

**BEFORE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION, PANIPAT**

Complaint case No.	:	368 of 2022
Date of Institution	:	13.12.2022
Date of Decision	:	01.01.2024

Sapna Bhandari, Resident of C-1/12, Sector-4, ELDECO Panipat, Near Toll Plaza, Panipat, Tehsil and District Panipat.

.....Complainant.

Versus

1. Manager, Nyka Fashion Pvt. Ltd. is an Indian company, 104, Vasani Udyog Bhavan Senapati Bapat Marg, Lower Parel MUMBAI Mumbai, City, Maharashtra 400013.
2. Manager, Delhivery courier office, N24-N34, S24-S34, Air Cargo Logistics Centre-II, Opposite Gate 6 Cargo Terminal, IGI Airport, New Delhi-110037.

.....Opposite Parties

Complaint Under Section 35 of Consumer Protection Act, 2019

BEFORE Dr. R. K. Dogra, President.
Dr. Rekha Chaudhary, Member.

Present: Complainant in person.
Opposite party No.1 ex parte vide order dated 25.01.2023
Shri Sunil Kumar Wadhwa, Advocate for opposite party No.2.

ORDER (DR.R.K.DOGRA, PRESIDENT)

The instant complaint has been filed by complainant **Sapna Bhandari u/s 35 of the Consumer Protection Act, 2019** against the opposite parties alleging deficiency in service and unfair trade practice on the part of the opposite parties.

FACTUAL ASPECTS

2 In brief, the case of the complainant is that the complainant on dated 15.08.2021 had ordered some beauty products vide ID NYK-79793557-4149605 amounting to Rs.18,227/- from respondent No.1 and made the payment through online. The product was delivered on 17.08.2021. The parcel worth Rs.17,541/- was delivered to the flat of the complainant by Delhi Courier company even after it was locked, the parcel was kept outside the flat. When the complainant came home in the evening, the complainant found the box pressed and in a damaged condition and oily substances were oozing out. The complainant informed the opposite party through Email and also contacted the call centre and also shared the photographs and videos of the products. The respondents company had issued ticket No.6302240920 to the complainant on 17.08.2021 but no resolution was done. The company delivered the 14 products through two parcels. One parcel contained goods worth Rs.17,541/- and the second parcel contained goods worth approximately Rs.686, out of which the parcel containing products worth Rs.17,541/- was damaged. The complainant was continuously sending emails to the Nyka company but the company always gave fake reply. Due to this act and conduct of respondents, the complainant has come to this Commission with the prayer to direct the respondents to pay Rs.1,00,000/- as compensation on account of mental pain and agony along-with Rs.17,541/- cost of products and Rs.1970/- litigation expenses.

3 Upon notice, opposite party No.2 appeared and filed written statement but opposite party No.1 did not appear before this Commission and was proceeded against ex-parte vide order dated 25.01.2023.

4. In reply, OP No.2 submitted that the answering opposite party is in the business of delivery of packaged couriers. The answering opposite party is not authorized to verify the contents, quality or quantity of the item to be delivered or open the package whatsoever. The answering opposite party is only obliged to deliver the item ordered to the delivery locations as assigned. It is pertinent to mention here that the OP No.1 is responsible for packaging and quality of the goods. The answering opposite party simply performs the task of picking up an already packaged product from the seller and delivering it to the buyer with the sole responsibility. Hence, there is no deficiency in service on the part of the answering opposite party and prayed for dismissal of present complaint.

EVIDENCE LED BY COMPLAINANT

5 The proprietor in support of his case tendered in documentary evidence his affidavit as Ex.CW1/A and closed the evidence after tendering the following documents;

Exhibits	Details
Ex.C1	Legal Notice
Ex.C2	Tax Invoice
Ex.C3	Gmail notifications
Ex.C4 To Ex.C8	Correspondence between complainant and opposite parties

6 On the other hand, learned counsel for the opposite party No.2 has tendered into evidence the affidavit of Pankaj **Deswal, Security Executive as Exhibit RW1/A** and closed the evidence after tendering the following documents;

Exhibits	Details
Ex.R1	Authority Letter
Ex.R2	Delivery Services Agreement

7 After considering the arguments and perusing the whole documents placed on file by the complainant, the following **points** have been found to be made out:-

- 1 Whether the complainant is entitled to get refund along with compensation etc? OPC**
- 2 Whether the complaint of the complainant is not maintainable in the present form OPR?**

STAND TAKEN BY COMPLAINANT

8 The counsel for the complainant has contended that the complainant on dated 15.08.2021 had ordered some beauty products vide ID NYK-79793557-4149605 amounting to Rs.18,227/- from respondent No.1 and made the payment through online. The product was delivered on 17.08.2021. The parcel worth Rs.17,541/- was delivered to the flat of the complainant by Delhi Courier company even after it was locked, the parcel was kept outside the flat. When the complainant came home in the evening, the complainant found the box pressed and in a damaged condition and oily substances were oozing out. The complainant informed the opposite party through Email and also contacted the call centre and also shared

the photographs and videos of the products. The respondents company had issued ticket No.6302240920 to the complainant on 17.08.2021 but no resolution was done. So, it is, therefore, requested that the present complaint may kindly be accepted and the opposite parties be directed to refund the cost of products along-with interest and costs.

STAND TAKEN BY OP No.2

9 The counsel for the OP No.2 has submitted that the answering opposite party is not authorized to verify the contents, quality or quantity of the item to be delivered or open the package whatsoever. The answering opposite party is only obliged to deliver the item ordered to the delivery locations as assigned. It is pertinent to mention here that the OP No.1 is responsible for packaging and quality of the goods. The answering opposite party simply performs the task of picking up an already packaged product from the seller and delivering it to the buyer with the sole responsibility. Hence, there is no deficiency in service on the part of the answering opposite party and hence the present complaint may kindly be dismissed with special costs.

10 We have heard the arguments advanced by the learned counsel for the parties and perused the whole record available on file. Our point-wise findings with reasons thereof are as under:-

Findings

Point No.1

11 In order to establish this point, the complainant has placed on record the invoice of products in question **Ex.C2** showing the cost price of beauty

products as Rs.17,541.75/-. The perusal of file shows that the products were ordered by the complainant and delivery of the products was made by the OP No.1 at the residence of complainant but it has been proved by the complainant that the said products were left by the OP unattended as the house of the complainant was found locked to the delivery boy and as and when complainant received the products which were found unattended on the gate of the house of the complainant and the material was oozing out from the cartoon in which the products were packed. Finding this position, complainant requested the opposite party and informed about the products which was leaking and thereafter company asked the complainant to send the products back and on the request of OP No.1, the said products were sent back by the complainant but no money was return by the opposite party to the complainant. As per document Ex.C7, it is established that the products were received by the company and no money was sent back by the company to the complainant. Once it has been admitted by the company that the products were not in proper order and same were received back by the company, then it was the duty of the company to refund the cost price of the products. Neither the products were exchanged nor any amounts was paid by the opposite party to the complainant, then certainly there is deficiency in service on the part of the opposite party and complainant is entitled for receiving the money back and despite requests not even a single penny was returned to the complainant for which complainant was entitled. All the necessary documents Ex.C1 to Ex.C7 placed on the file have supported the version of the complainant and even the stand of the complainant remained un rebutted against OP No.1, so, it can be concluded that

this point which is duly proved by the complainant is liable to be accepted and same is hereby returned in favour of the complainant and against the opposite parties.

POINT NO.2

12 So far as Point No.2 is concerned, having a glance over the detailed findings on Point No.1, this point becomes redundant as no cogent evidence has been led by Ops to prove that there is no deficiency in service. Rather this point has been disproved by the complainant by leading cogent and convincing evidence. Hence, this point is hereby returned against the Ops.

Final Order

13 Having heard the rival contentions raised by learned counsel for the parties and after perusing the whole record available on the file and evidence of the complainant this Commission is of the firm opinion that there is deficiency in service on the part of the opposite parties. Hence, the present complaint stands partly allowed and the opposite parties are directed to refund the cost price of the products Rs.17,541.75/- to the complainant within 45 days of this order along-with interest @9% per annum from the date of filing of this complaint till its actual realization. Opposite parties are further directed to pay Rs.5,000/- as compensation and Rs.5,500/- as litigation expenses failing which the complainant will be entitled to recover the whole amount with interest @12% from the date of order till its actual realization. **The opposite parties are held liable jointly and severally for making payment to the complainant**

14 In case, opposite parties fails to do so, then the complainant can file the execution petition under section 71 of Consumer Protection Act, 2019 and

in that eventuality, the opposite parties may also be liable for prosecution under Section 72 of the said Act. Copies of this order be sent to the party free of costs, as per rules, and this order be promptly uploaded on the website of this Commission. File be consigned to the record room after due compliance.

**Announced in Open Court
Dated:01.01.2024**

**Sd/-
(Dr. R.K. Dogra)
President,
District Consumer Disputes
Redressal Commission, Panipat**

**Sd/-
(Dr. Rekha Chaudhary)
Member,
District Consumer Disputes
Redressal Commission, Panipat**