

**Complaint No.360/2023**  
**Date of Filing: 03.11.2023**  
**Date of Disposal :16.05.2024**

---

**BEFORE THE DISTRICT CONSUMER DISPUTES**  
**REDRESSAL COMMISSION, MYSORE-570023**

**CONSUMER COMPLAINT No.360/2023**  
**DATED ON THIS THE 16<sup>th</sup> May, 2024**

**Present:** 1) Smt.A.K. Naveen Kumari.,  
B.Sc., LL.M., - PRESIDENT

2) Sri. Maruthi Vaddar  
BA., LLB., (Spl) – MEMBER

COMPLAINANT/S

Karthik.H.K, aged 38  
years No.139, Ground  
Floor, 2<sup>nd</sup> Main, A1  
Block, Vijayanagara, 3<sup>rd</sup>  
Stage, Mysuru City.

(In person)

V/S

OPPOSITE PARTY/S

Flipkart Internet Private  
Ltd., Building Alyssa,  
Begonia and Clove  
Embassy Tech Village,  
Outer Ring Road,  
Devarabeesanahalli  
Village, Bengaluru-  
560103.

(Rep.by.Adv  
Apoorvanada.K)

<b>Nature of complaint</b>	<b>: Deficiency in service</b>
<b>Date of filing of complaint</b>	<b>: 03.11.2023</b>
<b>Date of Issue notice</b>	<b>: 15.11.2023</b>
<b>Date of order</b>	<b>: 16.05.2024</b>
<b>Duration of Proceeding</b>	<b>: 6 MONTHS 13 DAYS</b>

**SMT.A.K. NAVEEN KUMARI.**  
**PRESIDENT**

The Complainant has filed the complaint against the opposite party seeking compensation of Rs. 1,00,000/- each towards mental agony deficiency in service and neglect towards hearing impaired special person and Rs. 10,000/- towards litigation expenses and Rs. 600/- towards disallowed value of the old exchange mobile. In all amounting to Rs. 3,10,600/-.

2. The complaint in brief avers as follows:-

That on 21.03.2023 the complainant has placed the order for mobile through Flipkart on-line by exchanging his old mobile phone for Rs.2,550/-. On 23.03.2023, about 4.30 p.m., he received new mobile phone but, at the time of giving discount towards his old mobile by assigning one or the other defects in the mobile by deducting of Rs.600/- gave discount of Rs.1,950/-only. It is contended that the complainant has explained the conditions about the exchange of old mobile phone along with proof, but he was

given discount of Rs.1,950/- only. It is contended that the complainant has made correspondence through on-line with the opposite party from 25.03.2023 to 11.05.2023, but it went in vain. So, he preferred appeal before the Government Grievance Appellate Committee, Government of India in Appeal No.230/2023 on 11.05.2023. But the said complaint was closed with an endorsement to approach the proper Forum.

3. It is contended that since he is a hearing impaired person requested the opposite party to send the messages instead of making phone calls, in spite of it the opposite party used to contact him through phone call and made allegations against him that he is not available for phone call. Then closed the complaint stating that his problem could not be solved through message and has committed deficiency in service. Hence, the complaint.
4. After filing of the complaint notice was issued to the opposite party. After service of the notice the opposite party appeared through counsel and filed version, which avers as follows:-

That the opposite party is the owner of the website [www.flipkart.com](http://www.flipkart.com) along with its mobile application named "Flipkart" (hereinafter collectively referred to as the "Flipkart Platform") which inter-alia are engaged, in providing trading/selling facility over the Internet through

its platform. That opposite party is an on line marketplace e-commerce entity. That the said “Flipkart Platform” is an electronic marketplace model e-commerce platform which acts as an intermediary to facilitate sale transactions between independent third party sellers and independent complainants. It is submitted that the sellers are separate entities being controlled and managed by different persons/stakeholders. Thus, for any act of the seller, the marketplace e-commerce platform or its operating entity cannot be held liable. The complainant has failed to array the seller in the present complaint, and thus the present complaint is liable to be dismissed on the sole ground.

5. It is contended that the business of the opposite party falls within the definition of an intermediary under section 2(1)(w) of the Information Technology Act, 2000. That this opposite party is protected by the provisions of Section 79 of the Information Technology Act, 2000. The intermediary observes due diligence while discharging his duties under this Act and also observed such other guidelines as the Central Government may prescribe in this behalf. Moreover, Section 5(1) of Consumer Protection (E-commerce) Rules, 2020 also provides for exemption to marketplace e-commerce entity under sub section 1 of section 79, who complies with sub-section (2) and (3) of that section. That the opposite party is merely an intermediate platform wherein the seller(s) and buyer(s) can transact freely with

disclosure and warranties to be strictly between such seller(s) and buyer(s). That as per the complaint, the complainant placed the order for SAMSUNG Galaxy S21 FE 5G (Lavender, 128 GB) on 21<sup>st</sup> March 2023, which was delivered to the customer on 23<sup>rd</sup> March 2023.

6. That the complainant emailed to the opposite party on 23<sup>rd</sup> March 2023, stating that the wish-master reduced the exchange value by Rs.600/-, citing the reason that there were scratches on the device, however, there were no scratches on the device. The team tried contacting the complainant multiple times on 25<sup>th</sup> March 2023; however, there was no response from the complainant. Hence, the team emailed requesting the complainant to share an alternate number and a convenient time to call back. The complainant emailed on 6<sup>th</sup> March 2023, stating that he is a hearing-impaired person, and does not want any callback.
7. It is contended that the complainant opted exchange his old phone while purchasing the aforementioned product and it remains entirely at the discretion of the complainant whether to proceed with the exchange and accept the provided value or retain the old product. In the current scenario, the complainant chose to return the old product, and an estimated amount for the same was indicated at the time of the product purchase. That the website of the opposite party explicitly mentions the possibility of a

variance in value under specific conditions related to the phones condition. Moreover, it is crucial to note that the decision to return the old product or the stipulated value was willingly made by the complainant and this amount was duly adjusted against the cost of a new product. The assertion by the complainant that they received an insufficient value is untenable, considering their conscious decision to proceed with the exchange based on the offered amount.

8. That the complainant's claim of the phone lacking scratches or dents lacks substantiation, as no documentary evidence has been provided to support such assertions. The complainant willingly relinquished the old phone to the designated personnel without raising any objections at that time. The complainant's current contention that they received an inadequate value for the exchanged product is unfounded, given their voluntary decision to proceed with the exchange and the absence of supporting evidence regarding the phone's condition.
9. That the complainant's concerns have been attended to and complied with on many occasions by the opposite party. The complainant is not maintainable as it alleges fraud and involves complicated question of facts and law and would need detailed evidence. These on-line sale transactions by the user are governed by the "condition of

sale” which reiterates that there is a bipartite agreement entered into between the buyer and the independent third party sellers as stipulated. That the complainant is guilty of ‘suppresioveri’ and ‘suggestiofalsi’. The complainant has made misconceived and baseless allegations of deficiency in service without any relevant documentary evidence in support of the allegations made in the complaint. That there is no deficiency of service per se on the part of the opposite party. Hence, prays to dismiss the complaint with exemplary costs.

10. The Complainant has filed affidavit in lieu of evidence and got marked documents as Ex-P1 to P7.

The Legal Executive, of the opposite party has filed affidavit in lieu evidence and got marked documents as Ex.R1 and R2.

11. Heard arguments of the Complainant.

The learned counsel for the opposite party failed to address arguments.

12. Now the points that arise for the consideration of this commission are:-

1. Whether the complainant has proved the deficiency in service by the opposite party?
2. Whether the complainant is entitle for the relief sought?
3. To what order?

13. Our findings on the aforesaid points are as follows:-  
Point No.1:- In the Affirmative  
Point No.2:- Partly in the Affirmative  
Point No.3 :- As per the final order for the following reasons:-

**:: R E A S O N S ::**

14. **Point No.1:-** The evidence of the Complainant discloses that he has purchased the new mobile phone through Flipkart, as per the tax invoice marked as Ex.P7 for Rs. 28,518/-. As per the evidence of the complainant there was ex-change offer for old mobile by the opposite party. So, as per the advertisement he has agreed for discount of Rs. 2,550/-. But, the opposite party gave discount of only Rs. 1,950/- by deducting Rs. 600/-. Ex-P6 is the copy of the Flipkart for having shown the product ex-change value as Rs.1,950/-. The first and the foremost defence of the opposite party is that it is just an intermediary and it is not liable to indemnify the complainant and the complainant has to make the seller as a party. The opposite party has not stated as to who is the seller.
15. The documents produced by the Complainant disclose that he has transacted with the opposite party. When such is the case the opposite party cannot contend that



it is not answerable to the complainant. With regard to the ex-change offer, the opposite party also admits that the scratch on the back side or edge of the mobile is not referred in the advertisement for fixing the value of the old mobile, but only scratch on the screen is referred. So, deducting of Rs.600/- towards exchange of old mobile contending that there is scratch on the edge of the mobile and giving discount of Rs. 1,950/-instead of Rs.2,550/- which was admitted by the Complainant is not correct.

16. When the complainant has placed materials before the opposite party with regard to the condition imposed by the opposite party regarding ex-change offer of the old mobile and fixing the value of the old mobile, the opposite party instead of considering the request of the complainant deducting of Rs.600/-towards scratch on the back side of the mobile is not correct. Moreover, the complainant has sent message to the opposite party that he is a special person suffering from hearing impaired and he cannot converse through mobile phone and requested the opposite party to send message or telegram to him they have not obliged and frequently made calls to him through phone and closed the matter stating that the complainant is not available for phone

call. So, as rightly contended by the Complainant it amounts to deficiency in service by the opposite party. Hence we answer this point in the Affirmative.

17. **Point No.2:-** The Complainant has sought compensation of Rs. 1,00,000/- each towards mental agony, neglect towards hearing impaired special person and towards deficiency in service. And sought compensation of Rs. 10,000/- towards litigation expenses, which is on higher side. The complainant is entitled for refund of Rs. 600/- towards the amount deducted towards exchange of his old mobile. He has entitled for compensation of Rs. 10,000/- towards mental agony and deficiency in service and he has entitled for cost of Rs. 5,000/- towards litigation expenses. Hence we answer this point partly in the Affirmative.

18. **Point No.3:-** In view of answering points No.1 and 2 as above we proceed to pass the following:-

**:: ORDER ::**

**The Complaint is allowed in part**

**The opposite party shall pay Rs. 600/- towards the old mobile discount, Rs. 10,000/- towards deficiency in service and mental agony and cost of Rs. 5,000/- towards litigation expenses to the**

**Complainant within one month from the date of passing of this order**

**Failing which the opposite party shall pay interest on the said amount at 9% p.a. on Rs. 15,600/- from the date of this order till its actual payment.**

**Furnish free copy of the order to both the parties.**

**(Dictated to the Stenographer transcribed, typed by her, corrected by us and then pronounced in open Commission on this the 16<sup>th</sup> May, 2024)**

**(A.K. NAVEEN KUMARI)  
PRESIDENT**

**(MARUTHI VADDAR)  
MEMBER**