

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, GANJAM, BERHAMPUR.

Complaint Case No. CC/88/2022
(Date of Filing : 16 Aug 2022)

1. Sri Gandhi Behera

S/o Late Jayaram Behera, At: Singipur, Po: Baulagam, Dist:
 Ganjam, Pin: 761 026. Correspond Address: Sri Gandhi Behera,
 C/o Biswanath Behera, At: Chanakya Nagar 3rd Lane, Near
 Tara Tarini Temple, Lanjipalli, Berhampur, 760 008, Ganjam,Complainant(s)

Versus

1. Flipkart Internet Private Limited

Buildings Alyassa, Begonia and Clove, Embassy Tech Village,
 Outer Ring Road, Devarabeesanahalli Village, Bengaluru, 560
 103, Karnataka, India.Opp.Party(s)

BEFORE:

HON'BLE MR. Satish Kumar Panigrahi PRESIDENT
HON'BLE MRS. Saritri Pattanaik MEMBER

PRESENT: Through SELF for the Complainant, Advocate for the Complainant 1

Through Mr. Silla Rajgopal Rao, Advocate Opp. Party, Advocate for the Opp. Party 1

Dated : 08 Aug 2023

Final Order / Judgement

DATE OF DISPOSAL: 08.08.2023

PER: SRI SATISH KUMAR PANIGRAHI, PRESIDENT:

The fact of the case in brief is that the complainant has filed this Consumer complaint under section 35 of the Consumer Protection Act, 2019 alleging deficiency in service and unfair trade practice by the Opposite Parties (in short O.Ps) and for redressal of his grievance before this Commission.

1. The complainant had order one Adidas Runstunner M running shoes of 10 number size on Flipkart Mob App on dated 20.07.2022 vide Flipkart order ID-OD125512934867315000 that was cash on delivery of total amount Rs.957/- plus 51 super coins. The actual cost of the said shoe was Rs.4999/- and online the OP has mentioned the following price breakup to attract the customers, they are as follows –

List Price = Rs.4999/-

Selling Price	= Rs.2631/-
Extra Discount	= Rs.1623/-
Special Price	= Rs.1008/-
Savings using Super Coins	= Rs.51/-
Shipping Fee	= Rs.40/-
Shipping Discount	= Rs.40/-
Total Amount	= Rs.957/- + 51 super coins

But order was cancelled by Flipkart on dated 21.07.2022 without assigning any reasons and implicit consent of the Complainant. The complainant further submitted that, while discussing over telephone with customer care, the complainant asked the name and the detail address of the seller but they have not provided the same to the complainant and stated that, they have no such type of updates with them. Prior to said cancellation, the OP has provided Order confirmation and shipping information in details through Ekart Logistics – FMPC2026845807 to the complainant from 20th July'22 till 26th Jul'22 thereafter written that, the shipped item cancelled on 21st July'22. When the complaint queried about the cancellation of the order, the Op has replied negatively and informed to the complainant that the seller has cancelled that order due to unforeseen error. The complainant filed a complaint at NCH on 21.07.2022 vide docket No. 3676089. After filling of the complaint with National Consumer Helpline, the Op has advised the complainant to place fresh order to purchase the same shoe and now the price is difference but the complainant refused to place fresh order. The complainant further attributes that, the OP has offered a gift card for Rs.150/- to use it and threatened to keep silent but the complainant refused the same also. But the OP has given remarks to NCH that, 'customer does not want the fresh product and cancel the order and refused to place the fresh order as there is price difference and disconnected call.' On inquiry at NCH regarding docketed complaint, the complainant received information from the official staffs of the NCH that, the Flipkart has given above said remark. The NCH has advised to the complainant to file case in consumer court and closed the complaint under docket No.3676089 on dated 28.07.2022. To redress the matter at higher level of the OP, the complainant had sent Email to CS-head @flipkart.com on dated 29.07.2022 writing above complain/matter but they have also failed to solved the mater.

Alleging deficiency in service on the part of the O.Ps the complainant prayed to direct the O.P to pay list price of shoes Rs.4999/-, compensation Rs.5000/- and litigation cost of Rs.10,000/- in the best interest of service.

3. The case is admitted and duly acknowledging the notice from the Commission, the O.P. filed written version through his advocate. It is stated that the content of present complaint is false, frivolous and hence denied. The O.P. merely operated an online platform and all the products on the platform are sold and supplied by independent third party seller. The Product in the instant matters was purchased from the third party seller, Bhumika Highstreet India Private Limited, who had sold the product to the complainant. The O.P. has no role to play in the entire transaction entered between the complainant and the seller. Further when the complainant raised his grievance with the O.P. The Opposite Party being an intermediary duly intimated the seller. Further the seller has informed that the order of the complainant was cancelled due to some unforeseen reasons and as a token of apology

seller credited Rupees 150/- in complainant's account and requested the complainant to place a fresh order. The O.P. intimated the same to the complainant. Thus the O.P. tried its best to solve the grievance of the complainant in its capacity of an intermediary. The complainant was provided all possible assistance by giving due intimation of information received from the seller. There is no cause of action against the O.P. The O.P. corroborates with the content of preliminary submissions and the same is repeated herein for the sake of brevity. The relief claimed under the present complaint is untenable and unreasonable and the O.P. under the circumstances and for the reasons stated above is not liable to pay any amount as compensation, cost of legal expenses or any other relief to the complainant.

4. On the date of hearing of the case, we heard from the Complainant-in-person and learned counsel for the O.P. We perused the complaint, written version and written argument and the materials placed on it.

5. The complainant in his written argument submitted that, the OP has intentionally not provided the correct name and detail address of the seller of the product in question for which the complainant could not be able to implead the seller in the present case. In support of the submission, the Complainant placed the print copy of the screen shot of Order ID:OD125512934867315000 wherein the name of the seller clearly mentioned that, "HSAtrasteFashion" but no address was mentioned in the said copy. But to suppress the material information, the OP has specifically submitted the name of the seller in his Preliminary Objections, and Evidence on Affidavit at para 3 that, 'Bhumika Highstreet India Private Limited' but no address of said seller has disclosed there and admitted the fact that, said seller has sold the product in question to the present complainant. Secondly, the very act of the op also attracts the sub-clause (a)(3) of Reg.5 of the Consumer Protection (E-Commerce) Rules, 2020 and the present op has also violated the said statutory rulings rampantly.

The Regulation 5 (3)(a) of the Consumer Protection (E-Commerce) Rules, 2020

speaks as follows: "the op being marketplace e-commerce entity has not provided details about the sellers offering goods and services, including the name of their business, whether registered or not, their geographic address, customer care number, any rating or other aggregated feedback about such seller, and any other information necessary for enabling consumer to make informed decisions at the pre-purchase stage:

Provided that a marketplace e-commerce entity shall, on a request in writing made by a consumer after the purchase of any goods or services on its platform by such consumer, provide him with information regarding the seller from which such consumer has made such purchase, including the principal geographic address of its headquarters and all branches, name and details of its website, its email address and any other information necessary for communication with the seller for effective dispute resolution."

But in the instant case, the OP being online marketplace has not displayed any information regarding the seller of the product as per statutory provision as mentioned above and also failed to provide update information about the said seller when asked by the Complainant to the Customer Care of the OP over the telephone.

Further it reveals that, the complainant has placed his order through online in the website of OP for a shoe for an amount of Rs.957/- with cash on delivery provision as against its reported original price of Rs.4999/- and thereby offering a promotional discount of Rs.4999/- on 20.07.2022 by the OP, with the option for the mode of payment as cash on delivery and the OP

also sent email on the same day 20.07.2022 to the Complainant's email I.D. confirming the acceptance of the order vide No.:OD125512934867315000. It implies that, the complainant has accepted the offer of the OP but on the next day 21.07.2022 the Customer Care Department of the OP through email informed the complainant that the subject order stands cancelled. It also reveals that the complainant after query regarding the cancellation of the order got to know through E-mail that due to 'pricing issue' the said order is cancelled. In accordance to the Sec.2(7)(1) of the Consumer Protection Act, 2019, here the complainant is a consumer. In the instant case it is clear evident that the complainant has accepted the online offer of the OP and the complainant has proposed to pay the cash on delivery of the product as he had opted with option for the mode of payment as cash on delivery. Hence in our considered view the OP is not only negligent in rendering proper service to the complainant but also involved in unfair trade practice, as such we hold there is deficiency in service on the part of the OP.

6. On foregoing discussion it is crystal clear that the acts of the O.P. is contravened the Consumer Protection (E-Commerce) Rules, 2020 and the provisions of the Consumer Protection Act, 2019 is applicable in the instant case for violation of such Rules, 2020. and it is tantamount to unfair trade practices of the OP.

6. So far as the compensation and cost of the case is concerned, we are convinced that the complainant has repeatedly requested to O.P. for solve of the problem of the complainant but the O.P. failed to take any effective steps to short out the problem of the complainant for which the complainant has suffered physically and mentally for which he is to be compensated. Under the above facts and circumstances, in our considered view, it will be just and proper to award compensation as well as litigation cost in favour of the complainant.

7. We relied upon the principle of law laid down by the State Consumer Disputes Redressal Commission, Odisha at Cuttack in FA No.:492/2018, Date of Order:11.01.2021 held in **Supriyo Ranjan Mahapatra v.M/s Amazon Development Center India Pvt. Ltd.** that, "When there is advertisement made for offer placed by the OP who is reputed Online Shopping Website and made offer and the complainant placed the order and same has been confirmed, the agreement is complete between the parties. Responsibility of the OP cannot be lost sight of. Before Floating offer the OP should have considered whether he was able to decide to issue the advertisement and after the contract is completed, it has no business to go away from the promise. On the other hand there is breach of contract made by the OP and for that the OP is liable to pay the damages."

In the result, the complainant's case is allowed on contest against the O.P. The O.P. is directed to pay compensation of Rs.15000/- towards mental & physical agonies and together with Rs.5000/- as cost of litigation to the complainant within 45 days from the date of receipt of this order, failing which all the dues shall be realized at the rate of 12% interest per annum till its actual date of realisation and the complainant is at liberty to take appropriate steps in accordance to the Consumer Protection Act, 2019 for realization of all dues. Further the OP is directed to strictly follow the Regulation 5(3)(a) of the Consumer Protection (E-Commerce) Rules, 2020 and provide all the information in a clear and accessible manner, displayed prominently to users at the appropriate place on the website platform.

This case is disposed of accordingly.

The Judgment be uploaded on the www.confonet.nic.in for the perusal of the parties.

A certified copy of this Judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 2019 or they may download same from the www.confonet.nic.in to treat the same as if copy of the order received from this Commission.

The file is to be consigned to the record room along with a copy of this Judgment.

Pronounced on dated 08.08.2023.

**[HON'BLE MR. Satish Kumar Panigrahi]
PRESIDENT**

**[HON'BLE MRS. Saritri Pattanaik]
MEMBER**