

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

Consumer Complaint No.	:	CC/489/2020
Date of Institution	:	13/10/2020
Date of Decision	:	14/12/2023

Vikrant Goyal s/o Sh. Purshotham Goyal r/o H.No.2119, Sector 21, Panchkula.

... Complainant

V E R S U S

1. Urban Clap Technologies India Pvt. Ltd. through its Managing Director, Plot No.19, Sewa Towers, 5th Floor, Udyog Vihar, Ph-7, Gurgaon (Haryana)
2. Urban Clap Technologies India Pvt. Ltd., Plot No.66, through its Regional Manager/Incharge, Plot No.66, 4th Floor, Joshi Hyundai Chandigarh, Industrial Area, Phase-2, Chandigarh.

... Opposite Parties

CORAM : **SHRI PAWANJIT SINGH** **PRESIDENT**
 MRS. SURJEET KAUR **MEMBER**

ARGUED BY : None for complainant
 : Sh. Jasdeep Singh, Advocate for OPs (OP-2 already ex-parte)

Per Pawanjit Singh, President

1. The present consumer complaint has been filed by Vikrant Goyal, complainant against the aforesaid opposite parties (hereinafter referred to as the OPs). The brief facts of the case are as under :-
 - a. It transpires from the allegations as projected in the consumer complaint that complainant is the owner of a Daikin 1.5 split air conditioner (hereinafter referred to as "*subject AC*") which has been installed in his house. As the subject AC required maintenance/service, therefore, the complainant approached the OPs on mobile who deputed one Krishna Bhardwaj, service engineer. The said engineer alongwith a helper attended the service of the subject AC on 30.5.2012 at around 12 noon and during service disclosed that there was a gas leakage in the unit and asked the complainant to pay ₹3,548/- which was paid by the complainant through online payment mode. However, on the very next day, trouble started again in the subject AC, regarding which complaint was made by him with the OPs. The complaint was again attended upon by Krishna Bhardwaj on 8.6.2020 who, after checking the AC unit, informed the complainant that there was no gas in the unit and he hastily dismantled the internal unit of the subject AC and further told that the same has to be taken to the workshop for repair. Accordingly, he had taken the internal unit to the workshop and on its return when the same was installed, again it stopped working. Copy of the complaint of the complainant/booking to the office of OPs is Annexure C-2. Thereafter, complainant repeatedly called the service engineer of the OPs and contacted the OPs, but, with no result. Subsequently, the complainant called the Daikin customercare who sent an engineer

who checked the subject AC unit and informed the complainant that the internal unit of the subject AC has been damaged due to negligent dismantling and further informed that complete internal unit is required to be replaced/changed on payment of ₹9,608/-, which was paid by complainant vide receipt (Annexure C-3). The complainant also served a legal notice (Annexure C-5), but, with no success. In this manner, the aforesaid act of the OPs in causing damage to the internal unit of the subject AC amounts to deficiency in service and unfair trade practice. OPs were requested several times to admit the claim, but, with no result. Hence, the present consumer complaint.

- b. OP-1 resisted the consumer complaint and filed its written version, inter alia, taking preliminary objections of maintainability, jurisdiction etc. It is alleged that, in fact, OP-1 started providing a managed market place for home services which includes services like beauty services, massage services, cleaning, plumbing, carpentry etc. The said services provided by the answering OP constitute the provision of a technology platform that enables the users of its mobile application/website to arrange and schedule home based services with independent third party provider of those services. The present consumer complaint of the complainant against the answering OP is not maintainable even as per certain provisions of the new Act since the answering OP is an intermediary/facilitator which provides market place for home services as per the provisions of the Act. It is further denied that any call was made by the complainant to the said independent service professional Krishna Bhardwaj. However, it is admitted that the complainant raised a complaint with the answering OP on 7.6.2020 and accordingly independent service professional was intimated to address the issue of the complainant. After closure of the first issue, complainant placed a new request on his own and accordingly a new independent service professional, Harsh visited the complainant. On 18.6.2020, answering OP sought some time from the complainant for final resolution. The complainant was not satisfied with the second independent service professional, but, instead of waiting for the response of the answering OP, he approached the Daikin service technician and thereafter when the answering OP satisfied the complainant about his grievance, the complaint was closed as the complainant did not raise any issue with respect to any refund. It is denied that the answering OP had dismantled and damaged the internal unit of the subject AC. On merits, the facts as stated in the preliminary objections have been reiterated. The cause of action set up by the complainant is denied. The consumer complaint is sought to be contested.
 - c. OP-2 did not turn up before this Commission, despite proper service, hence it was proceeded against ex-parte vide order dated 3.2.2021.
 - d. The complainant chose not to file the rejoinder.
2. In order to prove their case, contesting parties have tendered/proved their evidence by way of respective affidavits and supporting documents.
 3. We have heard the learned counsel for the OPs and also gone through the file carefully, including written arguments.
 - i. At the very outset, it may be observed that when it is an admitted case of the parties that the OPs were approached by the complainant for maintenance service of the subject AC and the OPs had deputed one Krishna Bhardwaj for the said purpose and the complainant had paid an amount of ₹3,548/- to the said service engineer and again when the subject AC was not properly working, complainant again approached the OPs and another service engineer was deputed and even after that the subject AC did not work, as a result of which the complainant got the same repaired from the engineer of Daikin company and on finding the subject AC in damaged condition, an amount of ₹9,608/- was charged for its repair, the case is reduced to a narrow compass as it is to be determined if the said act amounts to deficiency in service and unfair trade practice on the part of the OPs and the complainant is entitled to the reliefs prayed for in the consumer complaint, as is the case of the complainant, or if the consumer complaint is not maintainable against the OPs and is liable to be dismissed on the ground that the OPs are intermediary and merely facilitators between the consumer and the service provider, as is the defence of the OPs.
 - ii. In the backdrop of the foregoing admitted and disputed facts on record, one thing is clear that the entire documentary evidence is required to be scanned carefully for determining the real controversy between the parties.
 - iii. Perusal of Annexure C-1 clearly indicates that the complainant had purchased the subject AC in the year 2016. Annexure C-2 is the copy of account statement of the complainant which indicates that he had paid an amount of ₹3,548/- to the OPs. Annexure C-3 is the complaint dated 4.7.2020 lodged by the complainant which indicates that he had complained about defects noticed in the subject AC even after its repair/service by the service engineer deputed by the OPs. Annexure C-

4 is copy of account statement of the complainant which indicates that he had again paid an amount of ₹9,608/- on 5.7.2020 for the repair of the subject AC. Annexure C-5 is complaint dated 13.7.2020 lodged by the complainant with the OPs regarding defects in the subject AC. Annexure C-6 is copy of legal notice issued by the complainant to the OPs which was not replied by them.

- iv. The case of complainant is that as it stands proved on record that the subject AC was repaired/serviced by the service engineer deputed by the OPs, who had dismantled the same in a negligent manner as a result of which the subject AC stopped working and the OPs had charged an amount of ₹3,548/- for the same and consequently complainant was compelled to get the service of the subject AC from the service engineer of Daikin, to whom he had paid an amount of ₹9,608/-, there is deficiency in service and unfair trade practice on the part of OPs and the consumer complainant deserves to be allowed.
- v. On the other hand, learned counsel for OPs contended with vehemence that as the OPs are merely facilitator/intermediary, who provide service engineer on request of the customers, there is no deficiency in service or unfair trade practice on their part and the consumer complain be dismissed.
- vi. However, there is no force in the contention of OPs as the service engineer was deputed by OPs and OPs have directly accepted the service charges to the tune of ₹3,548/- from the complainant as is also evident from the account statement (Annexure C-2) and, therefore, OPs cannot escape from their liability. Moreover, when it has come on record that the complainant has further paid an amount of ₹9,608/- for the repair of the subject AC from another service engineer of Daikin company and it was found during that service that internal unit had been dismantled in a negligent manner, we are of the opinion that there is certainly deficiency in service on the part of the OPs.
- vii. In view of the aforesaid discussion, it is safe to hold that the complainant has successfully proved the cause of action set up in the consumer complaint. Accordingly, the present consumer complaint deserves to succeed and OPs are liable to refund the amount of ₹3,548/-, charged for service/maintenance by them, to the complainant alongwith interest and compensation etc.

4. In the light of aforesaid discussion, the present consumer complaint succeeds, the same is hereby partly allowed and OPs are directed as under :-

- i. to pay the amount of ₹3,548/- to the complainant alongwith interest @ 9% per annum from the date of its payment by the complainant i.e. 30.5.2020 onwards.
- ii. to pay ₹5,000/- to the complainant as compensation for causing mental agony and harassment;
- iii. to pay ₹3,000/- to the complainant as costs of litigation.

5. This order be complied with by the OPs within forty five days from the date of receipt of its certified copy, failing which, the payable amounts, mentioned at Sr.No.(i) & (ii) above, shall carry interest @ 12% per annum from the date of this order, till realization, apart from compliance of direction at Sr.No. (iii) above.

6. Pending miscellaneous application(s), if any, also stands disposed of accordingly.

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

14/12/2023

hg

Sd/-

[Pawanjit Singh]

President

Sd/-

[Surjeet Kaur]

Member