

refund the amount of the telescope Rs.4499/- paid by the complainant. The complainant also contacted OPs customer care and no satisfactory reply was given to complainant for this defect and OP No.1 kept on delaying the matter on one pretext or the other (Annexure C-5).The complainant many times requested OPs either to replace the same or return the amount of Rs.4999/- to complainant, but OPs neither replaced the product in question nor returned the amount of Rs.4999/- to complainant and kept on delaying the matter on one pretext or the other. The complainant sent a legal notice to the OPs on 9.9.2021 (Annexure C-7). Hence is the present consumer complaint.

2. OP No.1 contested the consumer complaint, filed its written reply and stated that the instant order and replacement order was sealed, packed and shipped to complainant by the Independent third-party seller i.e., OP No.2. Therefore, liability, if any, with respect to the alleged defect in the product and/or replacement product can only be fastened upon the seller i.e., OP No.2. It is further submitted that the OP No.1 does not provide any after sales service in relation to any product listed on its e-commerce marketplace by any seller. It is also submitted that the complainant's allegation regarding the defects with the product can only be attributed to the manufacturer and/or seller of the product/OP No.2 and not OP No.1. On these lines, the case is sought to be defended by OP No.1.
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 09.05.2022.
4. Rejoinder was filed and averments made in the consumer complaint were reiterated.
5. Parties led evidence by way of affidavits and documents.
6. We have heard the learned counsel for the parties and gone through the record of the case.
7. The case of the complainant is that he purchased one Telescope from OP No.2 on 07.07.2021. After spending an amount of Rs.4999/-, the same was got replaced by the complainant due to certain defect in it. But as per the case of the complainant, again some problem product in question and again return request was initiated, but the product was never picked up by OPs for replacement which is having certain inherent defect and lying with the complainant.
8. The stand taken by the OP No.1 is that, it is a mere online platform and not the seller. Hence, there is no deficiency in service on its part and present complaint deserves to be dismissed.
9. 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.
10. After going through the documents on record, it is abundantly clear that the product in question was just of the substandard quality, so the complainant being unsatisfied requested for the return/refund which was not honoured by the OPs. Hence, the act of OPs for supplying/selling substandard product, thereafter non-providing after sale services proves deficiency in services on their part and their indulgence in unfair trade practice.
11. 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 ₹4999/- to the complainant alongwith interest @ 9% per annum from the date of filing of this complaint till realization. The complainant shall, however, return the Telescope in question to the OPs.
 - ii. to pay an amount of ₹2500/- to the complainant as compensation for causing mental agony and harassment to him;
 - iii. to pay ₹2500 to the complainant as costs of litigation.
12. This order be complied with by the OPs within thirty days from the date of receipt of its certified copy, failing which, 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.
13. Certified copies of this order be sent to the parties free of charge. The file be consigned.

27/07/2023

Ls

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

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

**Sd/-
[Suresh Kumar Sardana]
Member**