. wherein the Hon'ble State Consumer Disputed Redressal Commission Pb. Chandigarh has held as under:-

*"The other plea taken by the appellant/opposite party that the business of appellant falls within the definition of an "intermediary" u/S 2(i)(w) of the Information Technology Act, 2000. There is no privity of contract with the complainant, as it merely provides an online marketplace where the independent third party sellers can list their products for sale; therefore, the sellers themselves are responsible for their respective listing of products on the website and Opposite Party is neither responsible for products that are listed on the website by various third party sellers as well as their delivery. The payment has been received by the appellant/opposite party, therefore, it cannot be said that there is no privity of contract between the respondent/complainant and appellant/opposite party. Once the appellant/opposite party No.1 has accepted the payment, then the appellant/opposite party No.1 also along with respondent/opposite party No.2 is responsible for delivery of short products and of the quality of products. Therefore, the ground taken in the appeal is not justified".*

As such after reliance upon the above referred case law and going through the facts of case and evidence, this Commission has come to the conclusion that refusal to refund the amount by the opposite party to the complainant amounts to deficiency in service on the part of the opposite party.

12. As such present complaint is partly allowed and opposite party is directed to refund the amount of Rs.3,149/- to the complainant alongwith interest @ 9% P.A. from the date of filing of the complaint till

realization. Opposite party is also directed to pay compensation of Rs.1,000/- for mental tension and harassment and costs of litigation. Entire exercise shall be completed within 30 days from the date of receipt of copy of this order.

13. The complaint could not be decided within the stipulated period due to heavy pendency of Court Cases.

14. Copy of the order be communicated to the parties free of charges. File be consigned.

(Lalit Mohan Dogra)

President.

Announced:

(B.S.Matharu)

Nov. 08, 2023

Member.

\*YP\*

**[ Sh.Lalit Mohan Dogra]  
PRESIDENT**

**[ Sh.Bhagwan Singh Matharu.]  
MEMBER**