

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION-II, VISAKHAPATNAM**

Date of Registration of the Complaint: 19.06.2021

Date of Final hearing: 02.04.2024

Date of Pronouncement: 02.05.2024

CONSUMER CASE No.138/ 2021

In the Matter of:

Jamana Vinay Kumar, S/o Surya Rao, aged about 36 years, Residing at D.No.4-15, Durganagar, Chandrapalem, Madhurwada, Visakhapatnam.

(Through: Sri Y.N.S. Srinivas)
...Complainant

Versus:

1. Amazon Seller Services Pvt. Ltd (ASSPL), Represented by its Authorized Signatory, and has its Registered office, at Brigade Gateway, 8th Floor, 26/1, Dr. Raj Kumar Road, Malleshwaram (W), Bangalore-560055, Karnataka.

2. Brainlytic Solution Pvt. Ltd, represented by its Authorized Signatory, 27, SBI Colony, Sunder Nagar, Raipur, Chattisgarh-492013.

(Through: Sri K.V.S.V Prasada Rao
& Opposite party-2 is absent)
...Opposite Parties

CORAM:

Smt. G.Venkateswari, M.Sc, LLB., President, Smt. P.Vijaya Durga, B.Com, B.L., Women Member., Sri Karaka Ramana Babu, M.Com, M.B.A., LL.B., Member.

P r e s e n t:

1. Smt. G Venkateswari, M.Sc, LLB.,
President
2. Smt. P Vijaya Durga, B.Com, B.L.,
Women Member
3. Sri Karaka Ramana Babu, M.Com, M.B.A., LL.B.,
Member

JUDGEMENT

(As per Sri Karaka Ramana Babu, Honourable Member, on behalf of the Bench)

I. The complainant filed this complaint under Section 35 of Consumer Protection Act 2019 before this commission against opposite parties brining the Honorable Commission to pass an award in his favor and against opposite parties, seeking a direction to the opposite parties for refund of an amount of Rs.9,049/-(Rupees nine hundred and forty-nine only) along with interest; to pay Rs.1,00,000/- towards compensation for causing mental agony; to pay an amount of Rs.10,000/- towards costs. On account of negligence on part of the opposite parties, for non-providing a return pickup service.

II. Brief Facts of the complaint as follows:

- a) That the complainant approached the 1st opposite party i.e. Amazon, selling products through E-Commerce. The complainant is the customer of the 1st opposite party by answering himself by customer in the Amazon mobile app of the 1st opposite



party. The complainant purchased an item i.e., "Cubelelo YJ MGO 2*2 sticker less Magnetic Speed Cube Magic 2*2*2 Puzzle Toy", "B07HYZ1VZP 1020098 HSN: 9503" on dated 03.07.2020 vide order no. 405-3938447-9206746, bearing invoice No.: IN-YEIO-4194 by paying an amount of Rs.949/- and to the 1st opposite party. The said product was delivered by the opposite parties to the complainant in the month of July 2020 but due to not interest in the said product the complainant opted for return of the aforesaid product to the opposite parties through online app of the 1st opposite party.

b) The complainant further states that since July, 2020 none of the opposite parties pick up the said return item from the complainant in spite of several reminders to the parties. The said product has been in the custody of the complainant till today of the complainant without it being used so far. The opposite parties have failed to stand up on its premises made by them for picking up aforesaid item is nothing but negligence committed by the opposite parties which amounts to deficiency of service on part of the opposite parties.

c) The complainant further states that on account of misdeeds of the opposite parties the complainant had issued a legal notice dated 02.12.2020 to the 1st and 2nd opposite parties calling upon to arrange a pickup of the return item or repay the amount of Rs. 949/- along with interest compensation and costs but in way in spite of resolving the issue the 1st opposite party sent a reply notice dated on 02.02.2021 stating that 1st opposite party is not responsible for pickup and also stated that 2nd opposite party i.e., independent 3rd party seller is liable.,

d) The complainant further states that he pick up the product with 1st opposite party by paying the necessary charges and he had no intimacy with the 2nd opposite party till today, name of the 2nd opposite party mentioned in the invoice.

e) The complainant further states that due to negligent acts of the opposite parties, the complainant suffer mental agony, tension and trauma and thus committed deficiency of service towards the complainant for which the opposite parties are jointly and severally liable for seeking reliefs, as stated Supra. Hence this complaint.

III. Version of the 1st opposite party:

a) The 1st opposite party i.e., amazon contested and filed its reply denying all the allegations made in the complaint.

b) This opposite party further states that its only an online market places at E-Commerce entity as defined under Consumer Protection Act 2019 and it was contained that the role of 1st opposite party was merely to facilitate the sale of the product between the complainant and the 2nd opposite party was the seller, therefore Amazon was acting



merely and intermediately. Invoice issued by the 2nd opposite party in the name of complainant with regarding the subject product, the 2nd opposite party (seller) do not appear before the commission to contest the claim.

c) Under the circumstances its stated that solving the above stated product by the 2nd opposite party to the complainant and it is in no were responsible to the self-transaction, this opposite party further states that all the products ordered from independent 3rd party sellers. On the E-Commerce market place of the answering respondent are sold, packed, sealed, shipped and delivered by the respondent independent 3rd party seller. Therefore, the liability with respect to the alleged non satisfaction in the product and pickup and only be on the 2nd opposite party i.e., Brainlytic Solution Services Private Limited.

d) The opposite party further states that present complaint filed by the complainant as bad for mis joint of the parties as in the present case the 2nd opposite party is liable for failure in return pickup of the product and this opposite party is not the seller or manufacturer and the product on list of the market place. The complainant is require to prove that deficiency of service against this opposite party but he failed to prov same as such the opposite party is cannot be liable for the deficiency of service.

e) This opposite party further states that complainant is not a consumer of this opposite party and thus, does not have Locus Standee to file the present complaint against this opposite party.

f) The demand of complainant to refund the price of the product i.e., Rs. 949/- along with their reliefs as prayed is illegal and unforce able as such it is prayed the complaint we dismissed with exemplary costs.

IV. In spite receipt of the notice from this commission 2nd opposite party called absent no representation, counter not filed within mandatory period.

V. During the case of enquiry, the complainant filed evidence affidavit and documents got marked as Ex. A1 to A6 and evidence affidavit filed on behalf of 1st opposite party and documents got marked as Ex. B1 to B3. The 2nd opposite party remains absent AB initio.

VI. Written arguments have been filed by the complainant as well as 1st opposite party and also submitted respective oral argument to substantial their respective case.

VII. Based on pursuit of the record and submissions by the parties, the filing points that when arises for the determination of the complainant are:

i. Whether there is any deficiency of service and negligence on part of the opposite parties

ii. If so, is the complainant entitled for the reliefs claim.



VIII. Discussion and Analysis:

All the points for the consideration are interlinked. Hence the same are discussed the combined as false.

- a) Ex. A1 the invoice shows the price of the Sticker less Magnetic Speed Cube vide order No. 405.3938447-9206746 bearing invoice No. IN-YEJO-4194 dated 03.07.2020, in which clearly defects the same and the above said payment said by the complainant for the subject product through online to Amazon ay which was clearly reflects in Ex.A1. The invoice issued and recorded by the 1st opposite party contains the printout of logo of the Amazon.in as such the relationship between the opposite parties and the complainant is clearly established. Even though the product seller i.e., Brainlytic solution Pvt Ltd., name displayed in the said invoice added as a 2nd opposite party and the ordered product was delivered on July 2020 but surprisingly the ordered product is not interested to the complainant as such the complainant immediately opted for the return of the subject product to the opposite parties and placed the return request through online app of the 1st opposite party. In spite of receipt of the return request the opposite parties not picked up sub product till today. The same is custody of complainant which clearly in the Ex.A6, and Ex.A5 shows that the return intimation to the 1st opposite party through online, in term the ASSPL replied indicates that; a return started or refunded will be processed when we receive your item, which clearly indicates that facilitator responsible along with independent seller.
- b) In the view of the foregoing of the observations and the facts in issued there is a clear deficiency in service and negligence on part of the opposite parties in not providing return pickup service place to the online market place of 1st opposite party.
- c) The order of the subject product online shopping in Amazon and consideration paid to the Amazon pay by the complainant and also the first opposite party not denied the payment but they objected same model amount intendent 3rd party seller that is 2nd opposite party but not in the account. They claimed only E-Commerce entity on Digital and electronic network to act as a facilitator between the buyer and seller.
- d) The 1st opposite party the electric service provider to the complainant and based on their advertisement only the complainant ordered the subject product. Therefore, online shopping and payment was made through the Amazon pay as such the complainant not known to whose product seller as on the date of payment. If at all any advertisement display in the on-line Amazon shopping before ordering the any order the name of the product seller/place mentioned them there is an option to the complainant

whether they buy or not but in this case no such typed of product seller name displayed in the Amazon online while complainant ordered the product.

e) The complainant opinion that from the date of any product till the delivery of the product including return policies, the Amazon E-Commerce marketing responsible and Amazon place a vital role to satisfy the customer needs. In this case the complainant ordered the subject product through Amazon E-Market place and the same was delivered but the complainant dissatisfied with the subject product he intends to return subject product and obtained the return option as per the options provided by the 1st opposite party but neither 1st opposite party nor 2nd opposite party even after issued legal notice. Until payment made, the complainant not known the name of the product seller the 1st opposite party to establish that the amount paid by the complainant for the subject product is related to the product seller that is 2nd opposite party or not and also no piece of evidence that are filed by the opposite party to that affect. Based on the invoice bill for the 1st opposite party only the relation between the product seller i.e., 2nd opposite party and 1st opposite party is clearly established. Until delivery/return of the product, the 1st opposite party is the service provider of the complainant as such the complainant is the consumer to the 1st opposite party and also the consideration of Rs.949/- was paid to Amazon pay through online until establish that 1st opposite party are remitted to the product seller i.e., 2nd opposite party, displaying name of the product seller as per Ex.A1 the complainant added as 2nd opposite party but 2nd opposite party not represented before the commission in spite of notice serve.

f) Ex. A5 clearly reflected that return option available in the amazon shopping and also clearly promised that refund will be processed when we receive your item. But till today such arrangement for return pickup service from both the opposite parties, itself shows the negligence and deficiency of service towards complainant.

g) Absence of privity of contract is not a bar for maintaining a complaint against a service provider, in this case opposite parties are service provider and also consideration receiver, till today. Subject product is neither return back nor refunds the cost of the subject product. Exhibits filed by the opposite party not proved their case.

h) The 1st opposite party cannot shirk its responsible merely saying that its only a service provider of the online market place to the buyer and the seller of the product and it has no role in the transaction of the sale and purchase much lays in the above transaction pertaining its logo on the invoice in the name of the 2nd opposite party and facilitating the 2nd opposite party to sell the products to the complainant, having the distinct nexus with 2nd opposite party and causing inconvenience and loss to the



complainant by not picking up the return of the subject product or refund the cost of the subject product. Under the above circumstance both the opposite parties competed deficiency of service and negligence on their part which is illegal and unjustified. As such they cannot escape their liability in this regard. The opposite parties 1 and 2 are jointly and severally liable to pay the complainant reliefs as granted here under.

IX. Conclusion & Result:

In view of foregoing discussion, the complainant is entitled to reliefs as been stated infra.

a. Therefore, this commission is inclined to awarded the complainant is entitled refund of the cost of the subject product.

b. Non pickup for return of the product in time naturally that might have would be complainant will suffered mental agony besides financial loss. In this view of the matter, we sincerely feel that it is a known case to award a compensation of Rs. 5,000/- on account of deficiency of service and negligence on part of the opposite parties, and also the complainant ought not have to approach this condition had his request of return or return of the product as been honored by the opposite party within time. Hence complainant entitled cost of Rs. 3,000/- for this litigation expenses.

In the result, the complaint allowed partly, directed to pay an amount of Rs.949/- (Rupees nine hundred and forty nine only) towards costs of the product; and also further directed to pay Rs.5,000/- (rupees five thousand only) towards compensation for causing mental agony and financial loss deficiency of service, apart from Rs.3,000/- awarded as costs to the complainant, upon receipt of the refund of amount from the opposite parties, the complainant is directed to return the subject product to the opposite parties. Time for compliance is 45 days from the date of receipt of this order.

X. Applications pending, if any, stand disposed of in terms of the aforesaid judgement.

XI. A copy of this judgement be provided to all the parties free of cost as mandated by the Consumer protection Act 1986/2019. The judgement be uploaded forthwith on the website of the Commission for the perusal of the parties.

XII. File be consigned to record room along with a copy of this judgement.

Dictated to the stenographer, and transcribed by her, corrected and pronounced by us in the Open Commission, the 02nd day of May, 2024.



Sri Karaka Ramana Babu
Member

Appendix of Evidence

For the Complainant:

No.	Date	Description of the document	Remarks
Ex A-1	03.07.2020	Tax Invoice issued by the Opposite parties	Download Copy
Ex A-2	02.12.2020	Legal notice issued by the complainant to the opposite parties along with the postal slips	Office Copy
Ex A-3	21.12.2020	Postal Acknowledgment	Original
Ex A-4	02.02.2021	Reply notice issued by the 1 st Opposite party	Served Copy
Ex A-5	----	Item returned status	Photostat Copy
Ex A-6	----	Product/ Item not picked up from the complainant	Photostat Copy

For the Opposite parties:

No.	Date	Description of the document	Remarks
Ex B-1	----	Conditions of Use	Photostat Copy
Ex B-2	----	Letter of RBI/2009-10/231	Photostat Copy
Ex B-3	03.07.2020	Tax Invoice	Download Copy


2.5/24
President

P. Vidya
2.5.24
W. Member


02/5/24
Member

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