

CC/340/2023

Date of filing: 25.10.2023
Date of Disposal: 04.04.2024

**BEFORE THE BANGALORE URBAN II ADDITIONAL
DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION, SHANTHINAGAR, BANGALORE - 560027**

DATED THIS THE 04th DAY OF APRIL 2024

CONSUMER COMPLAINT NO.340/2023

PRESENT:

SRI VIJAYKUMAR.M.PAWALE, B.A., LL.B., (Spl)., ... PRESIDENT

SMT.V.ANURADHA, B.A., LL.B., ... MEMBER

KUM.RENUKADEVI DESHPANDE, B.Com., LL.B., (Spl)., ... MEMBER

COMPLAINANT:

Adithya Chaturvedi,

206, Pearl Tuscany,

Kudlu Road,

Somasundrapalya,

Bengaluru, Karnataka,

India - 560102.

(Complainant is Rep Adv. Sri. Priyendu Padmaraj)

V/s

OPPOSITE PARTY:

Flipkart Internet Private Limited,

Buildings Alyssa,

Begonia and Clove Embassy,

Tech Village Outer Ring Road,

Devarabeesanahalli Village,

Bengaluru, Karnataka,

Pin - 560103.

(OP is placed Exparte)

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4/4/24

Author **SMT.V.ANURADHA, MEMBER**

// JUDGMENT //

1. This complaint has been filed by the Complainant under Section 35 of the Consumer Protection Act, 2019 (hereinafter referred as the Act) seeking direction against the opposite party to refund amount of Rs.22,990/-, to pay compensation of Rs.1,00,000/- and to pay costs of litigation.

2. The case of the complainant in brief is as under;

The complainant has placed an order of One (1) "BOSCH 6.5 kg Drive Motor, Anti Tangle, Anti Vibration Fully Automatic Front Load "Washing Machine, from the opposite party website on 17.07.2023 vide order No.OD428646359430269100 for an amount of Rs.22,990/- vide invoice No.FAD1712400001425. The said product was delivered on 19.07.2023 and the said product is referred to as an open box delivery. That due to knee surgery the complainant was bed ridden and due to which the complainant was not be able to inspect the above said product and taking advantage of these

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in the said situation the opposite party concerned delivery of the product to the complainant's executive after collecting the OTP from the complainant has left the vicinity without opening the box and showing the product. On very next day i.e. 20.07.2023 prior to the technician scheduled visit the complainant with the help of his friend opened the said box, where a complainant found the significant dent on the metal body and the detached front panel of the said washing machine. In this regard the complainant has immediately contacted the opposite party customer care and raised a complaint with the customer service executive team to initiate the replacement request. Thereafter the opposite party technician inspected product on 21.07.2023 and prepared a job sheet for replacement which confirms the damage stated above. Thereafter the complainant continues follow ups but the opposite party customer service response regarding the system error and also replied that return and replacement period has already been crossed as per opposite party policy so that replacement could not be done by the opposite party. On 29.08.2023 the complainant got issued legal notice but the opposite party neither replied nor complied the demand made in the legal notice. Hence, this complaint.

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3. Despite service of notice, the opposite party failed to appear before this Commission hence opposite party is placed *ex parte*.

4. Even after giving sufficient opportunity complainant failed to file evidence, hence affidavit evidence of the complainant is taken as nil. Advocate for complainant filed written arguments but failed to address oral arguments, hence oral arguments of complainant is taken as nil. We perused the records.

5. The following points do arise for our consideration;

1. Whether the complainant proves the deficiency of service on the part of the opposite party?

2. Whether the complainant is entitled to the relief claimed in the complaint?

3. What order?

6. Our findings on the above points are as under;

1. POINT NO.1: In the Affirmative;

2. POINT NO.2: Partly in the Affirmative;

3. POINT NO.3: As per the final order;

REASONS

7. **POINT NO.1 & 2:** It is the admitted fact that the complainant has placed an order of One (1) "BOSCH

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6.5 kg Drive Motor, Anti Tangle, Anti Vibration Fully Automatic Front Load Washing Machine, from the opposite party website on 17.07.2023, for a sum of Rs.22,990/- as per tax invoice. After delivery of the product the complainant noticed that the washing machine had significant dent on the metal body and detached front panel of the said washing machine as per the copy of photo, which shows the damage occurred in the said washing machine. Wherefore in this regard the complainant has complained to the opposite party customer care and the service person of the opposite party visited the complainant residence and inspected the washing machine and also as per checklist and installation and service call in that specifically mentioned that there is a transit damage and the package is opened by the dealer and in the job card it is also mentioned that at the time of installation machine found front panel transit damage.

8. In spite of continuous approach to the opposite party the opposite party has failed to resolve the issue and after crossing the replacement period the opposite party replied to the complainant issue since we are sorry to hear that you're facing issue with your

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... product since the product has crossed the seller's replacement period. They will not be able to fulfill the complainant's request. And in the Job card the technician also suggested for replacement of the product due to transit damage. But the opposite party to escape from their liability has replied in the mail on 29.08.2023 that the replacement period has crossed as per opposite party policy. Due to the act of the opposite party the complainant has got issued legal notice on 29.08.2023 calling upon the opposite party for refund of amount along with compensation. The opposite party neither replied nor complied the demanded in the legal notice.

9. In spite of service of notice, opposite party failed to appear before this Commission and placed Exparte.

Hence, we have no other option, except to believe the complaint and documents produced by the complainant.

10. We carefully perused the pleading and documents produced by the complainant. It clearly reveals that the damage of the washing has happened during the transit as per the job sheet issued by the opposite party. And on the same day itself the complainant

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has also requested for the replacement of the product, but the opposite party has failed to replace the product within the prescribed time valid period for replacement of opposite party policy. The opposite party has denied for replacement on the ground that the valid period for replacement has been lapsed as per opposite party policy. This act of the opposite party amounts to deficiency of service and unfair trade practice which is proved by the complainant by producing relevant documents. Hence looking into the facts and circumstances we are of the opinion that the complainant is entitled for refund of Rs.22,990/- by returning back damaged product to the opposite party. The complainant has claimed for Rs.1,00,000/- as compensation is excessive and exorbitant. Hence we are inclined to award Rs.3,000/- as a compensation and Rs.2,000/- as cost of litigation expenses. Hence, we answer Point No.1 In the affirmative & Point No.2 Partly in the affirmative.

11. **POINT NO. 3:** In view of the discussion referred above, the complaint requires to be allowed in part. The opposite party is liable to refund Rs.22,990/- by taking back the damaged product from the complainant. The opposite party is also liable to pay

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Rs.3,000/- as a compensation and Rs.2,000/- as cost of litigation expenses to the complainant. We proceed to pass the following;

ORDER

The complaint is allowed in part.

The opposite party is directed to refund Rs.22,990/- (Rupees Twenty Two Thousand Nine Hundred Ninety Only) to the complainant by taking back the damaged product from the complainant.

The opposite party is also directed to pay Rs.3,000/- (Rupees Three Thousand Only) towards compensation and Rs.2,000/- (Rupees Two Thousand Only) towards cost of litigation expenses to the complainant.

The opposite party shall comply the order within 45 days from this date.


Supply free copy of this order to the parties.

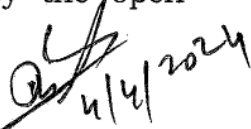
Return spare copies of the pleading and evidence to the parties.

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(Dictated to the Steno, typed by her, transcript corrected, Revised and then pronounced by the open Commission on **04th day of APRIL 2024**).


(RENUKADEVI DESHPANDE)
MEMBER


(V.ANURADHA)
MEMBER


(VIJAYKUMAR.M.PAWALE)
PRESIDENT

//ANNEXURE//

Witness examined for the complainant's side:

- NIL -

List of documents filed by the complainant:

1. Copy of Aadhar card,
2. Copy of the Tax invoice,
3. Copy of the photo of the product,
4. Copy of the check list for installation and service cell,
5. Copy of the Job card,
6. Copy of the E-mail dated 21.08.2023,
7. Copy of the legal notice dated 29.08.2023.

Witness examined on behalf of the Opposite Party:

- NIL -

List of documents filed by the Opposite Party:

- NIL -


(RENUKADEVI DESHPANDE)
MEMBER


(V.ANURADHA)
MEMBER


(VIJAYKUMAR.M.PAWALE)
PRESIDENT

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