

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION – I, HYDERABAD

PRESENT

HON'BLE MRS. B. UMA VENKATA SUBBA LAKSHMI, PRESIDENT
HON'BLE MRS. C. LAKSHMI PRASANNA, MEMBER
HON'BLE MR.R.NARAYAN REDDY, MEMBER

Friday, the 04th day of August, 2023

Consumer Case No.589 OF 2022

Between:-

A.Sanjeeva Reddy S/o. A.Sai Reddy@Sayanna
Aged about: 43 Years, Occ: Legal Profession,
R/o. H.No. 12-13-829/37/A, Kimti Colony,
Tarnaka, Hyderabad – 500 017.Complainant

AND

M/s.Hindustan Healthmart,
A unit of Sparsh Medix Private Limited,
Rep. by its Director,
(Tarun Mantri), #8-2-162, Turner Street,
Kummarguda, Opp. Manohar Talkies,
Secconf Bazar Village, Secunderabad – 500 003.Opposite Party

Counsel for the Complainant : A.Govinda Reddy
Counsel for the Opposite Party : Ashish Samat

O R D E R

(By Hon'ble Mr. R. Narayan Reddy, Member
on Behalf of the Bench)

1. The present complaint is filed under Section 35 of the Consumer Protection Act, 2019 against the Opposite Party, alleging deficiency of service on the part of the Opposite Party with a prayer:
 - a) To direct the Opposite Party to return the amount of Rs.650/- (Rupees Six Hundred and Fifty Only) to the Complainant;
 - b) To award compensation of Rs.10,000/- (Rupees Ten Thousand Only) towards mental agony and psychological torture;
 - c) To award legal expenses of Rs.5,000/- (Rupees Five Thousand Only) to the Complainant; and
 - d) To punish the Opposite Party as per the Consumer Protection Act.

2. Brief facts as averred in the complaint are that, the Complainant purchased a pulse Oxymeter (Accuser) from the Opposite Party and paid Rs.1600/- (Rupees One Thousand Six Hundred Only) vide invoice no. 2000284006982 dated: 20.07.2020. After purchasing the said pulse Oxy-meter, came to home and tested the pulse oxymeter but surprisingly, it did not function and the same was brought to the notice of the Opposite Party by visiting personally and also on phone 040-48582707 but the Opposite Party did not respond properly and recklessly asked the Complainant to return the same. As such the Complainant returned the said Pulse Oxymeter, but the Opposite Party tried to offer another one which costs Rs.750/- (Seven Hundred and Fifty Only) (True View Pulse Oxymeter), the Complainant did not accept the said offer of the Opposite Party and demanded full amount of refund but the Opposite Party returned part amount of Rs.950/- by saying that the GST and other taxes are already paid. And the Complainant averred that the Opposite Party selling deliberately defected materials to innocent customers to make money with the fault Oxymeters and after knowing the intention of the Opposite Party in this regard and his response, the Complainant got issued legal notice to the Opposite Party on 08.09.2020 calling upon the Opposite Party to repay the remaining amount of Rs.650/- in respect of the said Oxymeter within 7 days on receipt of the legal notice and the said notice was served on the Opposite Party but the Opposite Party neither replied nor paid the remaining amount to the Complainant. Further averred that the Complainant was deceived by the Opposite Party by selling the defective pulse Oxymeter and when he returned the same the Opposite Party did not pay actual amount to the Complainant, and there is a chance to the Opposite Party to sell the said defective Oxymeter to other innocent customers and played fraud deceptively on the complainant as such having no other alternative, the Complainant filed the present complaint with the reliefs as stated supra.
3. Upon receipt of the notice in the said complaint, the Opposite Party filed its written version denying all the allegations of the complainant except those which are specifically admitted herein, it is admitted that the Complainant bought the product from the

Opposite Party and thereafter 20 days from the date of purchase the Complainant called and visited the Opposite Party by complaining that the Oxymeter was not functioning. It is contended that he had clearly informed the Complainant that they were only the retailer and has no liability whatsoever with regard to the functioning of the product or with the warranty of the product. It is also contended that on humanitarian grounds, the Opposite Party had offered the Complainant another Oxymeter which was of a lower price range and the Complainant refused to accept it. And the Complainant asked for repair the Oxymeter, despite the Opposite Party No.1 asked the Complainant to register the complaint/request with the manufacturer of the product since the Opposite Party is only a retailer of the product and cannot assure the functioning of the same or repair the same on behalf of the manufacturer. It is contended that the present claim against the Opposite Party is futile, as the Complainant need to file a complaint against manufacturer as the issue with the product is one of functioning, which the Opposite Party has no control over and the warranty of the product is to be enforced against the manufacturer of the same. And contended that the Opposite Party has sold the boxed product, as received from the manufacturer, and there is no deceptive motive on the part of the Opposite Party. Hence, present petition is not maintainable against the Opposite Party as the Opposite Party is a mere retailer of the product and in view of the same, sought for dismissal of the Complaint.

4. During the Course of enquiry, the Complainant got filed his evidence affidavit and marked his documents as Ex.A1 to Ex.A3 and reported no further evidence. Evidence affidavit of the Opposite Party was filed through their Director of Opposite Party M/s. Hindustan Healthmart namely Tarun Mantri S/o. Ramesh Mantri and reported no documents and no further evidence. Both parties filed their respective written arguments and the Opposite Party submitted their oral arguments. Thereafter the matter was reserved for orders.
5. Heard the Learned Counsel of the Opposite Party. Based on the facts and material available on the record, the following points have emerged for consideration:

- a. Whether the Complainant could make out the case of commission of deficiency of service and adoption of unfair trade practice by the Opposite Party?
- b. Whether the Complainant is entitled for the claim / compensation made in the complaint?
- c. If so, to what relief?

5.1. Point No.(a):

It is the admitted fact that the Complainant has purchased the Oxymeter from the Opposite Party and paid Rs.1600/- (Rupees One Thousand Six Hundred Only) through Ex.A-1. And it was also admitted by the Opposite Party that after 20 days from the date of purchasing, the Complainant called and visited the Opposite Party by complaining that the Oxymeter was not functioning. And further admitted that “he had clearly informed the Complainant that they were only the retailer and has no liability whatsoever with regard to the functioning of the product or with the warranty of the product” and on humanitarian grounds the Opposite Party had offered the Complainant another Oxymeter which was of a lower price range and the Complainant refused to accept it. And also admitted that asked the Complainant to register the complaint/request with the manufacturer of the product since the Opposite Party is only a retailer of the product and cannot assure the functioning of the same or repair the same on behalf of the manufacturer and contended that the Opposite Party has sold the boxed product, as received from the manufacturer, and there is no deceptive motive on the part of the Opposite Party and there is no deficiency on the part of them.

- 5.1.1. The non-functioning of the Oxymeter within a very short period of its purchase itself shows that it is a case of manufacturing defect. So the Opposite Party being the seller of the Oxymeter is responsible for its service. The seller is primarily liable to repair the Oxymeter if any defect occurs during the guarantee period. Normally a layman will approach the seller if any defect occurs in the product where he buys it; he won't directly approach the manufacturing company or the service centers. The seller has the responsibility to repair it through service centers.

He cannot escape from his liability by simply saying that the seller is the only retailer as such go complaint to the manufacturer, because the consumer does not have any contract with the manufacturing company. If the retailer sells a product which is not in conformity with the warranty given by the manufacturer, then the retailer is also liable for the sale of defective products. It is true that the seller has no authority from its own to replace any product by another any, only the manufacturing company has such authority. But it should be remained in mind that the retailer/seller is selling the product on behalf of the manufacturing company and in this regard, the seller can be considered as an agent of the Company. The seller can take any proper action regarding removal of the manufacturing defects or replacement after taking cognizance from the Company. So the seller cannot avoid its responsibility. In the case, it is not necessary to implead manufacturers as a party. The Complainant in his affidavit has stated that the Opposite Party returned only the part amount of Rs.950/- out of total amount Rs.1,600/- by saying that the GST and other taxes are already paid and the Oxymeter was kept with them. The Opposite Party also admitted the same in his affidavit. And the opposite Party also contended that the Opposite Party had offered the Complainant another Oxymeter which was of a lower price range and the Complainant refused to accept it. Hence it is clear that there is a deficiency in service on the part of the Opposite Party as no attempt was made by them for repairing it through service center or for replacing. Hence, point no. (a) is answered in favour of the complainant.

5.2. Point No.(b):

In view of the above findings we are of the considered opinion that the Complainant is entitled to get a refund of balance amount of Rs.650/- from the Opposite Party. As the Oxymeter became defective within a short period from the date of its purchase and despite his repeated demands, the Opposite Party did not care either to repair the product or replace the product or to refund the total amount, which clears that the Complainant suffered mental agony. Hence, point no.(b) is also answered in favour of the Complainant.

5.3. Point No.(c):

In the result the Complaint is allowed in part and the Opposite Party is directed to

- i) refund the balance amount of Rs.650/- (Rupees Six Hundred and Fifty Only);
- ii) pay a reasonable compensation of Rs.5,000/- (Rupees Five Thousand Only) towards mental agony and suffering caused by the Complainant for the acts of the Opposite Party;
- iii) pay Rs.2,000/- (Rupees Two Thousand Only) towards costs.

Time for compliance is 45 days from the date of receipt of this order, failing which, the amount mentioned under Sr.No.(i) shall attract an additional interest @ 6% p.a. till the actual realization.

Dictated to stenographer, transcribed and typed by him, pronounced by us on this the 04th day of August, 2023.

MEMBER

MEMBER

PRESIDENT

APPENDIX OF EVIDENCE

WITNESS EXAMINED FOR THE COMPLAINANT:

A.Sranjeeva Reddy S/o. A.Sai Reddy @ Sayanna Complainant / Party-in-Person (PW1).

WITNESS EXAMINED FOR THE OPPOSITE PARTY:

Tarun Mantri S/o. Ramesh Mantri Rep. by the Director of the Opposite Party M/s.Hindustan Healthmart (DW1).

EXHIBITS FILED ON BEHALF OF THE COMPLAINANT:

- Ex.A1 Original invoice dated: 20.07.2020.
Ex.A2 Office Copy of Legal Notice dated: 08.09.2020.
Ex.A3 Original Postal receipt dated: 08.09.2020 along with postal acknowledgment dated: 10.09.2020.

EXHIBITS FILED ON BEHALF OF THE OPPOSITE PARTY:

NIL

MEMBER

MEMBER

PRESIDENT

Read by:
Compared by:
DSK