

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-I,
U.T. CHANDIGARH**

Consumer Complaint No.	:	CC/300/2023
Date of Institution	:	16.6.2023
Date of Decision	:	5/03 /2024

Avnish Mittal s/o Sh. Viney Mittal r/o House no 115, sector 16A Chandigarh.

...Complainant

Versus

Myntra Designs Pvt. Ltd., Gurugram office, Plot No. 82A, Sector 18,
Gurugram, Haryana - 122015, through it authorized signatory.

Second Address:- Mumbai Office, WeWork Spectrum, 307, Chincholi
Bunder Road, Malad, Rajan Pada, Mindspace, Malad West, Mumbai,
Maharashtra 400064

Third Address:- Myntra Design Private Limited, AKR Tech Park, 3rd Floor,
7th Mile, Krishna Reddy Industrial Area, Hosur road, Bangalore. 560068

...Opposite Party

CORAM : **SHRI PAWANJIT SINGH** **PRESIDENT**
SHRI SURESH KUMAR SARDANA **MEMBER**

ARGUED BY : Sh. Sukhwinder Singh, Advocate for complainant
 : Sh. Gaurav Bhardwaj, Advocate for OP

Per Pawanjit Singh, President

1. The present consumer complaint has been filed by the complainant under Section 35 of the Consumer Protection Act 2019 against the opposite parties (hereinafter referred to as the OP). The brief facts of the case are as under :-

(a) It transpires from the averments as projected in the consumer complaint that the OP is private shopping company deals in online shopping for fashion and lifestyle in India. On 13.5.2023, the complainant placed on line order for purchasing Saint G Mens Shoes and an amount of Rs.7611/- was deducted through the credit card of the complainant as sale consideration and the copy of invoice dated 13.5.2023 is annexed as Annexure C-1 whereas copy of screen shots of shoes ordered by the complainant is annexed as Annexure C-2. On 17.5.2023, the complainant received a parcel from the OP and when he opened the same he was shocked to see that the said parcel contained altogether a different product than what was ordered i.e. ladies sandals and the invoice dated 13.5.2023 was in the name of one Gitanjali Chavan at Aurangabad. A copy of wrong product delivered and invoice in favour of one Geetanjali are annexed as Annexure C-3 and C-4. However, the complainant thinking that it could be a bonafide mistake, immediately initiated a chat with customer care on the app of Ops and also called them explaining the entire issue and on this the complainant was asked by the customer care to share images of the product received and accordingly

the complainant sent 4 images to the OP on the chat with the help centre. On getting requisite information and images, a complaint was registered by the OP in chat id 26460804 on 17.5.2023 and the complainant was promised by the OP that the matter shall be resolved soon. However, the complainant was again shocked to see that the OP has rejected the request of the complainant in a mechanical way. On receiving the rejection, the complainant again approached the OP through its customer care service number lodged another complaint and as the issue was not resolved by the OP, the complainant was compelled to send legal notice on 17.5.2023 to the OP, copy of which is annexed as Annexure C-5. Another reminder Annexure C-6 was sent to the OP but with no result. The aforesaid act of OP amounts to deficiency in service and unfair trade practice on the part of OP. OP was requested several times to admit the claim, but, with no result. Hence, the present consumer complaint.

- (b) OP resisted the consumer complaint and filed its written version, inter alia, taking preliminary objections of maintainability, cause of action suppression of fact and non joinder of necessary parties. It is alleged that the answering OP under

Information Technology Act has no liability. Since the answering OP is only an online service provider and the subject product was purchased by the complainant from Saint-G Leather Studio Pvt. Ltd. It is further alleged that as the complainant has not impleaded Saint-G Leather Studio Pvt. Ltd. the complaint is liable to be dismissed for non-joinder of necessary party. However, it is admitted that the complainant has placed the order on the online platform of the answering OP. It is denied that wrong product was sent to the complainant and on finding that the allegations of the complainant qua delivery of wrong product false and wrong, his request was rightly declined. It is further alleged that as per received inputs it was found that the subject product was delivered to complainant intact condition and post successful quality check. Hence, the allegation of the complainant regarding the delivery of wrong product is false and the complaint is liable to be dismissed. On merits, the facts as stated in the preliminary objections have been reiterated. The cause of action set up by the complainant is denied. The consumer complaint is sought to be contested.

(c) Complainant chose not to file rejoinder.

(d) In order to prove their case, parties have tendered/proved their evidence by way of respective affidavits and supporting documents.

2. We have heard the learned counsel for the parties and also gone through the file carefully, including the written arguments on record.

(i) At the very outset, it may be observed that when it is an admitted case of the parties that the complainant has placed online order of the subject product through OP No.1 on 13.5.2023 as is also evident from Annexure C-1 the invoice as well as copy of screen shot Annexure C-2 and the parcel delivered contained the product was received by the complainant on 17.5.2023 as is apparent from Annexure C-3, the case is reduced to a narrow compass as it is to be determined if the OP has sent altogether different product i.e. ladies sandals in place of the subject product i.e. shoes which was actually ordered by the complainant and the complainant is entitled for the relief as prayed for as is the case of the complainant or if the OP has delivered same product as ordered by the complainant and the complaint of the complainant is not maintainable and is liable to be dismissed.

- (ii) Perusal of Annexure C-1 clearly, indicates that the complainant had placed an order for the purchase of Saint-G Men Tan Brown Solid Chelsea Boots, size 8 (UK8) for sale consideration of Rs.7611/-, which was paid by the complainant to the OP through his credit card. Annexure C-2 is the photographs of the shoes which were ordered by the complainant whereas Annexure C-3 are the photographs of the sandals which were wrongly delivered to the complainant. Annexure C-4 copy of invoice which shows that the same was addressed to one Gitanjali Chavan at Aurangabad.
- (iii) Thus, from the evidence as discussed above, one thing is clear that the OP had sent altogether a different product to the complainant by sending sandals as is apparent from Annexure C-3 instead of shoes as ordered by the complainant vide Annexure C-1, especially when the evidence led by complainant is unrebutted by OP, hence, the aforesaid act of OP amounts to deficiency in service and unfair trade practice on its part. Hence, the instant consumer complaint deserves to be allowed.
- (iv) No doubt in its written versions OP had come with the defence that there is no deficiency in service or unfair trade practice on its part as it is only an

intermediary to facilitate transactions between the seller and the buyer whereas, however, when the tax invoice (Annexure C-1) clearly indicates that subject product was being sold through OP, thus OP being e-commerce entity, cannot escape from its liability, especially when OP is duty bound to provide service to the consumer as provided under The Consumer Protection (E-Commerce) Rules, 2020 and the relevant portion of the same is reproduced below for ready reference :-

4. Duties of e-commerce entities. ---

xxx

xxx

xxx

(10) Every e-commerce entity shall effect all payments towards accepted refund requests of the consumers as prescribed by the Reserve Bank of India or any other competent authority under any law for the time being in force, within a reasonable period of time, or as prescribed under applicable laws.

- (v) As it stands proved on record that the complainant had, in fact, placed an order for the subject product by directly paying an amount of ₹7611/- to OP, who was well aware of the seller also and the OP/seller had not supplied/delivered the subject product, which was ordered by complainant, rather they had supplied altogether a different product, the said act clearly amounts to deficiency in service and unfair trade practice on their part especially the OP/seller

was supposed to supply the subject product which was ordered by the complainant.

3. In the light of the aforesaid discussion, the present consumer complaint succeeds, the same is hereby partly allowed and OP is directed as under :-

- (i) to pay ₹7611/- to the complainant alongwith interest @ 9% per annum from 17.5.2023 till onwards.
- (ii) to pay an amount of ₹2000/- to the complainant(s) as compensation for causing mental agony and harassment to him;
- (iii) to pay ₹2000/- to the complainant as costs of litigation.

4. This order be complied with by the OP within 45 days from the date of receipt of its certified copy, failing which, it shall make the payment of the amounts mentioned at Sr.No.(i) & (ii) above, with interest @ 12% per annum from the date of this order, till realization, apart from compliance of direction at Sr.No.(iii) above.

5. After compliance of order the complainant shall return the wrongly delivered product to the OP if already not returned and the OP shall collect it at its own risk and cost.

6. Pending miscellaneous application(s), if any, also stands disposed off.

7. Certified copies of this order be sent to the parties free of charge. The file be consigned.

Announced
5/03/2024
mp

Sd/-
[Pawanjit Singh]
President

Sd/-
[Suresh Kumar Sardana]
Member

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-I,
U.T. CHANDIGARH**

CC/300/2023

PRESENT None

ORDER

Vide our detailed order, recorded separately, the consumer complaint has been partly allowed. File be consigned.

5/03/2024

**[Pawanjit Singh]
President**

**[Suresh Kumar Sardana]
Member**