

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-I,****U.T. CHANDIGARH**

Consumer Complaint No.	:	CC/335/2021
Date of Institution	:	30/04/2021
Date of Decision	:	13/07/2023

Tarun Gupta, S/o Sh.Dharam Pal Gupta, #2420, Sector 27-C, Chandigarh-160019.

... Complainant

**V E R S U S**

1. Google India Pvt. Ltd., Survey No.13, Plot No.13/E, Block 1, Divyasree Omega, Serilingampally Mandal, Opp. Satyam Building, Kondapur Village, Hyderabad, Telangana-500081.
2. B2X Service Solutions India Pvt. Ltd. Unit Number 402, Skyline Icon, Chimatpada, Marol, Andheri-Kurla Road, Andheri (East) Mumbai-400059, India.
3. Flipkart Internet Pvt. Ltd, Building Alyssa, Begonia & Clove Embassy Tech Village, Outer Ring Road Devarabeesanahalli Village, Bengaluru 560103, Karnataka, India.

... Opposite Pa

**CORAM :**            **PAWANJIT SINGH**  
                              **SURJEET KAUR**

**PRESIDENT**  
**MEMBER**

**ARGUED BY**        : Complainant in person.  
                              : Sh.Saurabh Gulia, Counsel for OP No.1.(s)  
                              : OP No.2 ex-parte.  
                              : Sh.Atul Sharma, Counsel for OP No.3.

**Per Surjeet kaur, Member**

1. Averments are that the complainant had ordered Google Pixel 4-A mobile phone from OP No.3 on 16.10.2020 received the device on 17.10.2020. The device was not working properly and accordingly a complaint was lodged in this regard on 20.10.2020 and in response to which Google support team raised a case and the issue was fixed at that time as per annexure A-1 & A-2. After 7 days of receiving the mobile, complainant started facing issue of proximity censor and later on the frequency of disorder increased multifold and again Google support team OP No.2 was contacted but the same was not resolved which is annexed as Annexure C-4 & C-5. Thereafter, on 3.12.2020 Google support technician visited, discussed and complainant showed him all the evidences of disorder in the device which is annexed as Annexure A-6 to A-8. The device was delivered/returned to the complainant taken by the OP No.2 on 14.12.2020 showing their inability as they were not able to resolve the issue and they closed the ticket as per Annexure A-9 & A-10. On 4.2.2021 Google support technician called the complainant and informed that phone screen was replaced but referring to issue of proximity censor they neither did anything nor replaced. Despite various mails subsequently to the OPs nothing transpired as is evident from the text Annexure A-31 & 32 annexed with the complaint. The Google

- support team denied the replacement of the defective phone from the date of receipt of the same, with a new device nor they are refunding the amount to the complainant. Hence, is the present consumer complaint.
2. OP No.1 filed an application under Order 1 Rule 10(2) to be read with Section 151 of Code of Civil Procedure, 1908, and has also given statement dated 23.09.2022, stated that the same be read as reply to the present consumer complaint on behalf of OP No.1. It is submitted that the applicant/OP-1 does not manufacture or provide the product Google Pixel mobile phone. It is also submitted that the product Google pixel is manufactured by Google LLC a company incorporated under the laws of the United States of America. The applicant/OP-1 is neither a necessary party nor a proper party to the present proceedings and the application has to be dismissed for non-joinder of parties. On these lines, the case is sought to be defended by it.
  3. Notice of the complaint was sent to OP No.2 seeking its version of the case. However, nobody appeared on behalf of OP No.2 despite following proper procedure, therefore it was proceeded ex-parte on 30.05.2022.
  4. OP No.3 contested the consumer complaint, filed its written reply and stated that it is not the seller of the product and the same is evident from the copy of tax invoice as attached by the complainant himself in the present complaint, but mere an online intermediary providing a common platform to the buyer & independent third-party seller. It is further submitted that the complainant has admitted the fact that he initially, contacted the manufacturer i.e., OP No.1 to raise the alleged grievance and he already had his product repaired once from the authorized service centre of the manufacturer. It is also submitted that it is bound by the terms of use enumerated on the Flipkart platform which clearly states that the contract of sale is a bipartite contract between the buyer and the seller only and it is not a party to it. Denying all other allegations made in the complaint a prayer for dismissal of the complaint has been made.
  5. Rejoinder was filed and averments made in the consumer complaint were reiterated.
  6. Parties led evidence by way of affidavits and documents.
  7. We have heard the learned counsel for the parties and gone through the record of the case.
  8. The sole grouse of the complainant through present complaint is that despite being his handset within warranty period, the OPs did not rectify the error, rather during the service period the screen of the handset of the complainant was damaged and there was issue of proximity sensor. The request of the complainant for refund or the replacement was denied by the OPs. Hence, is the present complaint.
  9. The stand taken by the OP No.1 through its application is that it has been wrongly impleaded as a party and the product Google pixel is manufactured by Google LLC a company incorporated under the laws of the United States of America. Hence, it cannot be held liable for deficiency in service for the fault reported by the complainant in the present complaint.
  10. On the other hand, OP No.3 Flipkart has contended that it is mere an online intermediary providing a common platform to the buyer & third-party seller. Therefore, it cannot be held liable for any deficiency in service.
  11. Significantly, OP No.2 did not appear to contest the claim of the complainant and preferred to proceed against ex-parte. This act of the OP No.2 draws an adverse inference against it. The non-appearance of the OP No.2 shows that it has nothing to say in its defence against the allegations made by the complainant. Therefore, the assertions of the complainant go un rebutted and uncontroverted.
  12. It is evident from the documents on record, that the complainant paid amount of Rs.27003/- to OP No.3 for buying Google pixel 4-A handset on 16.10.2020. Just after the purchase of the handset, some issues were reported to OPs through various emails Annexure A-2, A-3 & A-4 respectively. Annexure A-6 is the job sheet issued by the OP No.2 dated 3.12.2020 in which issue of sensor has been highlighted and the handset was to be handed over to the complainant on 14.12.2020. Immediately on 15.12.2020, the complainant raised issue that the screen of the phone is damaged (Annexure A-8) and so kept on following the matter through various subsequent emails and finally requested for the refund/replacement. Vide Annexure A-28, the request for refund/replacement denied by the OPs and vide Annexure A-29 the complaint denied to accept the repaired device.
  13. After going through the evidence on record, it is abundantly clear that the brand new handset of a big brand had various issues since beginning. The complainant get harassed by the frequent issues which were arising time and again OP No.1 has filed an application stating that it is a wholly owned subsidiary of Google LLC and has been appointed as a non-exclusive reseller of advertising space under Google LLC 'Ads' program in India. As per OP-1 the said services performed by it does not even form subject matter of the present case. But in our opinion as OP No.1 is publishing in India through social platform and so they are alluring the general public to purchase the product only on its

faith. Therefore, OP No.1 cannot escape from its liability. The complainant has used the platform of OP No.3 trusting its name and therefore, invested his hard-earned money to buy the product in which OP No.3 is having full faith to be sold on its platform. Hence, the act of OPs in selling a substandard product, non-providing proper after sale services and forcing the complainant in the present unnecessary litigation proves deficiency in services on their part and their indulgence in unfair trade practice.

14. In view of the above discussion, the present consumer complaint succeeds and the same is accordingly partly allowed. OPs are directed as under :-

- i. To refund amount of ₹27,003/- to the complainant alongwith interest @ 9% per annum from the date of filing of this complaint till realization.
- ii. to pay an amount of ₹5000/- to the complainant as compensation for causing mental agony and harassment to him;
- iii. to pay ₹5000/- to the complainant as costs of litigation.

15. This order be complied with by the OPs within thirty days from the date of receipt of its certified copy, failing which, it/they shall make the payment of the amounts mentioned at Sr.No.(i) & (ii) above, with interest @ 12% per annum from the date of this order, till realization, apart from compliance of direction at Sr.No.(iii) above.

16. Certified copies of this order be sent to the parties free of charge. The file be consigned.

13/07/2023

*Ls*

**Sd/-**  
**[Pawanjit Singh]**  
**President**

**Sd/-**  
**[Surjeet Kaur]**  
**Member**