

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL  
COMMISSION, AMRITSAR.

Consumer Complaint No. 139 of 2022

Date of Institution: 29.3.2022

Date of Decision: 3.10.2023

1. Jasbir Singh aged 28 years S/o Harbhajan Singh, Post Office Chheharta, Block Verka Wadali , Guru Ki Wadali, Amritsar 9855473876
2. Kumakshi Khanna aged 23 years D/o Vikas Khanna, R/o 2752, Gali No.2, Ram Tirath Road, Putlighar, Amritsar

Complainants

Versus

1. Oppo Mobiles through its Manager/Chairman/Principal Officer, Regd., Office Vatika Business Park, 2<sup>nd</sup> Floor, Sohna Road, Gurgaon 122001
2. Puneet Electronic through its Prop./Manager/Authorized Signatory, Ram Tirath Road, Gawal Mandi Colony, Amritsar 9815206480
3. Oppo Mobile Auth.Service Centre through its Manager, 1834, Hide Market, Nerar Viryam Hospital, Ram Bagh, Amritsar 9646208003

Opposite Parties

Complaint under section 35 of the  
Consumer Protection Act, 2019)

**Result : Complaint Allowed**

**Counsel for the parties :**

For the Complainants : Ms. Kumakshi Khanna ,  
complainant No.2 alongwith Sh.  
Sanjeev Kumar Puri, Adv.

For the Opposite Parties No.1 & 3 :Sh. Shubham Sharma ,Sr.Engineer

For the Opposite party No.2 : Ex-parte

**CORAM**

**Mr.Jagdishwar Kumar Chopra, President**

**Mr.Lakhwinder Pal Gill, Member**

**ORDER:-**

**Sh.Jagdishwar Kumar Chopra, President** :-Order of this commission will dispose of the present complaint filed by the complainant u/s 35 of the Consumer Protection Act, 2019.

**Brief facts and pleadings**

1. Brief facts of the case are that complainant No.2 purchased one mobile phone Oppo A5 20204164 IMEI/Sr. No. 867212047965713 to gift it to her friend complainant No.1 on happy occasion from opposite party No.2 on payment of Rs. 13000/- vide Invoice No. 82 dated 15.1.2020. After purchase of the mobile phone, complainant No.2 gifted the same to her friend complainant No.1, as such complainant No.1 is the beneficiary of the said mobile phone. On 18.3.2022 at about 9.15 pm complainant No.1 alongwith Jagtar Singh was going on the motorcycle splendor bike No. PB-02-CM-7102 owned by Jagtar Singh and kept his mobile in the pocket of his trouser. Complainant No.1 was driving the vehicle while Jagtar Singh was pillion rider. In the way the complainant suddenly felt

burning of skin below the mobile phone on his right leg which immediately increased within a minute and became intolerable and he lost his control over the motorcycle and complainant No.1 and Jagtar Singh fell down on the ground. Complainant No.1 received internal injury on his shoulder and he with great difficulty immediately removed his trouser and then the mobile got blast in the pocket of trouser of complainant No.1. The skin behind the trouser pocket was burnt. The complainant took photographs of the trouser, mobile, burnt leg as Ex.C-2. The pain in the shoulder of complainant No.1 increased day by day and he got medical treatment from Orthoveda centre on 21.3.2022 and is still under treatment, copy of prescription slip is Ex.C-3. After the abovesaid incident complainants approached opposite party NO.2 as the mobile was purchased from him but he flatly refused to attend the complainant and then he approached opposite party No.3 i.e. authorized service centre but they also refused to attend the complainant rather misbehaved with the complainant No.2 and said there may be manufacturing defect in the mobile set and then the complainant requested to send mail to the company for change of mobile on which they thrown the mobile set on the desk and shouted on the complainant to go to company . Opposite parties No.1 & 2 had sold defective/inferior quality mobile set by charging Rs. 13000/- due to which the complainant suffered injury, mental tension, harassment and medical expenses besides financial loss

due to unfair trade practice and deficiency in service on the part of the opposite parties. Vide instant complaint, complainant has sought for the following reliefs:-

- (a) Opposite parties be directed to refund Rs. 13000/- alongwith interest @ 12% p.a. from the date of invoice till final payment ;
- (b) Compensation to the tune of Rs. 2,00,000/- may also be awarded to the complainant.
- (c) Opposite parties be also directed to pay adequate litigation expenses to the complainant.
- (d) Any other relief to which the complainant is entitled be also awarded to the complainant.

Hence, this complaint.

2. Upon notice, opposite parties No.1 & 3 appeared and filed written version in which it was admitted that complainant No.2 had purchased one mobile from opposite party No.2 on payment of Rs. 13000/- against invoice No. 82 dated 15.1.2020. It was submitted that opposite party No.3 basically pertains to Boshion Services Private Limited and complainant should have impleaded opposite party No.3 as Boshion Services Private Limited so the complaint is liable to be dismissed as misjoinder of the parties. It was denied that the complainant No.1 was driving the vehicle while Jagtar Singh was pillion rider and complainant suddenly felt burning of skin below the mobile phone on his right leg

which immediately increased and became intolerable and lost his control over the motorcycle and complainant No.1 and Jagtar Singh fell down on the ground and complainant No.1 received internal injury . The alleged photographs is a work of fabrication only. Infact any alleged loss to the complainant or his mobile is due to their negligent acts and of mishandling the mobile only. The alleged treatment and medical certificate has got no co-relation with the mobile in question. It is submitted that complainant never approached opposite party No. 3 who is authorized service centre. Infact whenever any customer visits the service centre he is provided with job card/job sheet which job sheet has not been produced by the complainant. It is denied that opposite party No.3 refused to attend the complainant and said that there may be manufacturing defect in the mobile set . It is bullshit story only , the complainant has never contacted opposite parties No.1 & 3 and if it was so; he could have sent an email directly to the complainant or cold send a complaint to the company. On the other hand the complainant is an clerk of an Advocate in courts and is well planned and a cooked up story by him after the expiry of 2 years . Even otherwise after the expiry of two years there is no liability of the answering opposite parties which is clear from the terms and conditions which was handed over to the complainant at the time of purchase of handset. While submitting that there is no deficiency or unfair trade practice of the part of the replying

opposite parties and while denying and controverting other allegations, dismissal of complaint was prayed.

3. On the other hand opposite party No.2 did not opt to put in appearance despite service of notice, as such it was proceeded ex-parte vide order dated 11.5.2022.

4. The complainant also filed rejoinder to the written version filed by opposite parties No.1 & 3 and denied the submissions made by them in their written version and prayed for the relief as claimed vide instant complaint.

#### **Evidence of the parties and Arguments**

5. Alongwith the complaint, complainant No.1 has filed his affidavit Ex.CW1/A, copy of invoice Ex.C-1, copy of photographs of trouser, mobile, burnt leg Ex.C-2, copy of prescription slip Ex.C-3.

6. On the other hand opposite parties No.1 & 3 alongwith written version have filed affidavit of Lakshita Bansal, Authorized person of Oppo mobiles Ex.OP1&3/A, warranty policy Ex.OP1&3/2, copy of resolution as well as authorization in favour of Ms. Lakshita Ex.OP1&3/1.

7. We have heard the Ld.counsel for the parties and have carefully gone through the record on the file . We have also gone through the written arguments submitted by the complainant as well as opposite parties No.1 & 3.

**Findings**

8. From the pleadings of the parties and the evidence produced on record, the case of the complainants is that complainant No.2 purchased one mobile phone Oppo A5 20204164 IMEI/Sr. No. 867212047965713 to gift the same to her friend i.e. complainant No.1 on payment of Rs. 13000/- vide Invoice No. 82 dated 15.1.2020, copy of invoice is Ex.C-1. As such the complainant No. 1 is beneficiary of the said mobile phone. It is the case of the complainants that on 18.3.2022 at about 9.15 pm complainant No.1 alongwith Jagtar Singh was going on the motorcycle and kept his mobile in the pocket of his trouser and suddenly felt burning of skin on his right leg which immediately increased within a minute and became intolerable and he lost his control over the motorcycle and complainant No.1 and Jagtar Singh fell down on the ground and then the mobile got blast in the pocket of trouser of complainant No.1. Complainant No.1 received internal injury on his shoulder and the skin behind the trouser pocket was burnt. The complainant took photographs of the trouser, mobile, burnt leg as Ex.C-2. The pain in the shoulder of complainant No.1 increased day by day and he got medical treatment from Orthoveda centre on 21.3.2022 and is still under treatment, copy of prescription slip is Ex.C-3. After the abovesaid incident complainants approached opposite party No.2 as the mobile was purchased from him but he flatly refused to attend the complainant and then he approached

opposite party No.3 i.e. authorized service centre but they also refused to attend the complainant and stated there may be manufacturing defect in the mobile set . Then the complainant requested to send mail to the company for change of mobile but the opposite party No.3 refused to send mail to opposite party No.1 . The case of the complainant is that Opposite parties No.1 & 2 had sold defective/inferior quality mobile set by charging Rs. 13000/- due to which the complainant suffered injury, mental tension, harassment and medical expenses besides financial loss .

9. On the other hand opposite parties No.1 & 3 have repelled the aforesaid contentions of the complainant and submitted that complainant never approached opposite party No. 3 who is authorized service centre as no job sheet has been produced by the complainant. It was submitted that the alleged loss to the complainant or his mobile, if any is due to their negligent acts and of mishandling the mobile only. The alleged treatment and medical certificate has got no co-relation with the mobile in question. It is denied that opposite party No.3 refused to attend the complainant and said that there may be manufacturing defect in the mobile set . As the complainant is an clerk of an Advocate in courts and made a well planned and a cooked up story after the expiry of 2 years . Even otherwise after the expiry of two years there is no liability of the answering opposite parties which is clear from the terms and conditions



which was handed over to the complainant at the time of purchase of handset.

10. From the appreciation of the facts and circumstances of the case the purchase of mobile by complainant No.2 on 15.1.2020 is admitted by opposite parties No.1 & 3 . The only case of the complainant No.1 is that the mobile in dispute got blast due to which he received internal injury on his shoulder and the skin behind the trouser pocket was burnt and in order to prove this the complainant placed on record photographs of the trouser, mobile, burnt leg as Ex.C-2. The contention of the complainant that in this regard he approached the opposite party No.2 who flatly refused to attend the complainant and then approached opposite party No.3 which is authorized service centre but they also refused to attend the complainant . On the other hand the only plea taken by the opposite parties No.1 & 3 is that complainant never approached opposite party No. 3 who is authorized service centre as no job sheet has been produced by the complainant. But we are not agreed with this plea taken by the opposite parties as it is settled principle of law that in case, two plausible views were available, under given set of facts, the court shall be obliged to the view which was favourable to the consumer. Reference in this regard can be had to ***“Kulwinder Singh Versus LIC of India “ 2007(1) CLT 303 (Punjab) wherein it has been held that “where two views are possible, the one, which favour the consumer should be taken”*** . The

other plea taken by the opposite parties No.1 & 3 that the alleged loss to the complainant or his mobile, if any is due to their negligent acts and of mishandling the mobile only. Again we are not agreed with this plea of the opposite parties as perusal of the photograph Ex.C-2 duly proves the condition of the mobile as it totally burnt and also the skin of the leg of the complainant was burnt which also fully proves the averments of the complainant . Moreso the complainant No.1 in support of his averments has duly filed his affidavit Ex.CW1/A which also affirms the averments of the complainant as true and no one can file wrong affidavit in the court of law . On the other hand if the opposite parties No.1 & 3 have any doubt regarding the averments made by the complainant in his complaint that the story made by the complainant regarding blast in the mobile is concocted one , the opposite parties could move an application for checking the mobile in their Lab to bring the truth before this Commission whether the same was actually blast or not. But the opposite parties No.1 & 3 have not made any effort to check the mobile in their service centre which is well equipped to know the exact cause occurred with the mobile of the complainant. Moreover no prudent person can harm himself as shown in the photographs Ex.C-2 where the skin of the complainant No.1 also burnt which fully proves the averments of the complainant No.1 that the mobile got blast in his pocket. No doubt the complainant filed the complaint after two years from the date of its

purchase , but this aspect can only be seen when there is some defects in the mobile then the complaint filed after expiry of two years does not come within the warranty terms and conditions . However in the instant case the mobile hand set got blast which itself proves that there are some manufacturing defect , as such the opposite parties are liable to get it replaced with new one of same make or model and if the same make and model is not available, then the opposite parties are liable to refund the sale price to the complainant. Opposite party No.2 being authorized retailer did not opt to make appearance and made them ex-parte , as such the averments of the complainant are impliedly admitted by opposite party No.2. As the complainant purchased the mobile through opposite party No.2 and not directly from opposite party No.1, as such it is the duty of the opposite party No.2 to get it either replaced or refund from opposite party No.1.

11. In view of the above discussion, we allow the complaint with costs and the opposite party No.2 is directed to get the mobile handset of the complainant replaced with new one of same make or model from opposite party No.1 & 3 and if the same make and model is not available, then the opposite parties are liable to refund the sale price i.e. Rs. 13000/- to the complainant. Opposite parties are also directed to pay litigation expenses of Rs. 2000/- to the complainant. Compliance of the order be made within 45 days from the date of receipt of copy of this order ;

failing which complainant shall be entitled to get the order executed through the indulgence of this Forum. Copies of the orders be furnished to the parties free of costs. File is ordered to be consigned to the record room. Case could not be disposed of within the stipulated period due to heavy pendency of the cases in this commission.

Announced in Open Commission

(Jagdishwar Kumar Chopra)  
President

Dated: 3.10.2023

(Lakhwinder Pal Gill)  
Member