

Date of filing: 23.08.2017
Date of Disposal: 15.09.2023

**BEFORE THE III ADDITIONAL BANGALORE URBAN
DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
BENGALURU – 560 027.**

DATED THIS THE 15th DAY OF SEPTEMBER, 2023

CONSUMER COMPLAINT NO.2384/2017

PRESENT:

SRI. SHIVARAMA K	PRESIDENT
SRI. CHANDRASHEKAR S NOOLA	MEMBER
SMT. REKHA SAYANNVAR	MEMBER

Sri.Shiv Nair,
Aged about 50 years,
S/o M.S Nair,
Residing presently at
#463, 18th Main,
IV 'T' Block, Jayanagar,
Bengaluru – 560 041.

.....COMPLAINANT

(Advocate – Sri.Kiran N Murthy)

V/s

1) Amazon Development Centre
India Pvt. Ltd.,
Orion Building,
GF, 8th, 9th, 10th, & 11th Floor,
Bagmane Constellation Business

Park,
K.R Puram – Marathalli Ring Road,
Mahadevapura,
Bangalore – 560 048.
Landmark:Opposite Arena Mall.

2) Cloudtail India Pvt Ltd.,
Anjaneya Infrastructure Project,
Unit No.2, No.38 & 39,
Soukya Road, Kacherakanahalli,
Hoskote Taluka,
Bangalore Rural District,
Bangalore – 560 067.

Having their Corporate Office at
Prione Business Services Private
Limited.,
5th Floor, Divyasree Chambers,
Wing 'B',
#11 O' Shaughnessy Road,
Langford Town,
Bangalore – 560025.

3) M/s Panasonic India (P) Ltd.,
276/22/1, J.P Chambers,
2nd Floor, 46th Cross,
Jayanagar 5th Block,
Bengaluru – 560 041.
Near Ramakrishna Hospital,
Rep. by its Regional Head.

..... **OPPOSITE PARTY/S**

(Advocate for OP-1 & 2 – Sri.
Mohan Malge)

(Advocate for OP-3 – Sri.K.P
Madhan Kumar)



// JUDGEMENT //**BY SRI.SHIVARAMA K, PRESIDENT**

The complainant has filed this complaint U/s.12 of the Consumer Protection Act, 1986 for an order to hold OP-1 & 2 jointly and severally liable for deficiency of service and for a direction to OP-2 to replace the product with a new brand one and alternatively to direct OP-2 to refund entire amount of Rs.58,990/- and such other relief as this Commission deems fit in the circumstances of the case.

2. It is not in dispute that OP-1 is the online porter which sells various products both cash on delivery and online payments. OP-2 is the vendor of product and OP-3 is the manufacturer of the product. Further it is not in dispute that the complainant had ordered a Panasonic HD Smart LED TV from OP-2 through OP-1 online platform on 28.10.2016 for a sum of Rs.59,000/-. Further the complainant had made online payment by using his credit card and OP-2 had issued tax invoice dated 28.10.2016 and it was intimated that the product would be arrived on or before 9th November 2016 and OP-1 delivered the product through its logistical partner on behalf of OP-2 on 02.11.2016. Further it is not in dispute that the complainant got issued legal notice dated 10.07.2017 to OP-1 & 2.



It is the further case of the complainant that the complainant was unable to unpack it immediately as its intended installation location was under construction. Further by the time the civil work was completed and the complainant could eventually unpack the product for installation on 24.11.2016 after 10 days of the return period permitted to the item. Further at the time of unpacking it was found that the product was badly damaged and the item was not in its original company packaging but had been opened and then repacked in a slipshod manner. Further Panasonic Engineer observed the quality of packing and the product and found the damaged product and refused to install the TV as it was completely damaged. Further the complainant had sent email to OP-2 on 24.11.2016 and informed them the issue and the complainant was asked to send the pictures of the damaged product. Further despite repeated follow ups, the complainant did not get any update or reply from OP-2. Further OP-2 had responded the complainant to contact the manufacturer for resolution of the issue as it was a manufacturing defect. Further it is the case of the complainant that the damage was due to gross negligence during handling and transporting and the manufacturer cannot be held liable for it. Further OP-1 refused to receive the legal notice sent and OP-2 had received the notice and had given reply. Further since there was defect in the product, the complaint came to be filed.



3. It is the further case of the OP-1 that OP-1 neither sold the product nor offered to sell any products and it was only an online market place where independent third-party sellers can list their products for sale. Further OP-1 did not involve in the sale transaction between customer and the seller and it was only a facilitator. Further OP-1 is not liable for the compensation sought.

4. It is the further case of the OP-2 that it is matter of record that the product was received by the complainant in a sealed box condition without any demur. Further the product pack was opened almost after 20 days after its sale receipt. Further since the complainant sought the return of the product after expiry of the return window period of 10 days, the complainant is not entitle for the return of the product as per the policy of OP-1. OP-2 cannot be held liable for delivery of damaged product by OP-1 and also the product sealed and packed by the manufacturer. Hence, it is sought to dismiss the complaint.

5. To prove the case the complainanthas filed affidavit in the form of his evidence in chief and produced documents.OP-1 & 2 have filed their affidavit in the form of their evidence in chief. Counsel for complainant has filed the written arguments.



6. Heard the counsel for the complainant.

7. The points that would arise for consideration are as under:

- i) Whether the complainant has proved the deficiency of service on the part of the opposite parties?
- ii) Whether the complainant is entitled for the relief as sought?
- iii) What order?

8. Our findings on the aforesaid points are as follows:

Point No.1: In affirmative

Point No.2: Partly in affirmative

Point No.3: As per the final order for the following

REASONS

9. POINT NO.1:- Complainant and OP-1 & 2 have reiterated the fact stated in their respective pleadings in the affidavits filed in the form of their evidence in chief. According to the complainant while unpacking the product it was found badly damaged. The complainant has produced the Xerox copy of the letter dated 24.11.2016 given by the Panasonic Service



Provider, in which it is stated that the product was badly damaged when unpacked and it does not appear that the Company had packed and the packing was not proper, hence he was not able to install the TV. We feel the said letter itself is sufficient that the product was damaged at the time of delivery.

10. It is the contention of the learned counsel for the OP-1 & 2 that since the unpack was done after 10 days from the date of delivery, they are not responsible for the damage and replace of the same. According to the complainant, the TV was looked like that it had been dropped with the screen almost completely shattered in multiple places and its plastic casing was cracked open. Further the damage was due to gross negligence during handling and transporting and the manufacturer cannot be held liable for. Since there was a damage in the product there is a deficiency of service on the part of OP-2 in delivering the product safely. Further it is to the look out of the vendor to reach the product safely to the customer. Accordingly, we answer the point in affirmative.

11. Point No. 2:- The complainant has claimed replacement or alternatively for refund of the amount of Rs.58,990/-. The complainant alleged against OP-2 the vendor of the product. We feel OP-2 being vendor, duty is casted on OP-2 to deliver the product safely to the door of the customer.



Hence, OP-2 has failed to do the same. Further we feel since the product was purchased in the year 2016, it is not fair to replace the same model. Hence, we feel OP-2 shall refund the entire amount paid of Rs.58,990/- and the complainant shall return the product to OP-2. Further since OP-2 failed to refund the amount even though notice has been sent by the complainant and it gave a reply on 13.07.2017 stating that OP-1 is responsible for the damage in the product delivered. We feel since the vendor is responsible, OP-2 is not correct in its reply and OP-2 is liable to pay interest on the above said amount @ 9% p.a from the date of legal notice dated 10.07.2017. Further the complainant has claimed a sum of Rs.50,000/- towards mental agony. We feel the complainant is entitle for a sum of Rs.10,000/- towards mental agony. Further the activity of OP-2 made the complainant to approach this Commission and to send legal notice. Hence complainant is entitle for a sum of Rs.10,000/- towards litigation cost. Accordingly, we answer this point partly in affirmative.

12. POINT No.3:- In view of the discussions made above and findings given on point No.1 & 2 we proceed to pass the following:

ORDER


1. Complaint is allowed in part. OP-2 is directed to pay a sum of Rs.58,990/- with interest @ 9% p.a



from the date of legal notice i.e., on 10.07.2017 till realization and a sum of Rs.10,000/- towards mental agony and a sum of Rs.10,000/- towards litigation cost to the complainant.

2. Complainant is directed to return the product to OP-2.
3. OP-2 shall comply the order within 45 days from the date of order. In case Opponent fails to comply the same within the above said period, the above said amount of Rs.20,000/- carries interest @ 9% p.a from the date of order till realization.
4. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
5. Supply free copy of this order to both the parties and return extra copies of the pleading and evidence to the parties.

(Dictated to the stenographer and transcribed by him and typed by him and corrected and then pronounced in the open Commission on **15th day of September, 2023**)


(Rekha Sayannvar) (Chandrashekhara S Noola)
MEMBER MEMBER


(SHIVARAMA, K)
PRESIDENT

//ANNEXURE//**Witness examined from the side of complainant:**

Sri.Shiva Nair, who being complainant.

<u>Documents marked from the side complainant:</u>	
1)	Copy of the invoice bill dated 31.10.2016.
2)	Copy of the letter dated 24.11.2016 issued by Panasonic Service Engineer.
3)	Copy of the communications to clouddail (Amazon India) dated 24.11.2016.
4)	Copy of the reply from clouddail (Amazon) dated 24.11.2016.
5)	Copy of the reply from the complainant dated 25.11.2016 to clouddail attaching snap shots of the product.
6)	Copy of the mail from Amazon dated 02.12.2016.
7)	Copy of the following mails from the complainant dated 07.12.2016 to the OP-1.
8)	Copy of the mail sent to Amit Agarwal, Country Manager, Amazon dated 10.12.2016.
9)	Copy of the legal notice dated 10.07.2017 along with postal receipts and RPAD return unserved covers.
10)	Copy of the reply notice dated 13.07.2017.

Witness examined from the side of opposite party-1


Sri.Rahul Sundaram, who being authorised representative of OP-1.

Witness examined from the side of opposite party-2

Swati Chaudhary, who being authorised representative of OP-2.

Documents marked from the side of Opposite Party/s

---- Nil ----


15/09/2023.
(Rekha Sayannvar) (Chandrashekhar S Noola)
MEMBER MEMBER


15/09/23
(SHIVARAMA, K)
PRESIDENT

vln*

