

BEFORE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION  
SHIMLA (H.P.)

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Complaint No.: 76/2022  
Presented on: 11.04.2022  
Decided on : 13.06.2024

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Parav Sharma,  
S/o Sh. Bhuvnesh Sharma,  
R/o Om Sai Bhawan, Dyerton Estate,  
Shimla-1, H.P.

....Complainant

Versus

1. Flipkart Internet Pvt. Ltd.,  
Through its CMD,  
Registered Office at Building Alyssa,  
Begonia and Clove Embassy Tech Village,  
Outer Ring Road, Devarabeesanahalli Village,  
Bengaluru, Karnataka.
2. E-Kart Logistics (E-Kart Courier),  
Office at Chotta Shimla,  
Tehsil and District Shimla H.P.

....Opposite Parties

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**Coram :**

Dr. Baldev Singh, President.  
Mr. Jagdev Singh Raitka, Member  
Ms. Janam Devi, Member.

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For the Complainant:	Mr. Ravi S. Sood, Advocate vice Mr. Pankaj Sharma, Advocate.
For the Opposite Parties:	Mr. Naresh Thakur, Advocate.

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**ORDER:**

Present complaint has been filed by Parav Sharma (hereinafter referred to as the complainant) under Section 35 of the Consumer Protection Act 2019 (hereinafter referred to as the Act) against Flipkart Internet Pvt. Ltd. (hereinafter referred to as the OP No.1) and E-Kart Logistics (E-Kart Courier) (hereinafter referred to as the OP No.2), on account of deficiency in service and unfair trade practice, seeking relief therein that the OPs be directed to pay Rs.1901/- alongwith interest; to pay Rs.50,000/- as damages; to pay Rs.10,000/- as litigation charges etc.

2. The case of the complainant in brief is that complainant is an advocate by profession and he on 13.03.2022

ordered 10 sets of Spectra Trident Unruled A-4 Printer Papers amounting to Rs.190.10/- each, total amounting to Rs.1901/- from Flipkart and the said order was required to be delivered on 16.03.2022 as per the message of OP No.2. It is stated that the OP No.2 is the logistic department for OP No.1 and deals in the shipping and delivery of the parcel. It is stated that on 16.03.2022, the OP No.2 delivered the courier to the complainant but when the same was checked by the complainant after receiving the same from OP No.2, it was found that all the products were in damaged condition. It is stated that the complainant without any further delay on 17.03.2022 raised an online request before the Flipkart/OP No.1 to return the parcel which was duly acknowledged by OP No. 1 and on the request of OP No.1, the OP No. 2 was called by the complainant to collect the return parcel, but OP No. 2 flatly refused to collect the same from the complainant and the return request was also cancelled by the OP No.2. It is stated that thereafter also several requests were made to OP No. 1 time and again but to no avail and every time they made the lame excuses and finally on 24.03.2022 written complaint was made by the complainant in the Flipkart app and the OP No.1 assured the complainant that issue will be resolved and parcel will be picked up till 29.03.2022, but to the utter surprise of the complainant no one from OP No. 1 & 2 ever approached the complainant to pick the parcel or resolve the issue. It is stated that the online request raised for the return of the damaged goods/products was also closed stating reason that the return of the parcel could not be processed as the period of return as per OP No.1's return policy has lapsed. It is stated that aforesaid acts on the part of OPs amount of deficiency in service and unfair trade practice. It is prayed that the complaint may be allowed.

3. After admission of complaint, notices were issued to the OPs. The complaint so filed has been opposed by the OP No.1 by filing reply taking preliminary objections therein

regarding maintainability, suppression of facts, complainant doesn't fall under the category of consumer, there does not exist any privity of contract between the complainant and the replying opposite party etc. It is stated that the opposite party No.1 is engaged, among others, in providing trading/selling facility over the internet through its website [www.flipkart.com](http://www.flipkart.com) and mobile application and provides online marketplace platform/technology and/or other mechanism/services to the sellers and buyers of products to facilitate the transactions, electronic commerce for various goods, by and between respective buyers and sellers and enables them to deal in various categories of goods including but not limited to mobiles, camera, computers, watches, clothes, footwear, healthcare and personal products, home appliances and electronics etc. It is stated that said Flipkart Platform is an electronic platform, which acts as an intermediary to facilitate sale transactions between independent third-party sellers and independent end customers and the independent third-party sellers use the Flipkart Platform to list, advertise and offer to sell their products to the users/buyer who visit the Flipkart Platform. It is stated that once a buyer accepts the offer of sale of the products made by the third-party seller on the Flipkart Platform, the seller is intimated electronically and is required to ensure that the products are made available and delivered in accordance to the delivery terms as per the terms for sale displayed by seller on the Flipkart Platform. It is stated that sellers are separate entities being controlled and managed by different persons/stakeholders and the replying OP does not directly or indirectly sells any products on Flipkart Platform, rather, all the products on Flipkart Platform are sold by third party sellers, who avail of the online marketplace services provided by the replying opposite party, on terms decided by the respective sellers only. It is stated that in the instant complaint also, it can be evidenced that the actual seller of the product is a third- party seller (who is not impleaded as a necessary party)

and not the replying opposite party herein, hence request for replacement/refund made by the complainant cannot be fulfilled by the replying opposite party. It is stated that any kind of assurance, whether in terms of warranty on the products, Price, Discounts, Promotional Offers, after sale services or otherwise, are offered and provided by the seller or manufacturer of the products sold on Flipkart Platform. It is stated that the replying opposite party, neither offers nor provides any assurance and/or offers warranty to the end buyers of the product. It is stated that user(s) of the Flipkart Platform are bound by the Terms of Use enumerated on the Flipkart Platform which clearly state that the contract of sale is a bipartite contract between the buyer and the seller only and the replying opposite party is not a party to it. It is stated that from perusal of the complaint it transpires that defective product was delivered to the complainant and he wants to refund or replace the product. It is stated that the grievance of the complainant should have been only against the seller of the product. It is stated that the complainant presented the communication held between him and the replying opposite party in twisted manner to create unnecessary pressure and to extort money illegally from the replying opposite party. It is stated that whenever the complainant had approached the replying opposite party, he was attended properly and even though the issue is out of the domain to the replying opposite party, but just to assist and provide resolution to the alleged grievances of the complainant, the replying opposite party rightly escalated the grievance of the complainant to the concerned authority i.e. the Seller of the product, and subsequently with no delay whatsoever reverted their response to the complainant. It is stated that there is no deficiency in service or unfair trade practice on the part of the replying OP. It is prayed that the complaint may be dismissed.

4. The complaint so filed has been opposed by the OP No.2 by filing reply taking preliminary objections therein

regarding maintainability, suppression of facts, complainant doesn't fall under the category of consumer, mis-joinder of parties, there does not exist any privity of contract between the complainant and the replying opposite party etc. It is stated that complainant in the instant complaint is not seeking any relief against the replying opposite party and therefore, the present complaint is liable to be dismissed qua the replying opposite party. It is stated that replying opposite party is into logistics business and delivers the products to end customers who have placed orders on e-commerce companies like Flipkart.com, and other such companies. It is stated that replying opposite party further submits that there is no privity of contract between the complainant and the replying opposite party as the role/involvement of replying opposite party is to provide delivery of products booked by different customer on e-commerce portals/ online portals like that of www.flipkart.com and several other such companies and the replying opposite party is not involved in the entire transaction except to deliver the product to the customers as per address provided and also collect the money if the payment is to be made on cash-on-delivery (COD basis), however, in the instant matter, the product was delivered to the complainant intact as it was picked up by the seller. It is stated that since the payment transaction was completed and hence replying opposite party rightly delivered the sealed packed product at the address mentioned by the complainant. It is stated that complainant not even once approached the replying opposite party nor has raised any specific grievance or issue against the replying opposite party in the entire Complaint. It is stated that complainant only contacted with OP No.1 so the OP No. 1 or seller of the product can give the best possible answer to the complainant.

5. The parties adduced evidence in support of their contentions. On behalf of the complainant affidavit of complainant was tendered in evidence. Complainant has also

filed documents in support of his contentions. On behalf of OP No.1 affidavit of Ms. Sanchi Chhabra was tendered in evidence. OP No.1 has also filed documents in support of its contentions. On behalf of OP No.2 affidavit of Mr. Praveen Kejriwal was tendered in evidence. OP No.2 has also filed documents in support of its contentions.

6. We have heard learned counsels for the parties and have also gone through the entire record, carefully.

7. After hearing the submissions made by Ld. Counsel for the parties and perusing the entire record carefully including pleadings and evidence on record, it is clear that on 13.03.2022 the complainant ordered 10 sets of Spectra Trident Unruled A-4 Printer Papers amounting to Rs.190.10/- each, total amounting to Rs.1901/- from OP No.1. It is stated that on 16.03.2022 the OP No.2 delivered the paper sets to the complainant. It is stated that complainant after receiving the parcel checked the same and it was found that all the products were in damaged condition. It is stated that without any further delay the complainant on 17.03.2022 requested the OP No.1 to return the parcel which was duly acknowledged by OP No. 1 and accordingly the OP No. 2 was called by the complainant to collect the return parcel, but OP No. 2 flatly refused to collect the same. It is stated that thereafter complainant tried to contact the OP No.1, but when no response was received, then finally on 24.03.2022 written complaint was made by the complainant to the OP No.1 and OP No.1 assured the complainant that issue will be resolved till 29.03.2022. It is stated that although the OP No.1 assured that issue will be resolved, but no one from OP No. 1 & 2 ever approached the complainant to pick the parcel. It is stated that when thereafter the complainant tried to contact the OP No.1 then it was informed that order has been closed because period of return as per OP No.1's return policy has lapsed. It is stated that due to aforesaid acts on the part of OPs the complainant suffered mental agony and harassment as the product was not upto the mark and

was compelled to file this complaint on account of deficiency in service and unfair trade practice and prayed that the complaint may be allowed. The plea of the OP No.1 is that complaint against the replying OP is not maintainable because if there is any fault then the same is of seller and manufacturer and role of replying OP is only of intermediary in nature. It is stated that the opposite party No.1 is engaged, among others, in providing trading/selling facility over the internet through its website [www.flipkart.com](http://www.flipkart.com) and mobile application and provides online marketplace platform/ technology and/or other mechanism/services to the sellers and buyers of products to facilitate the transactions, electronic commerce for various goods, by and between respective buyers and sellers and enables them to deal in various categories of goods including but not limited to mobiles, camera, computers, watches, clothes, footwear, healthcare and personal products, home appliances and electronics etc. It is stated that independent third-party sellers use the Flipkart Platform to list, advertise and offer to sell their products to the users/buyer who visit the Flipkart Platform. It is stated that once a buyer accepts the offer of sale of the products made by the third-party seller on the Flipkart Platform, the seller is intimated electronically and is required to ensure that the products are made available and delivered in accordance to the delivery terms as per the terms for sale displayed by seller on the Flipkart Platform, hence if there is any defect in the product the replying OP has no role and it is to be borne by the seller and manufacturer of the product. It is prayed that the complaint may be dismissed. The plea of the OP No.2 is that there does not exist any privity of contract between the complainant and the replying opposite party and complaint against replying OP is not maintainable. It is stated that replying opposite party is into logistics business and delivers the products to end customers who have placed orders on e-commerce companies like [Flipkart.com](http://Flipkart.com), and other such companies. It is stated that the

replying OP is not involved in any transaction except to deliver the product to the customer. It is stated that the product was delivered to the complainant intact as has been received from the manufacturer/seller within time specified in the order. It is stated that complainant not even once approached the replying opposite party nor has raised any specific grievance or issue against the replying opposite party. It is stated that there is neither any deficiency in service or unfair trade practice on the part of the OP No.2 and prayed that complaint may be dismissed.

8. It is very much clear from the foregoing discussion of the pleadings and evidence of parties on record that specific grievance of the complainant is that he received the product in a damaged condition. The plea of the complainant is that he placed order with OP No.1 and OP No.1 delivered the product to complainant through OP No.2. It is also the plea of the complainant that when product was found in damage condition then the complainant approached the OP No.1 and OP No.1 assured that product will be replaced on or before 29.03.2022, but the product was not replaced, rather the complainant was informed that now time to replace the product has lapsed. The complainant has filed his affidavit and placed on record the copies of correspondence took place between the complainant and OP No.1 by way of various modes of communications. The perusal of the said communication clear goes to show that in one of the message the OP No.1 has assured the complainant that product will be replaced and refund will be initiated, however, nothing was done in this regard. The plea of the OP No.1 is that it has nothing to do with the product and its role is only to facilitate the buyer and seller through its platform. The plea of the OP No.2 is that there is no privity of contract between the complainant and replying OP No.2 and the OP No.2 has delivered the product in sealed packet as was received from the seller/manufacturer. However, the fact remains that product when received by the complainant was in a damaged condition



and he immediately on the next day informed the OP No.1 and OP No.1 in communications placed on record as a piece of evidence on behalf of complainant, admitted that product will be replaced and refund will be initiated, but the same was not done which means that product was in damaged condition when received by the complainant as alleged and the OPs were under obligation to replace the article and refund the amount spent by the complainant for purchase of the same. Non-replacement of article/product on the part of OPs clearly amounts to deficiency in service and unfair trade practice on the part of the OPs specifically when in the correspondence, the OP No.1 has admitted that product will be replaced and return will be initiated. So far plea of the OP No.1 that its role is of intermediary and the liability, if any, is of seller/manufacturer, is not relevant because it is not the case of the complainant that quality of the product was not good. Similarly, the plea of the OP No.2 that it only provides logistic services and has no role in alleged damage of the product, is also not justified. Reason being that it was the obligation of OPs to deliver the product to the complainant in safe condition which the OPs failed to do. Accordingly, it is held that complainant has been able to prove that there was deficiency in service and unfair trade practice on the part of the OPs and complaint deserves to be allowed.

9. In view of the foregoing discussion and reasons assigned therein the complaint is ordered to be allowed and the OPs are directed jointly and severally to refund Rs.1901/- to the complainant alongwith interest @ 9% per annum from the date of filing of complaint till its payment. The OPs are also directed jointly and severally to pay a sum of Rs.3,000/- to the complainant as compensation for mental harassment and agony and sum of Rs.2,000/- as costs of litigation. The OPs are directed to comply this order within 45 days from the date of passing of the order. Copy of this order be supplied to the parties free of

cost as per rule. The file after its due completion be consigned to the Record Room.

Announced on this the 13<sup>th</sup> day of June, 2024.

(Dr. Baldev Singh)  
President

(Jagdev S. Raitka)  
Member

(Janam Devi)  
Member

\*GUPTA\*