

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM
ERNAKULAM**

**Complaint Case No. CC/21/453
(Date of Filing : 26 Nov 2021)**

1. SHIHAB

KOYIKKAL HOUSE CHALACKAL MARAMBALLY P.O
ALUVA

.....Complainant(s)

Versus

1. HMD MOBILE PVT LTD

8TH FLOOR 24, BHARAKHAMBA ROAD, NEW DELHI

.....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 : 20 Jul 2023

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM

Dated this the 20th day of July

2023.

Filed on: 26/11/2021

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member Smt.Sreevidhia.T.N

Member

C.C No. 453/20 21

COMPLAINANT

Shihab, S/o.Makkar, Koyikkal House, Chalackal Marambally P.O., Aluva, Pin-683 105

Vs.

OPPOSITE PARTIES

1. The Care Manager, HMD Mobile Pvt.Ltd Ashoka Estate, Flat No.814, 8th Floor. 24. Barakhamba Road, New Delhi-110001
- 2) The Manager, Sahayee Mobile, Near Railway Station R.S.Road, Aluva-683 101

FINAL ORDER

D.B. Binu, President.

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

The complaint was filed under Section 35 of the Consumer Protection Act, 2019. The brief facts, as averred in the complaint, are that the complainant purchased a mobile phone from the second opposite party on July 25, 2021. The phone was described as No. 354632541558609 and was manufactured by the first- opposite-party. The purchase price was Rs. 1600. However, the very next day after the purchase, the complainant encountered issues with the phone. It was difficult to switch it back on once it was switched off, and the salesman at the store attributed this problem to the tight keypad of the new phone. The salesman assured the complainant that the issue would resolve itself with time. However, the phone continued to be inconvenient to use, and the complainant faced difficulties in turning it on after switching it off.

The complainant contacted the second opposite party to address the issue, but they dismissed it as a normal occurrence for a new phone. As a result, the complainant found it necessary to file a complaint seeking a replacement of the mobile phone with one of the same quality or a resolution to the problem. Additionally, the complainant is requesting compensation of Rs. 12000/- for the emotional distress caused.

2) **Notice**

The notices sent to both the opposite parties have been served. The first opposite party has submitted its version in response to the notice. However, the second opposite party has not filed their version within the given time frame. As a result, the second opposite party is considered as "ex-parte".

2. **The version of the Opposite Party No.1**

In this case, opposite Party No. 1 (OP No. 1) denies the allegations made against them in the complaint. They argue that the complaint lacks substance and is without any valid cause of action under the Consumer Protection Act. They claim that the alleged handset, a NOKIA 110 DS, purchased by the complainant did not have any manufacturing defect, and the complainant's vague allegations of issues with the product are false and baseless. The opposite Party asserts that they sell handsets that pass through stringent quality control measures and are free from

defects. They argue that any alleged defects in the mobile phone are a result of the complainant's mishandling and misuse. The opposite Party 1 states that the complainant has failed to provide any documentary evidence or expert reports to support their claims of defects. They also mention that the warranty provided by the manufacturer covers faults arising from the mechanical functioning of the phone without any external influences. The opposite Party 1 claims that the complainant purchased the mobile phone after being satisfied with its quality and features. They argue that the complainant has no right to file the complaint as there is no evidence of any defect in the product. The opposite Party 1 further cites the limited warranty document, which states that genuine handsets with defects will be repaired free of charge during the warranty period, subject to the terms and conditions outlined in the document. Overall, The opposite Party 1 requests the dismissal of the complaint, along with costs in their favor.

3) Evidence

The complainant had filed two documents that were marked as Exhibits-A-1- to A-2.

Exhibit 1: a copy of the bill was received for the purchase of a mobile phone from the second opposite party on July 26, 2021.

Exhibit 1: a copy of the service invoice was received when the mobile phone was serviced by the second opposite party on September 29, 2021,

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

- i) Whether the complaint is 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?

6) The issues mentioned above are considered together and are 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 complainant produced a copy of the bill received for the purchase of a mobile phone from the second opposite party on July 26, 2021. (**Exhibit A-1**). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 2019.

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 leveled against them. Here, the case of the complainant stands unchallenged by the second opposite party. We have no reason to disbelieve the words of the complainant against the second opposite party. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

The opposite party's inadequate service caused a deficiency, negligence, and failure to meet the complainant's expectations. This resulted in the complainant's mental agony, hardship, and financial loss. These actions demonstrate the opposite party's callousness, negligence, and poor service quality, making them fully responsible.

After considering the facts and evidence presented, as well as the relevant provisions of the law, the following aspects can be considered:

- A. **Maintainability of the Complaint:** The complaint is maintainable under Section 35 of the Consumer Protection Act, 2019, as the complainant satisfies the definition of a consumer. The complainant purchased a mobile phone from the second opposite party, as evidenced by the bill (Exhibit A-1), and thus falls within the ambit of a consumer as defined by the Act.
- B. **Deficiency in Service and Unfair Trade Practice:** The complainant experienced issues with the mobile phone purchased from the second opposite party, as mentioned in the complaint. It was difficult to switch the phone back on once it was switched off, and the salesman at the store acknowledged this issue but attributed it to a tight keypad of the new phone. Despite the complainant's efforts to resolve the issue with the second opposite party, they dismissed it as a normal occurrence for a new phone. This behaviour amounts to a deficiency in service and an unfair trade practice as defined under the Consumer Protection Act, 2019.
- C. **Entitlement to Relief:** Considering the deficiency in service and unfair trade practice, the complainant is entitled to a resolution of the problem with the mobile phone or a replacement of the same quality. The complainant has sought compensation of Rs. 12,000/- for the emotional distress caused. While emotional distress cannot be quantified precisely, it is reasonable to award a reasonable amount of compensation to the complainant considering the inconvenience and frustration caused by the faulty mobile phone.
- D. **The burden of proof lies on the consumer to provide documentary evidence of the defect occurring during the warranty period.** In the present case, the complainant has produced the service invoice (Exhibit A-2) which indicates that the mobile phone was serviced by the second opposite party on September 29, 2021, providing further support for the existence of a defect.
- E. **Costs of the Proceedings:** Considering the circumstances of the case, costs are awarded in favor of the complainant. The complainant has incurred expenses and inconvenience due to the faulty mobile phone and the subsequent legal proceedings. Therefore, the second opposite party is directed to bear the costs of the proceedings.

This order is issued in light of the complainant's consumer rights and the legal responsibilities of the opposing parties. It has been determined that the opposite parties have failed to meet their obligations and have provided inadequate service, thereby justifying the need for appropriate remedies to be granted to the complainant.

We find the issue Nos. (I) to (IV) are found in favour of the complainant for the serious deficiency in service that happened on the side of the opposite parties. Naturally, the

complainant had suffered a lot of inconvenience, mental agony, hardships, financial loss, etc. due to the negligence on the part of the opposite parties.

In light of the circumstances, the following orders are issued:

- I. The Opposite Parties shall refund the amount of Rs 1,600/- to the complainant.
- II. The Opposite Parties shall pay Rs 2,000/- as compensation to the complainant for the mental agony and financial loss.
- III. The Opposite Parties shall also pay the complainant Rs. 1000/- towards the cost of the proceedings.

The 1st and 2nd Opposite Parties are jointly and severally liable for the above-mentioned directions which shall be complied with by the Opposite Parties within 30 days from the date of the receipt of a copy of this order failing which the amount ordered vide (i) and (ii) above shall attract interest @9% from the date of receipt of a copy of this order till the date of realization.

Pronounced in the Open Commission on this the 20th day of July 2023

Sd/-

D.B.Binu, President

Sd/-

V.Ramachandran, Member

Sd/-

Sreevidhia.T.N, Member

Forwarded/by Order

Assistant Registrar

Appendix

Complainant's Evidence

Exhibit 1: a copy of the bill was received for the purchase of a mobile phone from the second opposite party on July 26, 2021.

Exhibit 1: a copy of the service invoice was received when the mobile phone was serviced by the second opposite party on September 29, 2021.

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

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

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