

**DISTRICT CONSUMER DISPUTES REDRESSAL FORUM  
THIRUVALLUR  
No.1-D, C.V.NAIDU SALAI, 1st CROSS STREET,  
THIRUVALLUR-602 001**

**Complaint Case No. CC/180/2022  
( Date of Filing : 17 Oct 2022 )**

1. S.Murugan

S/o Seeyalan, No.1, Annai Therasa Nagar, Kakkalur,  
Thiruvallur-602001.

Tiruvallur

TAMIL NADU

.....Complainant(s)

Versus

1. Flipkart India Pvt. Ltd., & 2 Another

1.The Manager, Flipkart India Pvt. Ltd., No.37/21, Chamiers  
Road, Reynampet, Chennai-18.

Chennai

TAMIL NADU

2. Thomson TV Consulting Rooms Pvt. Ltd.,

2.The Manager, Thomson TV Consulting Rooms Pvt. Ltd.,  
No.111, Alamathi, 2 Revenue Village, Thiruvallur High Road,  
Sholavaram Panchayat Union, Thiruvallur District-600067.

Tiruvallur

TAMIL NADU

3. Thomson TV

3.The Manager, Thomson TV, Head Office, F Block, Okhla  
Phase-II, Okhla Industrial Area, New Delhi-110020.

New Delhi

.....Opp.Party(s)

**BEFORE:**

**TMT.Dr.S.M.LATHA MAHESWARI, M.A.,M.L.,Ph.D(Law) PRESIDENT**

**THIRU.P.VINODH KUMAR, B.Sc., B.L., MEMBER**

**THIRU.P.MURUGAN, M.Com, ICWA (Inter), B.L., MEMBER**

**PRESENT:D.Vishvabharathi-C, Advocate for the Complainant 1**

**Set Exparte - OP1 to 3, Advocate for the Opp. Party 1**

**-, Advocate for the Opp. Party 1**

**-, Advocate for the Opp. Party 1**

**Dated : 10 Aug 2023**

**Final Order / Judgement**

Date of Filing

: 05.09.2022

Date of disposal

: 10.08.2023

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION**

**THIRUVALLUR**

**BEFORE TMT. Dr.S.M. LATHA MAHESWARI, M.A.,M.L, Ph.D (Law)  
..... PRESIDENT**

**THIRU.P.VINODH KUMAR, B.Sc., BL.,  
.....MEMBER-I**

**THIRU.P.MURUGAN, M.COM.,ICWA (Inter),B.L.,  
.....MEMBER-II**

**CC. No.180/2022**

**THIS THURSDAY, THE 10<sup>th</sup> DAY OF AUGUST 2023**

Mr.S.Murugan,

S/o.Seeyalan,

No.1, Annai Therasa Nagar,

Kakkalur, Thiruvallur -602 001.

.....Complainant.

//Vs//

1.The Manager,

Flipkart India Private Limited,

No.37/21, Chamiers Road, Reynampet,

Chennai 600 018.

2.The Manager,

Thomson TV Consulting Rooms Private Limited,

No.111, Alamathi, 2<sup>nd</sup> Revenue Village,

Thiruvallur High Road,

Sholavaram Panchayat Union,

Thiruvallur District -600 067.

### 3.The Manager,

Head Office, F Block, Okhla Phase II,

Okhla Industrial Area, New Delhi,

Delhi 110 020.

.....opposite parties.

Counsel for the complainant : Mr.D.Visva Bharathi, Advocate.

Counsel for the opposite parties : exparte

This complaint is coming before us on various dates and finally on 07.08.2023 in the presence of Mr.D.Visva Bharathi, counsel for the complainant and the opposite parties were set ex-parte for non appearance and for non filing of written version and upon perusing the documents and evidences of the complainant this Commission delivered the following:

### **ORDER**

### **PRONOUNCED BY TMT. S.M. LATHA MAHESWARI, PRESIDENT**

This complaint has been filed by the complainant u/s 35 of the Consumer Protection Act, 2019 alleging deficiency in service against the opposite parties in selling a defective product along with a prayer to direct the opposite parties to refund a sum of Rs.17,749/- towards the cost of the television and to pay a sum of Rs.25,000/-towards compensation for the mental agony and hardship caused to the complainant and to pay a sum of Rs.25,000/- towards unfair trade practice on the part of the opposite parties and to pay a sum of Rs.10,000/- towards cost of the proceedings to the complainant.

### **Summary of facts culminating into complaint:-**

Being aggrieved by selling of a defective television by the 2<sup>nd</sup> opposite party, manufactured by the 3<sup>rd</sup> opposite party and sold through the 1<sup>st</sup> opposite party platform the present complaint was filed.

Thomson TV 9 A Series 42 inches under order ID No.0d224677487785507000 dated 14.04.2022 was purchased by the complainant for a sum of Rs.17,749/- vide invoice dated 16.04.2022 with one year warranty. On 17.04.2022 the TV was installed. However, within a short span of installation on 14.07.2022 it got repaired. The complainant immediately informed the Customer Care and the 2<sup>nd</sup> and 3<sup>rd</sup> opposite parties sent email No.6660303 and stated that the defect would be rectified shortly on 18.07.2022. Though the 2<sup>nd</sup> and 3<sup>rd</sup> opposite party's personnel visited the complainant's house and verified the defective TV and promised that it would be repaired within one week, the same was not repaired till date. When refund was sought though an invoice was raised by the 1<sup>st</sup> opposite party, the same was cancelled

subsequently. Thus aggrieved the present complaint was filed seeking for refund of the TV cost along with a compensation of Rs.50,000/- and Rs.10,000/- cost.

On the side of complainant proof affidavit was filed and submitted documents marked as Ex.A1 to A3. The opposite parties 1 to 3 did not appear before this Commission and they were called absent and set *ex parte* on 31.03.2023, 28.02.2023 and 16.06.2023 respectively for non appearance and for non filing of written version within the mandatory period as per the statute.

**Points for consideration:**

1. Whether the alleged deficiency in service on the part of opposite parties in selling the defective product i.e., Thomson TV 9 A Series 42 inches to the complainant and in not rectifying the defect or refunding the TV cost cancelling the purchase order has been successfully proved by the complainant?
2. To what reliefs the complainant is entitled?

**Point No.1:-**

The following documents were filed on the side of complainant in support of her contentions;

- a. Tax Invoice dated 14.04.2022 was marked as Ex.A1;
- b. Credit Note dated 14.04.2022 was marked as Ex.A2;
- c. Order details dated 18.07.2022 was marked as Ex.A3;

The crux of the complaint allegations is that vide Ex.A1 the complainant had purchased a Thomson 9A Series 106cm (42 inches) Full HD Smart Android TV for a sum of Rs.17,749/- after getting discount of Rs.2250/- from the gross amount Rs.19,999/- on 14.04.2022. As the TV got repaired the same was intimated to the 2<sup>nd</sup> and 3<sup>rd</sup> opposite parties but they failed to rectify the same and hence the order was cancelled and refund sought for. Though an invoice was raised by the 1<sup>st</sup> opposite party for "Sales\_Return" the same was later cancelled which was sufficiently proved by Ex.A3. The documents produced by the complainant sufficiently establish the complainant's case and it is proved that the opposite parties 1 to 3 had committed deficiency in service and unfair trade practice in selling the defective TV to the complainant and in promising him to give the refund and later on cancelling the return order placed before the 1<sup>st</sup> opposite party. In such facts and circumstances all the opposite parties should be held liable for the alleged act of selling a defective product and not in neither rectifying the same nor refunding the product cost cancelling the order. It is apparently seen that the cancel order was accepted by the 1<sup>st</sup> opposite party vide sales invoice dated 02.08.2022. Here we could apply the doctrine *Res Ipsa Loquitur* that the cancel order itself proves that the product sold was a defective one and that the defect was not rectified though within the guarantee period. However, the cancel order was also cancelled on 03.08.2022. To hold 1<sup>st</sup> opposite party liable for deficiency in service, we find support for our view in a recent judgment passed in **State Consumer Disputes Redressal Commission in Sri Animesh Baidya vs Amazon Seller Services Private ... dated 30 July, 2021** by TRIPURA STATE CONSUMER DISPUTES REDRESSAL COMMISSION, ACARTALA in CASE No. A.172021, wherein it has been held that

*15. In Dinesh (supra), the Hon'ble State Commission, UT Chandigarh also considered the similar point involved in the instant appeal which is also helpful for us to decide the case. In the said case, Ld. Counsel for the appellant, Amazon Seller*

*Services Pvt. Ltd. also contended that the appellant, Amazon Seller Services Pvt. Ltd. was only an intermediary and had not received any benefit from the complainant, as such, it could not be held liable.*

*16. Similar contention was rejected by the Hon'ble State Commission, UT Chandigarh in Gopal Krishan & Ors. (supra) and observed as under:*

***Contention of Counsel for the appellant that as per terms and conditions of sale, no liability can be fastened upon the appellant, is liable to be rejected. 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, along with 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.. \*\*\****

*17. The Law Report cited by Mr. Das, Ld. Counsel in Jaskaran Singh & Anr. (supra), is in no way help the opposite party no.1, Amazon Seller Services Pvt. Ltd. as the said judgment, the Honble State Commission, Shimla did not consider the case of the Hon'ble National Commission in Emerging India Real Assets Pvt. Ltd. In the instant case also, admittedly, the appellant-complainant place an order for purchasing the mobile phone of Xiaomi Mi A3 through the Amazon Seller Services Pvt. Ltd., the opposite party No.1 and the mobile phone was delivered by the opposite party no.2, Amazon Courier Service Hub. Thus, the Amazon is also a co-seller. **Therefore, the opposite party no.1, Amazon Seller Services Pvt. Ltd. and Amazon Courier Service Hub cannot absolve themselves from the liability as the product is being stored and delivered by the opposite party no.1 and 2.** As the complainant did not place any order to the manufacturer of the mobile phone, according to us, the Xiaomi, the manufacturer and Darshita Aashiyana Private Ltd., the seller is not a necessary party so far as the complainant is concerned.*

*18. Taking into consideration all the facts and circumstances of the case, we are of the opinion that the learned District Commission failed to consider the evidence on record in its true sense and as such, the impugned judgment cannot be sustained in the eye of law, hence, it is liable to be set aside and the appeal should be allowed. Accordingly, the impugned judgment is set aside and consequent thereto, the complaint petition is allowed.*

Thus we hold that all the opposite parties had committed deficiency in service and that liability should be imposed upon all of them. Thus we answer the point accordingly in favour of complainant and as against the opposite parties.

### **Point No.2:-**

As we have held above that the opposite parties had committed deficiency in service to the complainant we direct the opposite parties 1 to 3 to refund the TV cost of Rs.17,749/- to the complainant within four weeks from the date of receipt of copy of this order and to pay a sum of Rs. Rs.50,000/- towards compensation for the mental agony and hardship caused to the complainant by purchase of the TV along with cost of Rs.5,000/- towards litigation expenses to the complainant.

**In the result, the complaint is partly allowed against the opposite parties 1 to 3 directing them**

**a) To refund a sum of Rs.17,749/- (Rupees seventeen thousand seven hundred forty nine only) the cost of television within four weeks from the date of receipt of copy of this order;**

**b) To pay a sum of Rs.50,000/- (Rupees fifty thousand only) towards compensation for the mental agony and hardship caused to the complainant;**

**c) To pay a sum of Rs.5,000/- (Rupees five thousand only) towards litigation expenses to the complainant.**

**d) Amount in clause (a) if not paid within four weeks shall carry interest at the rate of 12% from the date of complaint till realization.**

Dictated by the President to the steno-typist, transcribed and computerized by him, corrected by the President and pronounced by us in the open Commission on this the 10<sup>th</sup> day of August 2023.

-Sd-

**MEMBER-II**

-Sd-

**MEMBER I**

-Sd-

**PRESIDENT**

**List of document filed by the complainant:-**

Ex.A1	14.04.2022	Tax Invoice.	Xerox
Ex.A2	14.04.2022	Credit Note.	Xerox
Ex.A3	18.07.2022	Order details.	Xerox

-Sd-

**MEMBER-II**

-Sd-

**MEMBER I**

-Sd-

**PRESIDENT**

**[ TMT.Dr.S.M.LATHA MAHESWARI, M.A.,M.L.,Ph.D(Law)]  
PRESIDENT**

**[ THIRU.P.VINODH KUMAR, B.Sc., B.L.,]  
MEMBER**

**[ THIRU.P.MURUGAN, M.Com, ICWA (Inter), B.L.,]  
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