

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION: NORTH-EAST**GOVT. OF NCT OF DELHI****D.C. OFFICE COMPLEX, BUNKAR VIHAR, NAND NAGRI, DELHI-93****Complaint Case No. 47/2019****In the matter of:**

Sh. Vipin Bharti,

S/o Sh. R.S Bharti,

R/o C-5/17, Yamuna Vihar,

Delhi-110053

Complainant

Versus

1. M/s Lenovo India Pvt. Ltd.
Through Its Principal officer
Ferns Icon, Level-2, Doddanekundi,
Bengaluru, Karnataka, 560037
2. M/s Flipkart Internet Pvt. Ltd.
Through its Principal Officer
Vaishanavi Summit, No. 6/B, 7th Main,
80ft. Road 3rd Block, Koramangala,
Bengaluru, Karnataka 560034
3. M/s Strength Service Pvt. Ltd.
Through Its Principal Officer,

WA-88, First Floor, above ICICI Bank,
Shakarapur, Delhi-110092

Opposite Parties

DATE OF INSTITUTION 10.04.19
JUDGMENT RESERVED
ON: 10.04.23
DATE OF ORDER: 08.08.23

CORAM:

Surinder Kumar Sharma, President

Anil Kumar Bamba, Member

ORDER**Anil Kumar Bamba, Member**

1. The case of the Complainant is that he has purchased a mobile phone from Flipkart.com on 17.07.17 and the mobile was having frightfully network coverage issue. He has lodged a complaint with the Opposite Party No.2 and an engineer came to the Complainant and refused to replace the mobile in question and stated that “every Motorola mobile is having same network issue”. The Complainant stated that the mobile was not usable just because of very weak signal coverage problem in 4G mode. The Complainant against escalated his case to Opposite Party No.2 then one another engineer of Opposite Party No.2 came to Complainant and he also accepted that the mobile phone is having frightfully network coverage issue and he approved his replacement request. On 28.07.17 the Complainant received replaced mobile phone but he found the same issue with new one then he again lodged a complaint with Opposite Party No.2, then they told the Complainant to visit Opposite Party No.1 service centre and to get a report from them that they don’t have any software to solve this issue. On 02.08.17 the Complainant went to service centre of Opposite Party No.1 and he get the same report from them in written but Opposite Party No.2 refused to refund the amount of the mobile in question to the Complainant and told that he has to take help from Opposite Party No.1 service centre only. On 05.08.17 the Complainant again went to Opposite Party No.1 service centre, but one engineer of Opposite Party No.1 stated that your mobile phone is of low price that is why he is having signal issue in mobile and Complainant should buy the other mobile phone of high price range to get good network coverage. Thereafter by support of service centre head they submitted his mobile phone. The Complainant stated that after getting call from service centre the Complainant visited service centre to collect mobile phone in question on 31.08.17 but Complainant found same issue with mobile phone and then Complainant refused to accept mobile phone in question and lodged online complaint with Motorola. On 03.11.17 Complainant again received call that his mobile phone is ready but problem was not resolved. The Complainant also received letter from Ms. Megha Anand with assurance that mobile phone is repaired and to collect it else they will close complaint of Complainant. The Complainant received call from service centre and on 23.11.17 the Complainant visited service centre and found that the issue was not resolved. On 24.11.17 Complainant sent mails to Motorola about the issues and notified them that issue was still not resolved. On 29.11.17 and 10.01.18 Complainant received mails with assurance that repairing is done and to collect the mobile phone in question. The Complainant stated that he sent mails on various dates with question “what will be their next course of action if mobile phone

is still not get repaired?”. The Opposite Party did not responded back to Complainant for his question. On 23.01.18 Complainant again received mails to collect his mobile phone in question thereafter on 27.01.18 Complainant visited service centre of Opposite Party but issue was still not resolved. The Complainant sent mail to Motorola to intimate that he is going to take legal action against them and on 09.02.18 they replied to Complainant that Complainant can take legal action against them. The Complainant has prayed to return the amount to him which he has paid to the Opposite Party and Rs. 1,00,000/- on account of mental harassment. He further prayed for Rs. 5,000/- for litigation expenses.

2. The defence of the Opposite Party No.1 and Opposite Party No.3 was struck off vide order dated 21.11.19.

Case of the Opposite Party No.2

3. The Opposite Party No.2 contested the case and filed written statement. The Opposite Party No.2 submitted that the Complainant might have mistakenly considered the Opposite Party No.2 as the seller of the product and this is complete negligence on the part of the Complainant. The Opposite Party No.2 is not the seller of any product but mere an online intermediary providing a common platform to the buyer and independent third party seller. The company is engaged, among others, in providing trading/selling facility over the internet through its website www.flipkart.com and mobile application. The Opposite Party No.2 provides online marketplace platform/technology and/or other mechanism/services to the sellers and buyers of products to facilitate the transactions, electronic commerce for various goods, by and between respective buyers and sellers and enables them to deal in various categories of goods.
4. It is further submitted 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. The independent third party sellers use the Flipkart platform to list, advertise, and offer to sell their products to the users/buyers who visit the Flipkart Platform. Once a buyer accepts the offer of sale of the products made by the third party seller on the Flipkart Platform, the seller is intimated electronically and is required to ensure that the products are made available and delivered in accordance to the delivery terms as per the terms for sale displayed by seller on the Flipkart Platform.
5. It is submitted that the business of the Opposite Party No.2 falls within the definition of an “intermediary” u/s 2 (1)(w) of the Information Technology Act, 2000. It is further submitted that any kind of assurance, whether in terms of warranty on the products, price, discounts, promotional offers, replacement/refund, repair and after sale services or otherwise, are offered and provided by the manufacturer or the respective sellers of the products sold on Flipkart Platform. The Opposite Party No.2 neither offers nor provides any assurance and /or offers warranty to the end buyers of the product. Further, the seller of the product provides 10 days replacement warranty on its products wherein the buyers can claim replacement for the product if the product qualifies the quality check test arranged by the seller from the expert technicians. Thus, if the product is actually found defective by the seller within the said 10 days replacement policy, the seller provides replacement to the buyers.
6. The Opposite Party No.2 submits that the it is neither a trader nor a service provider and there does not exists any privity of contract between the Complainant and the Opposite Party No.2, and therefore it is submitted that the Complainant has wrongly arrayed Opposite Party No.2 in the present complaint and hence the complaint is bad for mis-joinder of party. Further, the Opposite Party No.2 submitted that the complaint is frivolous and vexatious and has been filed with malafide intentions of causing harassment to the Opposite Party No.2 and the complaint is liable to be dismissed.

Rejoinder to the written statement of Opposite Party No.2

7. The Complainant filed rejoinder to the written statement of Opposite Party No.2 wherein the Complainant has denied the pleas raised by the Opposite Party No.2 and has reiterated the assertion made in the complaint.

Evidence of the Complainant

8. The Complainant in support of his complaint filed his affidavit wherein he has supported the averments made in the complaint.

Evidence of the Opposite Party No.2

9. In order to prove its case Opposite Party No.2 has filed affidavit of Ms. Sheetal Tiwari, Authorized Signatory of Opposite Party No.2, wherein the averments made in the written statement of Opposite Party No.2 have been supported.

Arguments & Conclusion

10. We have heard the Complainant and the Ld. Counsel for Opposite Party No.2. We have also perused the file and the written arguments filed by Opposite Party No.2.
11. The case of the Complainant is that he has purchased a mobile phone from Flipkart.com on 17.07.17. The Complainant stated that the mobile in question was having a network coverage issue from the date of purchase of the mobile. The Complainant lodged various complaints to flipkart and they sent engineer at residence of Complainant and engineer accepted the network coverage issue and the Complainant received replaced mobile phone but he found the same issue with new one then he again lodged a complaint with Opposite Party No.2, then they advised the Complainant to visit the service centre of Lenovo. The Complainant visited service centre of Lenovo many times to resolve the issue in mobile phone in question but the said issue was not rectified by Lenovo service centre. The Complainant stated that he found the manufacturing fault in mobile phone and Complainant raised complaint to manufacturer but manufacturer did not provide resolution to the Complainant. Hence, this shows deficiency in service on behalf of Opposite Parties.
12. On the other hand, the case of the Opposite Party No. 2 is that the Opposite Party No.2 is not the seller of any product but mere an online intermediary providing a common platform to the buyer and independent third party seller. It is neither a trader nor a service provider and there does not exist any privity of contract between the Complainant and the Opposite Party No.2.
13. In the similar case **titled as Amazon Seller Services Pvt. Ltd. Vs. Gopal Krishan, First Appeal No.27 of 2017 decided on 17.02.2017 Hon'ble National Consumer Dispute Redressal Commission**. In the said case, through a web domain(online portal) owned, managed and controlled by Amazon Seller Services Pvt. Ltd., a mobile handset Xiaomi Redmi Note 3 was purchased by Sh. Gopal Krishan on 11.05.2016 for an amount of Rs. 9,998/-. Payment was made online and the handset was found defective. In the said case, it was observed that it was bounden duty of the facilitator to ensure that goods sold through any individual are manufactured as per quality standard. If the goods purchased through online are found not up to the mark, online portal through which goods were purchased, cannot escape its liability. Further, the contention raised that as per terms and conditions of sale, no liability can be fastened upon the appellant (Amazon), was rejected by this Commission by observing as under:-
 "8.....An agent, who sells a product, is duty bound to ensure its quality and if the product is found defective, agent shall be vicariously liable for the loss caused to the purchaser, alongwith the manufacturer of the product. It was so held by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi in the case titled as Emerging India Real Assets Pvt. Ltd & Anr. Vs. Kamer Chand & Anr. Revision petition no. 765 of 2016 decided on 30.03.2016."
14. Not only above, in a subsequent judgment passed by **Hon'ble National Consumer Disputes Redressal Commission in the case of Amazon Seller Services Pvt. Ltd. Vs. Dinesh & Ors., First Appeal No. 21 of 2018 decided on 16.02.2018** above view as expressed in the case of Amazon Seller Services Pvt. Ltd. Vs. Gopal Krishan (supra) was reiterated.
15. In view of the facts and circumstances of the present case as well as the judgment cited above, we allow the complaint. Opposite Party No.1 and Opposite Party No.2 are directed to pay jointly and severally the cost of the mobile phone in question of Rs. 9,999/- to the Complainant along with interest @ 6 % p.a. from the date of filing the complaint till recovery and Complainant is directed to hand over the alleged mobile to the Opposite Party No.2 for compliance of this order. The Opposite Party No.1 and Opposite Party No.2 are further directed to pay Rs. 15,000/- for mental harassment and Rs. 5,000/- as litigation expenses jointly and severally to the Complainant along with interest @ 6 % p.a. from the date of this order till recovery.
16. Order announced on 08.08.23.

Copy of this order be given to the parties free of cost.

File be consigned to Record Room.

(Anil Kumar Bamba)

(Surinder Kumar Sharma)

Member

President