

BEFORE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION  
SHIMLA (H.P.)

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Complaint No.: 141/2016  
Presented on: 25.05.2016  
Decided on : 05.12.2023

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Shri Narinder Kumar,  
Son of Shri T.R. Bhardwaj,  
R/o C/o Colors of India, Awadh Palace,  
The Mall, Shimla, H.P.

....Complainant

Versus

1. M/s. Apple India Private Ltd.,  
19<sup>th</sup> Floor, Concorde Tower-C,  
UB City No.24, Vittal Mallya Marg,  
Bangalore-560001,  
Through its Chief Executive Officer.
2. Amazon Seller Services Pvt. Ltd.,  
Brigade Gateway, 8<sup>th</sup> Floor,  
23/1, Dr. Raj Kumar Road,  
Malleshwaram (W), Bengaluru,  
Karnatka-560065,  
Through its Chief Executive Officer.
3. M/s. ARHUM IT,  
28/3004 A Nedungelil,  
Ponnet Temple Road,  
Ernakulam, Kochi, Kerala,  
Through its Chief Executive Officer.

....Opposite Parties

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**Coram :**

Dr. Baldev Singh, President.  
Ms. Yogita Dutta, Member.  
Mr. Jagdev Singh Raitka, Member.

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For the Complainant: Mr. Swaran Sharma, Advocate, vice  
Mr. Peeyush Verma, Advocate.  
For the Opposite Party No.1: Mr. Dheeraj Kanwar, Advocate  
For the Opposite Party No.2: Ex-parte.  
For the Opposite Party No.3: Ex-parte.

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**ORDER:**

Present complaint has been filed by Shri Narender Bhardwaj (hereinafter referred to as the complainant) under Sections 11&12 of the Consumer Protection Act 1986 (hereinafter referred to as the Act) against M/s. Apple India Private Ltd. (hereinafter referred to as the OP No.1), M/s. Amazon (hereinafter referred to as the OP No.2) and M/s.

ARHUM IT (hereinafter referred to as the OP No.3), on account of deficiency in service and unfair trade practice, seeking relief therein that the OPs be directed to refund Rs.35,699/- alongwith interest, to pay Rs.15,000/- as damages and Rs.5,500/- as costs of litigation etc.

2. The case of the complainant in brief is that the complainant in May, 2015 placed an order with the OP No. 2 for the purchase of an Apple iPhone 5s (Silver, 16 GB), manufactured by the OP No.1 and the complainant received a confirmation dated 04.06.2015 stating therein that the cell phone in question would be delivered by 16.06.2015 for a consideration amount of Rs.35,599/- and would be sold by the OP No 3. It is stated that the complainant thereafter received the cell phone and put the same to use. It is stated that the cell phone in question carried warranty of a period of one year, during which period the manufacturer of the cell phone offered free of cost repair in case of any trouble arising in its functioning. It is stated that the iPhone purchased by the complainant from the OPs all of a sudden became non functional in May, 2016 as the screen of the same completely blacked out and the same could not be put to use any longer. It is stated that the complainant notified the OP No.1 of the defect through mail and requested for either removal of the defect or replacement of the set as the defect had arisen during the warranty period, however, the complainant on 17.05.2016 received a mail from the OP No.1 stating to the utter shock, disbelief and surprise of the complainant, that their system was showing the activation date of the iPhone in question to be 26.03.2014 and the country of purchase was not India and the set in question had been purchased outside India. It is stated that the complainant through the OP No.2 had ordered for a brand new iPhone and had paid the consideration amount for a brand new iPhone to the tune of Rs.35,699/- and now it transpires that the OPs No. 2 and 3 in conspiracy with each other had thrust upon the complainant some defective and second hand set despite

charging the cost of a brand new set. It is stated that the OP No.1 is also equally responsible for the act and conduct of the OPs No. 2 and 3 because the OP No.1 Company has its own playstore where every new buyer is registered and only thereafter the purchased iPhone becomes functional. It is stated that the factum of second sale of the set became evident to the OP No 1, the moment the complainant got himself registered in May, 2015, but the OP No.1 kept mum and intentionally did not disclose the sale of a second hand set to the complainant. It is stated that it is crystal clear from the facts stated hereinabove that the OPs are not only indulged in an unfair trade practice, but are also guilty of deficiency in service for which they are jointly and severally liable to be penalised and put to exceptional costs. It is prayed that the complaint may be allowed.

3. After admission of complaint, notices were issued to the OPs. The OP No.3 was duly served and when failed to appear on 27.07.2016 then was ordered to be proceeded ex-parte.

4. The complaint so filed has been opposed by the OP No.1 by filing reply taking preliminary objections therein regarding maintainability etc. It is stated that it is a common market principle and also an established position of law that consumers who purchase an illegal product are not eligible to claim any relief under the Consumer Protection Act, 1986. It is stated that the provisions and terms of the Apple Warranty specifically exclude service of products which are not purchased in the country where it is being given for service, which is the case in the present matter. It is stated that in the present case the OPs No. 2&3 had sold the iPhone which was not specifically imported into India for being sold in India and this is against the import Policy of India as electronic goods specifically imported into India can only be sold and no electronic goods which are not specifically imported into India can be sold in India either directly or indirectly. It is stated that as per the records maintained by the replying OP iPhone in question has been

resold by the OP No.2 to the complainant. It is stated that OP No.1 only sells original iPhones which are legally imported by it for selling in India and it does not sell second hand/ refurbished iPhones directly or indirectly in India. It is stated that OPs No.2 and 3 have sold the present iPhone to the complainant without any direction or authorisation by the OP No.1. It is stated that when OP No.1 tried to check the credentials of the iPhone in question with the IMEI serial number, Complainant's iPhone reflected that it was purchased on 26.03.2014 and outside India. It is stated that it is very clearly mentioned in the warranty policies that the service of the iPhones is limited to the country of purchase, there is a limited one year warranty and nevertheless the second hand/refurbished iPhones cannot be serviced by OP No.1. It is stated that there is neither any deficiency in service nor unfair trade practice on the part of the replying OP and prayed that the complaint may be dismissed.

5. The complaint so filed has been opposed by the OP No.2 by filing reply taking preliminary objections therein regarding maintainability, complainant is not a consumer, misjoinder of parties, jurisdiction, etc. It is stated that replying OP neither sells nor offers to sell any products and merely provides an online marketplace where independent third party sellers can list their products for sale and the sellers themselves (and not the replying OP) are responsible for their respective listings and products on the Website. It is stated that the replying OP is neither responsible for the products that are listed on the Website by various third party sellers, nor does the replying OP intervene or influence any customers in any manner and moreover the replying OP is not involved in the sale transaction between the customer and seller. It is stated that the conditions relating to the customer's use of the Website (as expressly available on the Website) and specifically agreed by the customers state that the replying OP is only a facilitator and cannot be a party to or control in any manner any sale transaction

on the Website and the contract of sale of products on the Website is strictly a bipartite contract between the customer and the seller. It is stated that complainant has not bought any goods from replying OP nor has the complainant paid any amount/consideration to replying OP and the goods have been bought by the complainant from the independent third party seller selling its products on the Website operated by the replying OP. It is stated that the complainant contacted Customer Support team of replying OP on June 24, 2015 to inform that he has received a grey coloured product, but the order was placed for a silver colour Apple Iphone and customer support team of replying OP contacted the seller and the seller replied stating that he can replace the order with a silver coloured product. It is stated that the complainant returned the order and since the replacement order was not delivered, an A-Z guarantee (which is raised by OP No.2 against the seller, in case refund has to be initiated) claim was filed on July 21, 2015 and the replacement order got delivered to the complainant on July 31, 2015, hence the claim was not granted. It is stated that the complainant again contacted Customer Support team of the OP No.2 on May 20, 2016 to inform that he tried to claim the warranty on the device, however, service center of OP No.1 informed that the product was purchased on March 26, 2015 and the warranty period has expired. It is stated that the Customer Support team of OP No.2 contacted the seller and seller asked the complainant to send the IMEI number and the scanned copy of the invoice and the seller did not respond to any phone calls since May 14, 2016. It is stated that the seller again contacted the complainant on June 11, 2016 and informed that he was hospitalized due to which he was unable to respond to any phone calls and asked the customer to return the phone using the speed post and informed that he will get it replaced immediately within 7 working days of the receipt of the product. It is stated that the seller also added that he would provide the complainant with all genuine documents of the

product from the company. It is stated that the order placed by the complainant is a Merchant Fulfilled Network order ("MFN") wherein the sale and the delivery of the Product is being undertaken by the sellers themselves and the role of OP No.2 is limited only to that of listing the product on its Website. It is stated that further, the grievances of the complainant are limited to alleged manufacturing defects in the Product on which the replying OP has no control. It is stated that the relationship shared between the replying OP and the sellers is on a principal to principal basis, and either of the parties are neither willing to, nor assume any responsibility for any action, inaction, warranties, liabilities, etc. qua the other. It is stated that there is neither any deficiency in service nor unfair trade practice on the part of the replying OP and prayed that the complaint may be dismissed.

6. The parties adduced evidence in support of their contentions. On behalf of the complainant affidavit of complainant was tendered in evidence. Complainant has also filed documents in support of his contentions. On behalf of OP No.1 affidavit of Sandeep Karmakar was tendered in evidence. OP No.1 has also filed documents in support of its contentions. On behalf of OP No.2 affidavit of Rahul Sundaram was tendered in evidence. OP No.2 has also filed documents in support of its contentions. The OP No.2 after filing reply and evidence did not appear to argue the case, despite knowledge and notices and accordingly was ordered to be proceeded ex-parte vide order dated 03.11.2023.

7. We have heard learned counsels for the parties and have also gone through the entire record, carefully.

8. It is clear from the record that the complainant placed an order for purchase of iPhone, in question, with the OP No.2 of which the OP No.1 is manufacturer and the OP No.3 is the seller. The specific plea of the complainant is that the order was placed in the month of May 2015 and confirmation was

received on 04.06.2015. It is also the plea of the complainant that as per confirmation letter the delivery of iPhone was received by the complainant, for which he has paid Rs.35,699/- to the OPs. It is stated that there was warranty of one year and within the warranty period the phone in question developed problem in its functioning as the screen got completely blacked out and the complainant reported the matter to the OP No.1 and it was informed by the OP No.1 that the activation date of the iPhone, in question, was 26.03.2014 and perhaps the same has been resold to the complainant by the OPs No.2 and 3. It is stated that the complainant has ordered for a brand new phone for which he had paid amount of Rs.35,699/- and the OPs No.2 and 3 have supplied a defective second-hand iPhone to the complainant and the OP No.1 is also part of the conspiracy. Notice of complaint was issued to the OP No.3 and the OP No.3 after service of notice failed to put appearance and ordered to be proceeded ex-parte vide order dated 27.07.2016. The OPs No.1&2 contested the complaint by filing reply. The stand of the OP No.1 is that the OPs No.2&3 have sold iPhone which was not specifically imported to India and has been sold against the import policy of India meant for electronic goods. It is also stated that the iPhone sold to the complainant reflected that it was purchased on 26.03.2014 and outside India. It is also stated that there is no deficiency in service or unfair trade practice on the part of the OP No.1 so far selling of second handset/refurbished iPhone is concerned. The stand of the OP No.2 is that it is a platform and uses to sell the items of different sellers and same is the case in the present matter. It is stated that the complaint was received from the complainant and the OP No.2 then contacted the seller and claim of complainant was not processed because the OP No.3 was ready to replace the iPhone because the complainant had ordered silver iPhone and not the grey colour iPhone. It is also stated that the OP No.2 made contract in this regard with the seller and OP No.3 assured the complainant to return the iPhone

within seven working days, but for a considerable time the OP No.3 did not respond. The OP No.3 thereafter on 11.06.2016 contacted the complainant and told him that he/OP No.3 was in the hospital and so could not respond the calls and assured to do the needful. It is stated that there is no deficiency in service on the part of the OP No.2 because it has no control over the manufacturing defects.

9. It is clear from the foregoing discussion that the complainant had placed order for the purchase of silver colour-iPhone with the OP No.2, but grey colour iPhone was sold by the OP No.3 to the complainant of which the OP No.1 is manufacturer. The specific plea of the complainant is that he had placed order for the silver colour iPhone, but the OPs supplied grey colour iPhone and the same started giving problem within the warranty period. In this regard the complainant contacted the OPs, but his grievance was not redressed by the OPs. It is very much clear from the record that the complainant has been able to prove his case against the OPs through evidence on record. Moreover, the OP No.2 has also admitted that the complainant ordered for silver iPhone but grey colour iPhone was supplied to the complainant. Not only this, the plea taken by the OP No. 1 in reply that as per its record the iPhone, in question, was initially activated/purchased on 26.03.2014 and it appears to have been resold by the OPs No.2&3 to the complainant strengthens the case of the complainant. The OP No.1 has also taken the plea of liability inside and outside the country, which plea appears to be not relevant. The OP No.3 has not contested the complaint and opted to be proceeded ex-parte, however, the OP No.2 contested the complaint and admitted that the seller was contacted and he agreed to provide silver colour iPhone in place of grey colour iPhone which was supplied to the complainant earlier, but the OP No.2 had no role in it.

10. The complainant has been able to prove his case through evidence on record so far his grievance is concerned and

the OP No.1 has admitted in reply that the OP No.2 and 3 had resold the iPhone to the complainant though the complainant had ordered brand new iPhone and made payment for the same. Moreover, the grey colour iPhone was supplied in place of silver colour iPhone ordered. The selling of second-hand/refurbished iPhone instead of brand new, amounts to deficiency in service as well as unfair trade practice, therefore, we are of the considered opinion that the complaint deserves to be allowed and the OPs No.2 and 3 are liable to indemnify the complainant for the loss caused to him on their part because of selling second-hand phone and OP No.2 could not have displayed such kind of set for sale on its platform.

11. In view of the foregoing discussion and reasons assigned therein the complaint is ordered to be allowed and the OPs No.2&3 are directed to refund jointly and severally a sum of Rs.35,699/- to the complainant alongwith interest @ 9% per annum, from the date of filing of the complaint till its actual payment. The OPs No.2&3 are also directed to pay jointly and severally a sum of Rs.10,000/- to the complainant as compensation for mental harassment and agony and sum of Rs.5,000/- as costs of litigation. The complaint against OP No.1 is dismissed. The OPs No.2&3 are directed to comply this order within 45 days from the date of passing of the order. Copy of this order be supplied to the parties free of cost as per rule. The file after its due completion be consigned to the Record Room.

Announced on this the 5<sup>th</sup> day of December, 2023.

(Dr. Baldev Singh)  
President

(Yogita Dutta)  
Member

(Jagdev Singh Raitka)  
Member