

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION : AT NALGONDA :**

PRESENT: SRI MAMIDI CHRISTOPHER,
PRESIDENT.

SMT.S.SANDHYA RANI,
FEMALE MEMBER.

SRI K.VENKATESHWARLU,
MALE MEMBER.

. . .

TUESDAY, THE TWENTY SIXTH DAY OF JULY, 2022

CONSUMER COMPLAINT No. 50 OF 2021

Between:

Shaik Umar Farooq S/o Shaik Nazam Ali, Aged about 20 years,
Occ: Student, R/o H.No.2-22 Nalgonda District-508 211,
Telangana.

...COMPLAINANT.

AND

1) Flipkart Internet Private Limited, Buildings Alyssa,
Begonia & Clove Embassy Tech Village, Outer Ring Road,
Devarabeesanahalli Village, Bengaluru-560 103, Karnataka.

2) Sri Satyanarayana Enterprises, Main Road, Peddapuram,
East Godawari District-533 437, Andhra Pradesh.

...OPPOSITE PARTIES.

This complaint coming on before us for final hearing, in the presence of the Complainant, and Sri A.Narendar Rao, Advocate for the Opposite Party No.1, and the Opposite Party No.2 was set ex-parte, and on perusing the material papers on record, and having stood over for consideration till this day, the Commission passed the following:

ORDER

BY SMT.S.SANDHYA RANI, FEMALE MEMBER

1. The Complainant filed this complaint Under Section 35 of Consumer Protection Act, 2019 to direct the Opposite Parties to check every product selling on Flipkart is below the MRP (Maximum Retail Price) and to pay compensation of Rs.80,000/- for adopting unfair trade practices, Rs.60,000/- for deficiency in service and to deposit the same in Legal Aid Account to create more awareness among the consumers from getting deceived by the Opposite Parties.

Contd...2

2. The facts leading to the filing of this complaint are as follows:

The Complainant ordered Freedom Refined Sunflower Oil pouch, pack of 2 sunflower oil pouches 2000 ml (1000 ml. each) from Flipkart Order ID.No.OD121568984611350000 and the order was successfully delivered on 25/04/2021. The value of the order is Rs.480/- (each oil packet cost Rs.240/-) and the shipping charge is Rs.103/-, total price is 583/-. The Complainant after receiving the order found Flipkart selling more than MRP Price. MRP on the product is Rs.170/- (very hard to see the price as they wiped the MRP), but he paid Rs.240/- per each packet, which is Rs.70/- more on MRP. So the total Rs.170/- for two packets is Rs.340/-. The Complainant paid Rs.480/- instead of Rs.340/- according to MRP. So, in total Flipkart collected extra Rs.140/- on MRP. The wiping of MRP amounted to an unethical and unfair trade practice which also amounts to deficiency in service. COVID-19 brought suffering the people these days as it is very hard to meet basic needs, such as rice, pulses and oil etc., but the E-Commerce are making cash by selling more than MRP. Hence, the complaint.

3. The Opposite Party No.1 filed written version denying all the averments of the complaint and contended that the Complainant purchased the products from one of the sellers (Opposite Party No.2) registered on online platform provided by Opposite Party No.1. The Complainant wrongfully impleaded Opposite Party No.1 under the complaint and the same may be dismissed. As per Legal Metrology (Packed Commodity) Amended Rules, 2017, provides that an E-Commerce entity shall ensure that all monetary declaration as specified in the said Rules shall be displayed on the digital and electronic network used for e-commerce transactions. The responsibility for correctness of such declaration shall lie with the manufacturer, the seller or the importer. A market place model e-commerce entity, such as flipkart.com has been exempted by the Rules from any responsibility for any incorrect information provided by the seller under digital platform. The Opposite Party

Contd...3

No.1 contended the function of e-commerce entity is limited to providing access to a communication system, over which information made available by the manufacturer or the seller or dealer or importer is transmitted or temporarily stored or posted. The entity does not i) initiate the transmission ii) select receiver of the transmission, ii) select or modify the information contained in the transmission.

4. The Opposite Party No.1 Flipkart internet private limited is a company engaged in providing trading/selling facility over the internet through its website www.flipkart.com and mobile application. The Opposite Party No.1 is an online market place e-commerce. The Opposite Party No.1 only acts as an intermediary through its web interface and provides a medium to various sellers all over India to offer for sale and sell their products to the users of flipkart platform. These sellers are separate entity being controlled and managed by different persons/stake holders. The Opposite Party No.1 does not directly or indirectly sell any products on flipkart platform. All the products in flipkart platform are sold by third party sellers who avail the online market place service provided by Opposite Party No.1 and terms decided by the respective sellers only. The product purchased by the Complainant was sold by an independent seller through flipkart platform. The Opposite Party No.1 has no role in listing of the products specifications, price or discount for the product listed by the seller. The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Govt.of India has clarified that in a market place model of e-commerce any warranty, guaranty of goods and services sold by responsibility of the seller. The seller is responsible for delivering the goods to the customers, customer satisfaction and post sales. The Opposite Party No.1 contended that the product was purchased from the third party seller, i.e. Opposite Party No.2 by the Complainant as the Complainant filed copy of Tax-Invoice of the product. It is Opposite Party No.2 who sold and supplied the product to the Complainant. The Opposite Party No.1 conducted an internal investigation and found the seller

Contd...4

in violation of the Policies of the platform. The account of the seller was blacklisted and not allowed to sell products on the platform further. The Opposite Party No.1 contended that the role/involvement of Opposite Party No.1 is an intermediary only, i.e. to provide online platform to facilitate the whole transaction of sale and purchase of goods by the respective sellers and buyers on its flipkart platform. The services of answering Opposite Party No.1 are similar to that of shopping mall, where various products are rented out different sellers who independently carry out sale proceedings with the customers/visitors of the shopping mall and in case of any deficiency in service by shop owners/sellers in the shopping mall, it is the shop owner/seller who is held liable for the consequences and not the owner of the shopping mall. In the same way, the Opposite Party No.1 is not involved in the entire transaction except of providing the online platform for the transactions and the concerned contracts of sale and purchase in between the sellers and buyers only. Hence, Opposite Party No.1 is not held liable for any liability owing to such contract. The contract of sale is a bipartite contract between the buyer and seller only. The contractual/commercial terms include without limitation price, shipping cost, payment method, payment terms, date, period and mode of delivery, warranty related to products and services and after sale services related to sales and services. Flipkart does not have any control or does not determine or advice or in any way involved in the offering or accepting of such contractual, commercial terms between the buyer and seller.

5. The Complainant had ordered products through the online web portal and the products were duly delivered to the Complainant at the address provided by him. The Complainant purchased the products from one of the sellers listed on the flipkart platform. The Complaint is regarding alleged charging of more than MRP of the product. As Opposite Party No.1 is mere an intermediary and not the manufacturer or seller of the product sold to the Complainant and cannot assume liability of any extra price charged by the seller. It is only the seller who is liable

Contd...5

towards the Complainant for an excess charge. The Opposite Party No.1 contended that there is no privity of contract between the Complainant and Opposite Party No.1 and as such does not give rise to any dispute. It is only between the Complainant and independent third party, i.e. seller. Hence, the present complaint against the Opposite Party No.1 is liable to be dismissed.

6. The Opposite Party No.1 contended that he never came in possession of the product purchased by the Complainant, as such there is no question of tampering the MRP by Opposite Party No.1. The ultimate beneficiary of the consideration paid by the Complainant is the seller of the product and not Opposite Party No.1. Opposite Party No.1 has not cheated the Complainant in any manner. Opposite Party No.1 did not indulge in any unfair trade practice and not adopted deficiency of service of any sort with the Complainant. The Complainant failed to establish the cause of action under the provisions of Consumer Protection Act against Opposite Party No.1 as the dispute is only in between the Complainant and the seller and therefore, the complaint against Opposite Party No.1 may be dismissed with costs.

7. The Opposite Party No.1 filed guidelines for Foreign Direct Investments (FDI) on E-Commerce.

8. The Opposite Party No.2 is set exparte and not filed written version, affidavit and documents.

9. The Complainant filed his proof affidavit and got marked Exs.A-1 and A-2 and M0-1, i.e. two freedom refined sunflower oil sachets. The Opposite Party No.1 filed affidavit, but no documents were marked on behalf of Opposite Party No.1. The Complainant and Opposite Party No.1 filed written arguments.

10. The points for consideration are:

- 1) Whether there was deficiency in service and unfair trade practice on the part of the Opposite Parties?
- 2) Whether the Complainant is entitled for the claims as prayed for?
- 3) If so, to what extent?

Contd...6

11. POINT No.1:

The Complainant ordered Freedom Refined Sunflower Oil pouch, pack of 2 sunflower oil pouches 2000 ml (1000 ml. each) vide M.O-1 (2 Freedom Refined Sunflower Oil Pouches) from Flipkart Order ID.No.OD121568984611350000 and the order was successfully delivered on 25/04/2021 to the Complainant. The value of the order is Rs.480/- (each oil packet cost Rs.240/-) and the shipping charge is Rs.103/-, total price is 583/-, vide Ex.A-1. The Complainant after receiving the order found Flipkart was selling more than MRP Price. The MRP on the product is Rs.170/- (very hard to see the price as they wiped the MRP), but he paid Rs.240/- per each packet, which is Rs.70/- excess on MRP. So, the total Rs.170/- for two packets is Rs.340/-. The Complainant paid Rs.480/- instead of Rs.340/- according to MRP. So, in total Flipkart collected extra Rs.140/- on MRP.

12. The Opposite Party No.1 contended that the Complainant purchased the products from one of the sellers (Opposite Party No.2) registered on online platform provided by Opposite Party No.1. As per Legal Metrology (Packed Commodity) Amended Rules, 2017, provides that an E-Commerce entity shall ensure that all monetary declaration as specified in the said Rules shall be displayed on the digital and electronic network used for e-commerce transactions. The responsibility for correctness of such declaration shall lie with the manufacturer, the seller or the importer. The Opposite Party No.1 contended the function of e-commerce entity is limited to providing access to a communication system, over which information made available by the manufacturer or the seller or dealer or importer is transmitted or temporarily stored or posted.

13. The Opposite Party No.1 is an online market place e-commerce. The Opposite Party No.1 only acts as an intermediary through its web interface and provides a medium to various sellers all over India to offer for sale and sell their products to the users of

Contd...7

flipkart platform. The Opposite Party No.1 contended that he does not directly or indirectly sell any products on flipkart platform and all the products in flipkart platform are sold by third party sellers who avail the online market place service provided by Opposite Party No.1 and terms decided by the respective sellers only. The product purchased by the Complainant was sold by an independent seller through flipkart platform. The Opposite Party No.1 contended that he has no role in listing of the products specifications, price or discount for the product listed by the seller. The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Govt.of India has clarified that in a market place model of e-commerce any warranty, guaranty of goods and services sold by responsibility of the seller and that the seller is responsible for delivering the goods to the customers, customer satisfaction and post sales. The Opposite Party No.1 contended that the product was purchased from the third party seller, i.e. Opposite Party No.2 by the Complainant as the Complainant filed copy of Tax-Invoice of the product. It is Opposite Party No.2 who sold and supplied the product to the Complainant. The Opposite Party No.1 contended that the role/involvement of Opposite Party No.1 is an intermediary only, i.e. to provide online platform to facilitate the whole transaction of sale and purchase of goods by the respective sellers and buyers on its flipkart platform. The Opposite Party No.1 contended that he is not involved in the entire transaction except of providing the online platform for the transactions and the concerned contracts of sale and purchase in between the sellers and buyers only. The contract of sale is a bipartite contract between the buyer and seller only. Flipkart does not have any control or does not determine or advice or in any way involved in the offering or accepting of such contractual, commercial terms between the buyer and seller.

14. The Opposite Party No.1 contended that Complainant had ordered products through the online web portal and the products were duly delivered to the Complainant at the address provided by him and Complainant purchased the products from one of the

Contd...8

sellers listed on the flipkart platform. The complaint is regarding alleged charging of more than MRP of the product. As Opposite Party No.1 is mere an intermediary and not the manufacturer or seller of the product sold to the Complainant and cannot assume liability of any extra price charged by the seller. It is only the seller who is liable towards the Complainant for an excess charge. There is no privity of contract between the Complainant and Opposite Party No.1 and does not give raise to any dispute. It is only between the Complainant and independent third party, i.e. seller.

15. The Opposite Party No.1 contended that he never came in possession of the product purchased by the Complainant, as such there is no question of tampering the MRP by Opposite Party No.1. The ultimate beneficiary of the consideration paid by the Complainant is the seller of the product and not Opposite Party No.1. Opposite Party No.1 has not cheated the Complainant in any manner. Opposite Party No.1 did not indulge in any unfair trade practice and not adopted deficiency of service of any sort with the Complainant.

16. The Complainant as per Ex.A-1 ordered two Freedom Refined Sunflower Oil pouches pack of two on 19/04/2021 at 5-45 p.m., through Opposite Party No.2 and the same was delivered on 21/04/2021. The Complainant paid the amount of Rs.480/- in total toward cost of the oil pouches and Rs.103/- towards shipping charges, i.e. total price of Rs.583/- as per Ex.A-2. The Opposite Party No.2 issued tax invoice receipt towards the oil packets. The Complainant stated that he came to know that the product is for Rs.170/-, but he paid Rs.240/- towards each packet, which is Rs.70/- more than the MRP price on the oil packets. But, the actual MRP price of the oil packet is Rs.170/- and total cost would be Rs.340/-, but the Complainant paid Rs.480/- and Rs.103/- towards shipping charges, thereby the Complainant was charged extra amount more than the MRP price on the oil sachets. On observation of M.O-1, i.e. oil sachets, it is found there is erased mark at the place of MRP price on both the oil sachets. So that the

Contd...9

price cannot be seen by an ordinary person, thereby duping the consumers by charging Rs.240/- on each oil packet, more than the actual MRP of Rs.170/- per oil packet.

17. Herein are the excerpts of the provisions of Consumer Protection Act, 2019: "Deficiency" means as per Section-2 (11) of Consumer Protection Act, 2019, any fault imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes – i)any act of negligence or omission or commission by such person which causes loss or injury to the consumer and ii)deliberate withholding of relevant information by such person to the consumer.

18. Section-2(17), i.e. Electronic Service Provider means a person who provides technologies or processes to enable the product seller to engage in advertising or selling goods or services to a consumer and includes any online market place or online auction sites.

19. Section-2(34),i.e. Product Liability means the responsibility of a product manufacturer or product seller of any product or service to compensate for any harm caused to a consumer by such defective product manufacturer or sold by deficiency in service relating thereto.

20. Section-2 (22) Harm: in relation to a product liability includes, i) damage to any property other than the product itself, ii) personal injury – illness or death, iii) mental agony or emotional distress attendant to personal injury or illness or damage to property, or iv)any loss of consortium or services or other loss resulting from harm. Injury means any harm whatever caused to any person in body, mind or property.

21. Section-2(38) Product Service Provider means the person who provides any service in respect of such product.

22. Section-2(47) „Unfair Trade Practice“ means a trade practice which for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts unfair method or unfair or deceptive practice namely; i)making any statement whether orally or in writing or by visible representation including by means of electronic record which – a)falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model etc.

23. The Consumer Protection (E-Commerce) Rules, 2020 provides Under Section-4 (11), no e-commerce entity shall – a)manipulate the price of goods or services offered on its platform in such a manner as to gain unreasonable profit by imposing on consumers any unjustified price having regard to the prevailing market condition, in the essential nature of the good or service, any extra ordinary circumstances under which the good or service is offered and any other relevant consideration in determining whether the price charged is justified. As per Section-6, i.e. Duties of Sellers on market place – no seller offering goods or services through a market place e-commerce entity shall adopt any unfair trade practice whether in the course of the offer on the e-commerce entity“s platform or otherwise.

24. Unfair Contract means a contract between a manufacturer or trader or service provider on one hand and the consumer on the other, having such terms which cause significant change in the rights of such consumer. iv) imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage. The Opposite Parties No.1 and 2 are the agents who sells the 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, as held the Hon“ble National Commission in Revision Petition No.756/2016 between Emerging India Real Assets Limited and another Vs.Kamer Chand and another.

Contd...11

25. The Opposite Parties No.1 and 2 are in contract and agreement with the manufacturer and are service providers through e-commerce entity and are bound by the contract between the manufacturer product seller, i.e. Opposite Parties No.1 and 2 and the consumer and are bound to provide about the information and details about the product to the sellers offering goods. The Opposite Parties come within the purview of the above definitions of Consumer Protection Act, 2019 with regard to deficiency in service and unfair trade practice committed by them and also the consequences of the same.

26. In the present complaint, the Opposite Parties have tampered with the original MRP Price of the oil sachet and charged extra amount more than the MRP. The Complainant has not made the manufacturer of the Freedom Refined Sunflower Oil, as one of the Opposite Parties, who originally packaged and sold the product to the Opposite Parties No.1 and 2. The manufacturer would be the best person to clarify with regard to the price details and any modification or alteration of the same. There is tripartite contract between the seller, service provider, i.e. the Opposite Parties No.1 and 2 and the consumer. As such, the seller and service provider are liable for any defect, deficiency of service and unfair trade practice on the services provided or good/product sold by them. Therefore, the Opposite Parties have not performed their duties of sellers on market place as laid down in the Consumer Protection E-Commerce Rules, 2020.

27. The Complainant submitted some of the decisions of various Hon“ble Apex Courts with regard to the MRP. 1) Hon“ble State Consumer Disputes Redressal Commission, U.T. Chandigarh, between Amazon Sellers Private Limited Vs. Gopal Krishnan and another in Appeal No.27/2017. 2) Hon“ble National Consumer Disputes Redressal Commission, New Delhi, Revision Petition No.756/2016 between Emerging India Real Assets Private Limited and another Vs.Kamer Chand and another. 3) Hon“ble State Consumer Disputes Redressal Commission, Punjab, Chandigarh,

Contd...12

F.A.No.544/2019 between Amazon Seller Services Private Vs. Vishwajith Tapia. 4) Hon“ble State Consumer Disputes Redressal Commission in Case No.AL72021 between Sri Animesh Baidya Vs. Amazon Sellers Private Limited. The above decisions are relevant and applicable to the present facts of the complaint.

28. In a decision reported in IV (2009) CPJ 8 between Mc.Donalds India Vs. Anupam Tripathi, the Hon“ble Delhi State Consumer Disputes Redressal Commission, New Delhi observed that: „No trader/person can charge more than price mentioned on the package – OP sold article for price more than the permissible maximum price – the very connotation printed on the packet goods namely; MRP, which means “Maximum Retail Price” leaves no manner of doubt that no trader or person can charge more than the price mentioned on the package – “means sale of goods or article to an individual or in small quantities directly to the consumers”. The conduct of the appellants squarely falls within the mischief of “Unfair trade practice and deficiency of service” as they sold the article for a price which was more than the permissible maximum price.

29. In another decision reported in IV (2016) CPJ 246 (NC) between Big Cinemas and another Vs. Manoj Kumar – purchase of water bottle – there cannot be two MRPs excepting in accordance with law. The products in pre packaged form are covered under the definition of pre packed commodity in Section-2(1) of the Legal Metrology Act, 2009 and the Petitioners are required to comply with the provisions of the Act and Rules. The manufacturer importer, packer is required as per Rule-6 of the Rules to declare on packages – retail prices of the packages etc.

30. As per the two citations cited above are applicable to the present complaint facts as there was tampering of MRP price on MO-1 and as per Ex.A-1, the Opposite Parties No.1 and 2 collected more than the MRP price on the oil packet to illegally extorting money from the customers. Therefore, causing economic loss and

Contd...13

mental agony to the Complainant. Hence, there is deficiency in service and unfair trade practice on the part of the Opposite Parties No.1 and 2.

31. POINT Nos.2 & 3:

In the light of the findings under Point No.1, the Opposite Parties No.1 and 2 are liable to return the additional extra charge of Rs.140/- (i.e. Rs.70/- more than MRP on each packet) and to pay an amount of Rs.50,000/- towards compensation and Rs.3,000/- towards costs.

In the result, the complaint is allowed in part, directing the Opposite Parties No.1 and 2 jointly and severally to return the additional extra charge of Rs.140/- (i.e. Rs.70/- more than MRP on each Freedom Refined Sunflower Oil packet) and to pay an amount of Rs.50,000/- [Rupees Fifty Thousand only] towards compensation and Rs.3,000/- [Rupees Three Thousand only] towards costs, to the Complainant. The Opposite Party No.1 is directed to take M.O-1 [Two Freedom Refined Sunflower Oil Packets] deposited in the District Commission and replace them with two new oil packets and handover the same to the Complainant. Time for compliance is 30 days from the date of receipt of this order.

Dictated to Steno-Typist, transcribed by him, corrected and pronounced by us in the open Commission on this 26th day of July, 2022.

FEMALE MEMBER

MALE MEMBER

PRESIDENT

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Complainant:

Affidavit of the Complainant.

For Opposite Parties:

Affidavit of Opp.Party No.1.

Contd...14

EXHIBITS MARKED

For Complainant:

Ex.A-1	Dt.21/04/2021	Xerox copy of Tax-Invoice, issued by Opposite Party No.2.
Ex.A-2	Dt.23/02/2022	Xerox copy of Tax-Invoice, issued by More Retail Private Limited, Nalgonda.
M0-1		Freedom Refined Sunflower Oil Sachets(2).

For Opposite Parties No.1 & 2:

Nil.

PRESIDENT
DISTRICT CONSUMER DISPUTES
REDRESSAL COMMISSION,
NALGONDA