

Date of Complaint Filed:13.08.2019

Date of Reservation : 13.06.2023

Date of Order : 27.06.2023

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,**

**CHENNAI (SOUTH), CHENNAI-3.**

**PRESENT: TMT. B. JIJAA, M.L., : PRESIDENT**  
**THIRU. T.R. SIVAKUMHAR, B.A., B.L., : MEMBER I**  
**THIRU. S. NANDAGOPALAN., B.Sc., MBA., : MEMBER II**

**CONSUMER COMPLAINT No.221/2019**

**TUESDAY, THE 27<sup>th</sup> DAY OF JUNE 2023**

V.Vasanthakumar,

S/o. P.Vanaraj.

Flat No.29, A Block, 3<sup>rd</sup> Floor,

Pushpa Nagar Main Road,

LIG Flats, Valluvarkottam Colony,

Nungambakkam,

Chennai-600 034.

..Complainant.

-Vs-

1.M/s.Apple India Private Limited,

19<sup>th</sup> Floor, Concorde Tower C,

UB City, No.24, Vittal Mallaya Road,

Bangalore-560 001.

2.M/s.B2X Service Solution India Pvt Ltd,

Sharmi Devi Plaza, Opposite to Park Hyatt Hotel,

Ground Floor, Old No.38, New No.7,  
Sardar Patel Road, Guindy,  
Chennai-600 032.

3.icare Apple Authorised Service Centre.

No.47, Cit Colony, TT Krishnamachari Road,  
Alwarpet, Chennai-600 018.

..Opposite Parties.

\* \* \* \* \*

**Counsel for the Complainant : M/s. M. Raja, R. Ragavendran**

**Counsel for 1<sup>st</sup> Opposite Party : M/s. J. Anand, D. Kumar,**

**Nandhakumar, Esha Suchak**

**Counsel for 2<sup>nd</sup> Opposite Party : Exparte on 30.10.2019**

**Counsel for 3<sup>rd</sup> Opposite Party : Exparte on 18.09.2019**

On perusal of records and upon hearing the oral arguments of the counsel for Complainant and treating the written arguments as oral arguments on endorsement made by the Counsel for the 1<sup>st</sup> Opposite Party, this Commission delivered the following:

### **ORDER**

**Pronounced by the President Tmt. B. Jijaa, M.L.,**

(i) The Complainant has filed this complaint as against the Opposite Parties under section 12 of the Consumer Protection Act, 1986 and prays to rectify the defects of Complainant's Apple iPhone Space Grey 32 GB bearing Serial No.FYDX90GHHFLR and IMEI N.355306080298666 at free of cost without insisting any payments for the same and in alternative to pay a purchase cost of Rs.22,499/- along with interest @18% from the date of purchase and to pay a sum of Rs.1,00,000/- as compensation to the Complainant for his mental pressure, stress, mental agony, loss of education etc along with interest @18% from the date of complaint and to pay a sum of Rs.50,000/- towards the cost.

**I. The averments of Complaint in brief are as follows:-**

1. The Complainant submitted that 1<sup>st</sup> Opposite Party is leading manufacturer of mobile phones under the brand name of Apple iPhone and the 2<sup>nd</sup> & 3<sup>rd</sup> Opposite Parties are the agents of the 1<sup>st</sup> Opposite Party, who are conducting authorized service centre for the mobile phones manufactured by the 1<sup>st</sup> Opposite Party. The Complainant purchased Apple i-Phone Space Grey 32 GB, bearing Serial No.FYDX90GHHFLR and IMEI No.355306080298666 for a sum of Rs.22,499/- from Flipkart on 17.10.2018 and the said mobile phone carried warranty period of one year from the date of its purchase. From the date of said purchase, the Complainant is using the said mobile phone with due care and diligence to support his studies and contact his friends & relatives. In the course of the said usage, the said Apple -iPhone started to malfunction and did not power on.

2. The Complainant immediately reported the said malfunction before the 2<sup>nd</sup> Opposite Party on 07.01.2019 and entrusted to the 2<sup>nd</sup> Opposite Party by the Complainant for rectification of the said defects and patiently waited for the said rectification. On 21.01.2019, the 2<sup>nd</sup> Opposite Party called upon the Complainant and informed that the said Apple iPhone was beyond economical repair and directed the Complainant to take back the said Apple iPhone.

3. On continuous pleading of the Complainant, the 2<sup>nd</sup> Opposite Party advised the Complainant to contact the Apple Customer Care and the Complainant immediately contacted the said customer care and explained the aforesaid factual scenario and requested to rectify the defects of the said Apple iPhone. The Customer Service Executive advised the Complainant to present the said Apple iPhone before the 3<sup>rd</sup> Opposite Party and also registered the Complainant's grievance in Complaint No.100733539801. As per the direction of the Customer Care Executive, the Complainant submitted the said Apple iPhone before the 3<sup>rd</sup> Opposite Party for rectification of defects and the same was also informed to the 1<sup>st</sup> Opposite Party. On verification, the 3<sup>rd</sup> Opposite Party confirmed that the said Apple iPhone is covered under warranty and also issued Job No.IMT1796282 on 22.01.2019. On 31.01.2019, the 3<sup>rd</sup> Opposite Party contacted the Complainant and conveyed that the said mobile phone cannot be repaired for the reason that it lacks one internal screw and display wire was severed. The 3<sup>rd</sup> Opposite Party further conveyed that the said repairs will not be covered under warranty. Shocked and surprised by the said claim, the Complainant approached the 3<sup>rd</sup> Opposite Party in person and explained that the said mobile phone was earlier entrusted for repair to the 2<sup>nd</sup> Opposite Party and any defects in the internal parts has to be attributed to the 2<sup>nd</sup> Opposite Party alone but the 3<sup>rd</sup> Opposite Party without heeding the same, returned the said mobile phone quoting that the said mobile phone has extensive physical damage. The 3<sup>rd</sup> Opposite Party further sent a mail dated 31.01.2019 stating that they found modification and returned the unit. The email dated 31.01.2019 & Delivery report are contrary to each other. It is pertinent to state that the said mobile phone was entrusted with 2<sup>nd</sup> Opposite Party for repairs on 07.01.2019 and the same was returned to the Complainant on 22.01.2019 and on the direction of the Customer Care Executive, the Complainant once again entrusted the said mobile phone with the 3<sup>rd</sup> Opposite Party for repairs immediately on 22.01.2019 and the same was returned by the 3<sup>rd</sup> Opposite Party on 31.01.2019. Further the 2<sup>nd</sup> & 3<sup>rd</sup> Opposite Parties have confirmed that the said mobile phone doesn't have any physical damages and only after verifying the same, the said mobile phones have been taken for service by the Opposite Parties. Hence any internal or physical damage of the said mobile phone should be attributed to the 2<sup>nd</sup> Opposite Party alone. Thus it is very much clear that there is no fault on the part of the Complainant and the Opposite Parties are duty bound to rectify the defects in the said mobile phone. Hence the complaint.

**II. Written Version filed by the 1<sup>st</sup> Opposite Party in brief:**

4. The Complainant purchased iPhone 65 32 GB Space Grey on 17.10.2018 bearing IMEI No.355306080298666 ("iPhone") from Flip kart. The Complainant approached the 2<sup>nd</sup> Opposite Party for the

first time on 07.01.2019 with the issues pertaining to iPhone not powering on. Upon deposit of the iPhone, a Service report was issued to the Complainant. The Service report has remarked the status of the iPhone "unit beyond economical repair, VMI & MI failed at apple RC team iPhone returned without repairs". As the issue was not rectified by the 2<sup>nd</sup> Opposite Party, the Complainant was informed that the iPhone needs to be sent to the Apple Repair Centre for further diagnosis.

5. The Apple Repair Centre found that there was extensive physical damage in the iPhone, and for that reason, the Apple Repair Centre could not carry out an In-Warranty Repair. Therefore, the 2<sup>nd</sup> Opposite Party offered the Complainant a paid repair service for the iPhone. However, the offer of the 2<sup>nd</sup> Opposite Party was refused by the Complainant.

6. Further the Complainant approached the Apple Customer Care call Centre and raised the same issue pertaining to the iPhone and Apple customer Care advised the Complainant that the decision of the 2<sup>nd</sup> Opposite Party stands final but the Complainant insisted on In-warranty Services for which the Apple Customer Care told the Complainant to take one more advise to his satisfaction.

7. Thereafter, the Complainant approached the 3<sup>rd</sup> Opposite Party with same issue of the iPhone not powering on. Upon deposit of the iPhone with 3<sup>rd</sup> Opposite Party, the iPhone was diagnosed with the extensive physical damage and the same was clearly remarked in the product service summary report stating "the reason we can't repair your product is because it has extensive physical damage" which was issued to the Complainant.

8. Subsequently, the Complainant issued a Legal Notice dated 23.02.2019 to Opposite Parties seeking In-warranty repair along with compensation for the alleged mental pressure, stress, mental agony and loss of education. It is submitted that liability of a manufacturer arises only when there is inherent defect in the product when the product was manufactured and it is settled position of law that manufacturer cannot be made liable until it is proved by adducing expert evidence that there was any manufacturing defect. Hence prayed to dismiss the complaint.

### **III. The 2<sup>nd</sup> and 3<sup>rd</sup> Opposite Parties set ex parte:**

Notice was sent to the Opposite Parties and was duly served to the Opposite Parties. Despite the notice being served to the 2<sup>nd</sup> and 3<sup>rd</sup> Opposite Parties they failed to appear before this Commission either in person or through counsel on the hearing date and had not filed any written version on their side. Hence the 2<sup>nd</sup> and 3<sup>rd</sup> Opposite Parties were called absent and set ex-parte. Subsequently, the case was proceeded to be heard on merits.

**IV.** The Complainant has filed his proof affidavit and Written Arguments, in support of his claim in the complaint and has filed 7 documents which are marked as Ex.A-1 to Ex.A-7. The 1<sup>st</sup> Opposite Party had submitted its proof affidavit and Written Arguments. On the side of 1<sup>st</sup> Opposite Party Ex.B1 alone was marked.

### **V. Points for Consideration:-**

**1. Whether there is any deficiency in service on the part of the Opposite Parties?**

**2. Whether the Complainant is entitled for the reliefs sought for?**

**3. To what other relief, the Complainant is entitled to?**

**POINT NO. 1 :-**

9. The Complainant had purchased Apple iPhone 6s (Space Grey, 32 GB) bearing IMEI No.355306080298666 for a sum of Rs.22,499/- from Flipkart on 17.10.2018 with a warranty period of one year from the date of its purchase, as per Ex.A-1. The contention of the Complainant is that from the date of said purchase, he was using the said mobile phone with due care and diligence to support his studies and contact his friends and relatives. In the course of the said usage, the said Apple iPhone started to malfunction and did not power on. The Complainant immediately reported the said malfunction to the 2<sup>nd</sup> Opposite Party on 07.01.2019 and sought for rectification of the same. After physical verification, the 2<sup>nd</sup> Opposite Party confirmed that the said Apple iPhone was covered under the warranty period and registered the Complainant's grievance in Job No.CHN070119555832. It was further informed by the 2<sup>nd</sup> Opposite Party that the said notified defects would be rectified within 7 working days at the cost of manufacturer i.e. 1<sup>st</sup> Opposite Party. The said Apple iPhone was entrusted to the 2<sup>nd</sup> Opposite Party by the Complainant for rectification of the said defects. On 21.01.2019, the 2<sup>nd</sup> Opposite Party called upon the Complainant and informed that the said Apple iPhone was beyond economical repair and directed the Complainant to take back the said Apple iPhone. When the Complainant explained that the said Apple iPhone is covered under warranty any defects arising out in the said warranty period ought to be rectified by the Opposite Parties at their cost and expenses but the 2<sup>nd</sup> Opposite Party refused to heed the same and returned the said Apple iPhone. The Complainant had contacted the customer care and requested to rectify the defects of the said Apple iPhone. The Customer Care Executive advised the Complainant to present the said Apple iPhone before the 3<sup>rd</sup> Opposite Party and also registered the Complainant's grievance in Complaint No.100733539801. As per the direction of the Customer Care Executive, the Complainant submitted the said Apple iPhone before the 3<sup>rd</sup> Opposite Party for rectification defects and the same was also informed to the 1<sup>st</sup> Opposite Party. On verification, the 3<sup>rd</sup> Opposite Party confirmed that the said Apple iPhone is covered under warranty and also issued Job No.IMT1796282 on 22.01.2019. It was assured by the 3<sup>rd</sup> Opposite Party to rectify the defects of the said Apple iPhone within period of 7 days. On 31.01.2019, the 3<sup>rd</sup> Opposite Party contacted the Complainant and conveyed that the said mobile phone cannot be repaired for the reason that it lacks one internal screw and display wire was severed and returned the said mobile phone quoting that the said mobile phone has extensive physical damage. The 3<sup>rd</sup> Opposite Party further sent a mail dated 31.01.2019 stating that they found modification and returned the unit. The email dated 31.01.2019 and Delivery report are contrary to each other.

10. The 1<sup>st</sup> Opposite Party had admitted that the Complainant purchased iPhone 6S 32 GB Space Gray on 17.10.2018 bearing IMEI NO. 355306080298666 from Flip kart. It was also admitted that the Complainant approached the 2<sup>nd</sup> Opposite Party for the first time on 07.01 2019 with the issues pertaining to iPhone not powering on. The contention of the 1<sup>st</sup> Opposite Party is that upon deposit of the iPhone, a Service report was issued to the Complainant. The Service report has remarked the status of the iPhone "unit beyond economical repair, VMI & MI failed at apple RC team iPhone returned without repairs". As the issue was not rectified by the 2<sup>nd</sup> Opposite Party, the Complainant was informed that the iPhone needs to be sent to the Apple Repair Centre for further diagnosis. The Apple Repair Centre found that there was extensive physical damage in the iPhone, and for that reason, the Apple Repair Centre could not carry out an In-Warranty Repair. Therefore, the 2<sup>nd</sup> Opposite Party offered the Complainant a paid repair service for the iPhone. However, the offer of the 2<sup>nd</sup> Opposite Party was refused by the Complainant. Further the Complainant approached the Apple Customer Care call Centre and raised the same issue pertaining to the iPhone and Apple customer Care advised the Complainant that the decision of the 2<sup>nd</sup> Opposite Party stands final but the Complainant insisted on In-warranty Services for which the Apple Customer Care told the Complainant to take one more advise to his satisfaction. Thereafter, the

Complainant approached the 3<sup>rd</sup> Opposite Party with same issue of the iPhone not powering on. Upon deposit of the iPhone with 3<sup>rd</sup> Opposite Party, the iPhone was diagnosed with the extensive physical damage and the same was clearly remarked in the product service summary report stating "the reason we can't repair your product is because it has extensive physical damage" which was issued to the Complainant.

11. As per Ex.A-2 it is evident that the said iPhone was entrusted with 2<sup>nd</sup> Opposite Party for repairs on 07.01.2019, where the problem reported by the customer is mentioned as "Not Powering On", under the head "Condition of Equipment" it is mentioned as "need to inspect internally". However the iPhone was returned to the Complainant on 22.01.2019 and the Delivery Report, Ex.A-3 states that "Unit beyond Economical Repair. VMI & MI failed at apple RC Team, iPhone returned without repairs". As per Ex.A-4 on 22.01.2019 the Complainant had once again entrusted the said mobile phone with the 3<sup>rd</sup> Opposite Party for repairs, where it is mentioned that the condition of equipment as "Normal Usage" covered under warranty. However, the iPhone was returned by the 3<sup>rd</sup> Opposite Party on 31.01.2019, stating that they had found modifications.

12. The contention of the 1<sup>st</sup> Opposite Party that the Apple Repair Centre found that there was extensive physical damage in the iPhone, and for that reason, the Apple Repair Centre could not carry out an In-Warranty Repair, therefore, the 2<sup>nd</sup> Opposite Party offered the Complainant a paid repair service for the iPhone, which was refused by the Complainant cannot be accepted as the 2<sup>nd</sup> and 3<sup>rd</sup> Opposite Parties had taken the mobile for service after verification that the said mobile phone doesn't have any physical damages. Moreover in the service report issued by the 2<sup>nd</sup> Opposite Party under the head "Condition of Equipment" there is no mention about the physical damage of the said mobile phone. It is also admitted by the Opposite Parties that the said mobile phone is covered under warranty period of one year and hence any defects arising in the said period ought to be rectified by the Opposite Parties at their cost and cannot compel the Complainant to accept for paid up services when the mobile is under warranty.

13. While the Service Report dated 07.01.2019, Ex.A-2, Delivery Report dated 22.01.2019, Ex.A-3 of the 2<sup>nd</sup> Opposite Parties and the Repair Acceptance Form dated 22.01.2019, Ex.A-4 of the 3<sup>rd</sup> Opposite Party does not show about the physical damage of the mobile phone, the reasoning given by the 3<sup>rd</sup> Opposite Party is that the Apple Repair Centre found that there was extensive physical damage in the iPhone, and for that reason, the Apple Repair Centre could not carry out an In-Warranty Repair and therefore, the 2<sup>nd</sup> Opposite Party offered the Complainant a paid repair service for the iPhone, however, the offer of the 2<sup>nd</sup> Opposite Party was refused by the Complainant. The Opposite Party contended that as per Ex.A-5, that they could not repair the product because it has extensive physical damage which was not stated anywhere prior to acceptance of the mobile for repair. In Ex.A-6 which is the email sent by the 3<sup>rd</sup> Opposite Party, the reported issues is given as " Not powering on. Using HDI found device will not turn on. Unable to run test due to not powering on. Checked the iPhone found no sign of liquid traces. Verified the IMEI number and Serial number. Hence iPhone sent to repair centre for further screening and they found modification and returned the same unit. Hence returning the same to the customer". As per Ex.A-6, physical damage of the mobile has not been mentioned. Thus from the perusal of exhibits it is clear that there was no physical damage of iPhone at the time of handing over of the mobile to the Opposite Parties and as there is no fault on the part of the Complainant and the Opposite Parties are duty bound to rectify the defects in the said mobile phone, within the warranty period.

14. Hence this Commission is of the considered view that the Opposite Parties having not rectified the defects in the iPhone purchased by the Complainant which is within the warranty period inspite of several communications had committed deficiency in service. Accordingly, Point No.1 is answered.

### **POINTS NO 2 & 3:**

15. As discussed and decided in Point No,1 that the Opposite Parties had committed deficiency in service, by not rectifying the defect of the iPhone, the Opposite Parties are liable to rectify the defect of the Complainant's Apple i-Phone Space Grey 32 GB bearing Serial No.FYDX90GHHFLR and IMEI No.355306080298666 or in

alternative pay the purchase cost of Rs.22,499/- with interest at the rate of 9% per annum from the date of purchase. Accordingly the Points are answered.

**In the result, the complaint is allowed in part. The Opposite Parties 1,2 and 3 are directed jointly and severally to rectify the defects of Complainant's Apple iPhone Space Grey 32 GB bearing Serial No.FYDX90GHHFLR and IMEI No.355306080298666 or in alternative to pay the purchase cost of Rs.22,499/- (Rupees Twenty Two Thousand Four Hundred and Ninety Nine Only) and to pay a sum of Rs.10,000/- (Rupees Ten Thousand Only) towards deficiency of service and mental agony, along with cost of Rs.5,000/- (Rupees Five Thousand Only) to the Complainant, within 8 weeks from the date of receipt of this order, failing which the above amount of Rs.22,499/- shall carry interest at the rate of 9% p.a from the date of receipt of this order till the date of realisation.**

Dictated to Steno-Typist, transcribed and typed by her, corrected and pronounced by us in the Open Commission, on 27<sup>th</sup> of June 2023.

**S. NANDAGOPALAN**

**T.R. SIVAKUMHAR**

**B.JIJAA**

**MEMBER II**

**MEMBER I**

**PRESIDENT**

**List of documents filed on the side of the Complainant:-**

Ex.A1	13.10.2018	Invoice
Ex.A2	07.01.2019	Service report issued by the 2 <sup>nd</sup> Opposite Party
Ex.A3	22.01.2019	Delivery report issued by the 2 <sup>nd</sup> Opposite Party
Ex.A4	22.01.2019	Repair acceptance form issued by the 3 <sup>rd</sup> Opposite Party
Ex.A5		Delivery report issued by the 3 <sup>rd</sup> Opposite Party
Ex.A6	31.01.2019	Email report issued by the 3 <sup>rd</sup> Opposite Party
Ex.A7	23.02.2019	Legal Notice issued against the Opposite Parties along with acknowledgement card

**List of documents filed on the side of the 1<sup>st</sup> Opposite Party:-**

Ex.B1		Apple Terms of Warranty
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**List of documents filed on the side of the 2<sup>nd</sup> & 3<sup>rd</sup> Opposite Parties:-**

-NIL-

**S. NANDAGOPALAN**

**T.R. SIVAKUMHAR**

**B.JIJAA**

**MEMBER II**

**MEMBER I**

**PRESIDENT**