

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM
ERNAKULAM**

**Complaint Case No. CC/20/389
(Date of Filing : 23 Nov 2020)**

1. VINTESH CHEMBRA

BOSS BIG RESIDENCY , T D ROAD ERNAKULAMComplainant(s)

Versus

1. FLIPKART INTERNET PVT LTD

VAISHNAVI SUMMIT, GROUND FLOOR , 7TH
MAIN, 80 FEET ROAD,3RD BLOCK,
KORAMANGALA BENGALURU

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. D.B BINU PRESIDENT
HON'BLE MR. RAMACHANDRAN .V MEMBER
HON'BLE MRS. SREEVIDHIA T.N MEMBER**

PRESENT:

Dated : 06 Apr 2024

Final Order / Judgement

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
ERNAKULAM**

Dated this the 6th day of April, 2024.

Filed on: 23/11/2020

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member

Smt.Sreevidhia.T.N

Member

C.C. No. 389/2020

COMPLAINANT

Vintesh Chembra, Boss Big Residency, T D Road, Ernakulam, Pin 682011.

(Rep. by Adv.K.S.Arundas #35, DD Oceana Mall, Near Taj Gate Way Hotel, Marine Drive, Ernakulam-682 031)

Vs

OPPOSITE PARTIES

1. Flipkart Internet Private Limited, represented by its CEO, Vaishnavi Summit, Ground Floor, 7th Main, 80 Feet Road, 3rd Block, Koramangala, Bengaluru 560034, Karnataka.

(Rep. by Adv. Ajay N.S. & Anish Srivastava, Prudence Attorney's Fathima Plaza, Providence Road,Ernakulam)

2. Zest Money (Camden Town Technologies Pvt Ltd), represented by its CEO, Ground & Third Floor, Indiqube Celestia, Site No. 19 & 20, Koramangala 1A Block, Koramangala, Bengaluru, Karnataka 560034.

FINAL ORDER

D.B. Binu, President:

1. A brief statement of facts of this complaint is as stated below:

This complaint was filed under Section 35 of the Consumer Protection Act, 2019. In this case, The complainant, a consumer of the opposite parties, ordered a Vivo V15 mobile phone on August 25, 2019, for INR 23,990, using an EMI credit facility from the second opposite party. This purchase was intended as a birthday gift for his wife on September 1, 2019. The agreed monthly EMI was INR 4,187 for 6 months. The first opposite party promised delivery by August 27, 2019.

The mobile phone was not delivered on the promised date. After an inquiry by the complainant, the first opposite party delayed the delivery date first to September 5, 2019, and then to September 17, 2019. However, the phone was still not delivered. Ultimately, the first opposite party unilaterally cancelled the order.

Despite the non-delivery, the complainant had to repay the total EMI amount of INR 25,122, which was more than the phone's price, to maintain his CIBIL score. After

repayment, the first opposite party refunded only INR 23,990, not the full amount paid.

The complainant experienced mental stress, particularly because he could not present the phone as a birthday gift to his wife. He alleges that the opposite parties' actions constitute a deficiency in service and unfair trade practice. He also seeks reimbursement of INR 1,132, collected as service charges by the second opposite party.

The complainant requests the Commission to direct the opposite parties to pay INR 1,00,000 with 18% interest from the date of purchase until realization as compensation for service deficiency and unfair trade practice, refund INR 1,132 collected as service charges, and pay INR 25,000 for litigation expenses and costs.

2) Notice

The Commission sent notices to both opposite parties involved in the case. These notices were acknowledged by the opposite parties. The first opposite party responded by filing their version. However, the second opposite party did not file their version in response to the notice. Consequently, due to their lack of response, the second opposite party has been set as ex-parte by the Commission.

3). Evidence

The complainant submitted a proof affidavit along with five documents, which were marked as Exhibits A-1 to A-5.

Exhibit A-1: True copy of product booking details.

Exhibit A-2: True copy of communication with Opposite Party No. 1.

Exhibit A3: True copy of communication with Opposite Party No. 1.

Exhibit A-4: True copy of cancellation report.

Exhibit A-5: True copy of payment history.

A proof affidavit filed by the first opposite party before the Commission.

4) The main points to be analysed in this case are as follows:

- i) Whether the complaint maintainable or not?

- ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- iv) Costs of the proceedings if any?

5) The issues mentioned above are considered together and answered as follows:

In the present case in hand, as per Section 2(7) of the Consumer Protection Act, 2019, a consumer is a person who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment. The True copy of payment history issued by the first opposite party (**Exhibit A-5**). Hence, the complainant is consumer as defined under the Consumer Protection Act, 2019 (Point No. i) goes against the opposite parties.

The complainant has filed a case seeking damages and compensation from the opposite parties for deficiency in service, unfair trade practices, and negligence. These allegations arise from the opposite parties' failure to fulfill their obligations, resulting in the stated grievances.

We have heard from Sri. K.S.Arundas, the learned counsel representing the complainant.

The hearing note details the consumer complaint involving the purchase of a VIVO V15 mobile phone.

1. **Background:** The complainant, recognized as a consumer under the Consumer Protection Act 2019, booked the mobile phone on August 25, 2019, for INR 23,990, intending to gift it to his wife for her birthday on September 1, 2019. He availed an EMI credit facility from the second opposite party, with monthly payments of INR 4,187 for six months. The first opposite party promised delivery by August 27, 2019, but failed to do so.
2. **Issues with Delivery and Communication:** The complainant's attempts to cancel the credit facility were refused by the second opposite party, as they had already paid the first opposite party. The first opposite party repeatedly delayed the delivery, first to September 5, then to September 17, 2019, and eventually failed to deliver the phone at all, leading to its unilateral cancellation of the order.

3. **Financial and Emotional Impact:** The complainant was forced to repay INR 25,122 in total EMIs for a product he never received, to protect his CIBIL credit score. He received a reimbursement of only INR 23,990 from the first opposite party. The complainant expressed mental agony and stress due to the inability to present the gift to his wife, asserting that the actions of the opposite parties constitute deficiency in service and unfair trade practice.
4. **Opposite Parties' Response:** The first opposite party claimed they are merely an electronic platform and attributed the non-delivery to their delivery partner and product seller, denying liability for compensation. They did not disclose the details of the seller or the delivery partner.
5. **Legal Proceedings:** The complainant filed a proof affidavit and five documents, including communication records and payment history, to support his case.
6. **Prayer to the Commission:** The complainant requests the Commission to direct the first opposite party to pay INR 1,00,000 with 18% interest from the date of purchase as compensation for service deficiency and unfair trade practice, refund INR 1,132 collected as service charges by the second opposite party, and pay litigation expenses of INR 25,000.

We have also listened to the arguments presented by Sri. Ajay N.S., the learned counsel for the first opposite party. Additionally, we have reviewed the written arguments submitted by Flipkart Internet Pvt. Ltd. (Opposite Party No. 1).

1.Nature of Flipkart: Flipkart is an online marketplace e-commerce entity, acting as an intermediary between independent third-party sellers and customers. They provide a platform for these transactions but are not directly involved in the sale or warranty of products.

2.Legal Status and Liability: Under the Consumer Protection Act, 2019, and the Consumer Protection (E-commerce) Rules, 2020, Flipkart is defined as a marketplace e-commerce platform, distinct from the sellers. They argue that they cannot be held liable for the actions of independent sellers on their platform. Flipkart's role is likened to that of a shopping mall, where individual shop owners are responsible for their sales, not the mall owner.

3.Transaction Process: Flipkart asserts that it only facilitates transactions and does not provide or control product delivery. The responsibility for delivery lies with the seller, not Flipkart.

4.EMI Facility and Refund Issue: Flipkart states that they did not provide the EMI facility involved in the transaction. They communicated the buyer's

grievances to the seller, and the seller cancelled the order and refunded the amount of INR 23,990 to the buyer's Flipkart account.

5.No Direct Responsibility: Flipkart emphasizes that it does not charge customers for using its platform and is not responsible for delivery or refunds, which are the seller's obligations.

6.Legal Precedents: Citing legal precedents, Flipkart argues that the burden of proof for any deficiency in service lies with the complainant. They assert that the complainant has failed to prove any deficiency on Flipkart's part.

7.Conclusion: Flipkart concludes that they cannot be held liable for the complainant's grievances, as they are merely an online intermediary. They contend that the complaint is frivolous, based on twisted facts, and aimed at damaging their reputation. They assert that since the seller has already refunded the product cost, there is no remaining grievance to be addressed.

In summary, Flipkart's position is that as an online intermediary, they are not responsible for the actions of independent sellers on their platform and cannot be held liable for the specific issues raised in the complaint. They emphasize the legal distinction between themselves and the sellers and the lack of direct involvement in the transaction's specifics.

The evidence presented included a proof affidavit filed by the complainant, and it was unchallenged by the second opposite party.

The second opposite parties' conscious failure to file their written version in spite of having received the Commission's notice to that effect amounts to an admission of the allegations levelled against them. Here, the case of the complainant stands unchallenged by the second opposite party. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

We have meticulously reviewed the complaint affidavit and the documents submitted by the complainant. We have extracted the pertinent portion of the complaint below for our analysis:

Under the provisions of the Consumer Protection Act, 2019, and the Consumer Protection (E-commerce) Rules, 2020, Flipkart is categorized as a marketplace e-commerce platform, which is considered separate from the individual sellers on its platform. Flipkart acknowledges its status as a marketplace e-commerce platform, thereby making it subject to the Consumer Protection (E-commerce) Rules, 2020.

Specifically, Rule 5 of these rules is applicable to Flipkart as the first opposite party in this context.

These rules impose specific responsibilities on platforms like Flipkart, which impact their claim of not being liable for the actions of independent sellers on their platform.

Key points from these rules include:

1. **Accurate Product Descriptions:** They must ensure sellers provide accurate descriptions and images of products or services.
2. **Disclosure of Seller Information:** Platforms are required to disclose detailed information about sellers, including their business name, address, and customer care contact. This information should be easily accessible to consumers.
3. **Complaint Tracking and Information:** Platforms must provide a complaint ticket number for tracking and furnish details regarding return, refund, warranty, delivery, payment methods, and grievance redressal.
4. **Ranking Parameters and Differentiated Treatment:** They should disclose the parameters determining the ranking of goods or sellers and any differentiated treatment between them.
5. **Record Maintenance:** E-commerce entities are also expected to maintain records of sellers who have been involved in the sale of goods or services that violate copyright, trademark, or IT laws.

Given these rules, a marketplace e-commerce entity cannot entirely disclaim liability for the actions of sellers on its platform. While they may not be directly involved in the sale transactions, these rules mandate a level of oversight, accuracy of information, and a duty to ensure that sellers on their platform comply with the legal requirements. This undermines the analogy of likening their role to that of a shopping mall owner, as the e-commerce rules impose more proactive responsibilities and accountability on the platform

As per the Consumer Protection (E-commerce) Rules, 2020:

“5 (3) Every marketplace e-commerce entity shall provide the following information in a clear and accessible manner, displayed prominently to its users at the appropriate place on its platform:

- a. 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 consumers to make informed decisions at the pre-purchase stage.”

If the first Opposite Party, which in this context appears to be an e-commerce platform like Flipkart, did not reveal details about the sellers, it constitutes a violation of the Consumer Protection (E-commerce) Rules, 2020. According to these rules, particularly under Rule 5(3)(a), marketplace e-commerce entities are required to provide clear and accessible information about the sellers on their platform. This includes the seller's name, geographic address, customer care number, and other relevant details necessary for consumers to make informed decisions.

The failure to disclose this information not only undermines the transparency mandated by the e-commerce rules but also potentially impacts the consumer's ability to make informed purchasing decisions and pursue effective grievance redressal or dispute resolution with the seller. Therefore, non-disclosure of such critical seller information by the first Opposite Party is indeed a violation of the specified e-commerce rules.

Since the second opposite party's role was limited to providing a financial service (in this case, the EMI credit facility for the purchase), and they did not directly partake in the transaction between the complainant and the first opposite party (the e-commerce platform), their liability in this matter is limited. Their primary action was processing the payment for the purchase, and they fulfilled this role.

Despite being set as ex-parte in the proceedings, which means they did not participate in the legal process, the lack of direct involvement in the product's sale or delivery, or in the subsequent issues that arose, suggests that they cannot be held responsible for the complainant's loss or the delivery issues.

On the other hand, the first opposite party, being the e-commerce platform through which the transaction occurred, holds greater responsibility. Considering the Consumer Protection (E-commerce) Rules, 2020, the platform has certain obligations, including disclosure of seller details, accurate product descriptions, and ensuring a transparent transaction process. Their failure to adhere to these obligations, especially if they did not disclose essential information about the seller, makes them more directly accountable for the issues faced by the complainant.

Based on these points, the first opposite party (e-commerce platform) should be considered liable for the losses suffered by the complainant due to their non-compliance with the e-commerce regulations and the direct role they played in the transaction process.

In summary, the second opposite party is exempted from recovering the loss suffered by the complainant due to their limited role in the transaction, while the first opposite party is liable due to their significant involvement and alleged non-compliance with e-commerce regulations.

The complainant, recognized under the Consumer Protection Act 2019, engaged in a transaction with the first opposite party, an e-commerce platform, for the purchase of a mobile phone, using an EMI credit facility provided by the second opposite party. The product was not delivered as promised, leading to financial and emotional distress for the complainant.

Analysis and Legal Reasoning:

- A. **Maintainability and Consumer Status:** As per Section 2(7) of the Consumer Protection Act, 2019, the complainant qualifies as a consumer, having engaged in a transaction involving consideration. The payment history (**Exhibit A-5**) confirms this status.
- B. **Deficiency in Service and Negligence:** The failure of the first opposite party to deliver the product within the promised time frame, and the subsequent unilateral cancellation of the order, constitute a deficiency in service. Furthermore, their inability to disclose critical information about the seller as mandated by the Consumer Protection (E-commerce) Rules, 2020, particularly under Rule 5(3)(a), further substantiates this claim.
- C. **Liability of the First Opposite Party:** The first opposite party, being a marketplace e-commerce entity, is bound by the obligations under the Consumer Protection (E-commerce) Rules, 2020. Their argument of being merely an intermediary does not exempt them from ensuring compliance with these rules, which includes accurate product descriptions, disclosure of seller information, and maintenance of complaint tracking. Their failure to adhere to these rules' points to a clear violation, holding them liable for the issues faced by the complainant.
- D. **Role and Exemption of the Second Opposite Party:** The second opposite party, having only facilitated the financial aspect of the transaction and not partaking in the sales process, is exempted from liability. Their role was confined to providing the EMI facility, and they are not implicated in the service deficiencies.
- E. **Relief to the Complainant:** Given the distress and inconvenience caused to the complainant, coupled with the violation of consumer rights, it is deemed just to award compensation. The claim for mental agony, costs of litigation, and the refund of service charges is considered reasonable under the circumstances.

The Commission, after careful consideration of the submissions, evidence, and the legal framework, finds the first opposite party liable for the deficiency in service and unfair trade practice. The second opposite party is absolved of liability due to their limited involvement in the transaction. The complaint is thus partly allowed in favour of the complainant.

We find that issues (i) to (iv) also favour the complainant, as they are a result of the serious deficiency in service on the part of the first Opposite Party. Naturally, the complainant has experienced a significant amount of inconvenience, mental distress, hardships, financial losses, etc., due to the deficiency of service and unfair trade practices by the first Opposite Party.

In view of the above facts and circumstances of the case, we are of the opinion that the first Opposite Party is liable to compensate the complainant.

Hence the prayer is partly allowed as follows:

- I. The first opposite party is ordered to pay the complainant ₹ 40,000/- (Forty Thousand Only) for deficiency in service and unfair trade practice.
- II. The first opposite party is directed to refund the complainant an amount of ₹1,132 (One Thousand One Hundred Thirty-Two Only), which was collected as service charges by the second opposite party. This refund is due to the first opposite party's deficiency in service and engagement in unfair trade practices.
- III. The first opposite party is ordered to pay the complainant ₹10,000/- (Ten Thousand Only) towards the cost of the proceedings.

The first opposite party is liable for the above-mentioned directions. They must comply within 30 days from the date of receiving a copy of this order. If they fail to do so, the amounts ordered in points (i) and (ii) above will attract interest at a rate of 9% per annum from the date of the complaint (23.11.2020) until the date of realization.

Pronounced in the Open Commission on this the 6th day of April, 2024.

Sd/-

D.B.Binu, President

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V.Ramachandran, Member

Sd/-

Sreevidhia.T.N, Member

Forwarded/by Order

Assistant Registrar

Appendix

Complainant's Evidence

Exhibit A-1: True copy of product booking details.

ExhibitA-2: True copy of communication with Opposite Party No. 1.

Exhibit A3: True copy of communication with Opposite Party No. 1.

Exhibit A-4: True copy of cancellation report.

Exhibit A-5: True copy of payment history.

Opposite party's Exhibits

Nil

Despatch date

By hand: By post

kp/

CC No. 389/2020

Order Date: 06/04/2024

**[HON'BLE MR. D.B BINU]
PRESIDENT**

**[HON'BLE MR. RAMACHANDRAN .V]
MEMBER**

**[HON'BLE MRS. SREEVIDHIA T.N]
MEMBER**