

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION, HISAR

Consumer Complaint No. : 806/2020
Date of Institution: 17.11.2020
Date of Decision : 23.5.2024

Umed Kumar son of Sh. Jagdish Chander aged 37, resident of village Bhado Patti,
Tehsil Barwala and District Hisar (Haryana) Mobile No.98132-12341.

...Complainant

Versus

1. Flipcart Internet Private Limited Vaishnavi Summit, No.6/B, 7th Main 80 feet Road, 3rd Block, Koramnagala Bangalore-560034 India.
2. Exhpbox Ecommerce Private Limited Adani, Logistics Park, ICD Patli Pataudi Rd. Gurugram Haryana-122506, Gurgaon-122506.

.....Respondents

Complaint under Section 35 of the Consumer Protection Act,2019

**Before: SHRI JAGDEEP SINGH, PRESIDENT
MRS RAJNI GOYAT, MEMBER
DR.AMITA AGGARWAL, MEMBER**

Present: Complainant in person.
Sh. Abhishek Aggarwal, Advocate for OP no. 1.
None for OP no. 2 (address not disclosed by OP no. 1).

ORDER By:

SHRI JAGDEEP SINGH, PRESIDENT

Complainant has filed this complaint under Section 12 of the Consumer Protection Act, 1986 against the respondents/Opposite Parties (hereinafter to be referred as OPs). Keeping aside unnecessary detail of the complaint, the brief facts of the present complaint are that the complainant placed an order on 9.11.2020 on

flipcart app a men's shoes Model BBSHOCL89703-7 clarks walking shoes for men white 7, the ID no.OD120176482891808000, the online discounted prize Rs.3999/-. Further submitted that the complainant got the delivery on 12.11.2020 and the complainant made online payment of Rs.3999/- through his HDFC Bank credit card. It is submitted that when the complainant opened the packet in front of the delivery boy (Krishan Kumar), found that ordered shoes were already used and laces of right shoe was not there. The complainant asked the delivery boy to carry back the ordered shoes and refund the paid amount. The delivery boy replied that he cannot do so and he asked to make complaint on toll free number. The complainant raised his complaint immediately. On 15.11.2020 company rejected the complaint. The complainant made many complaints on toll free number but all in vain.

2. Further submitted that the complainant is cheated and faced mental agony. Further submitted that the complainant is a student and collected penies for shoes and the complainant is unable to purchase another shoes. There is deficiency in service on the part of the Ops. Hence, the complainant has filed the present complaint with the prayer that the Ops be directed to refund the sum of Rs.3,999/- alongwith interest and to pay compensation of Rs.1 lac on account of physical and mental agony and pecuniary losses etc.

3. On receiving notice, the OP No. 1 appeared through his counsel and filed written statement mentioning therein that the answering respondent 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, health care and personal products, home appliances and electronics etc. It is submitted that answering OP only acts as an intermediary through its web interface www.flipkart.com and provides a medium to various sellers all over India to offer for sale and sell their products to the users of the Flipkart Platform. Further submitted that these sellers are separate entity being controlled and managed by different persons/stakeholders. Further submitted that the product purchased by the complainant has not been sold by answering OP and answering OP has no role in providing warranty/delivery of the product sold by an independent seller i.e. OP no. 2 through the Flipkart platform of the answering OP. On merits, it is submitted that the product purchased by the complainant was manufactured by clarks brand and also sold by a third party seller registered on Flipkart Platform. It is further submitted that advertisement with regard to price, specification, quality and description etc. are listed by the manufacturer of the product. It is submitted that the complainant booked the product through answering OP and same was sold by the independent third party seller. It is settled proposition that the liability to deliver the product to the consumer rests with seller. Further submitted that answering OP been an

intermediary has assisted the complainant on each and every occasion when the complainant approached the answering OP. Further submitted that the complainant presented the communication held between him and the answering OP in twisted manner to create unnecessary pressure and to extort money illegally from the answering OP. Further submitted that there is no privity of contract between the complainant and the answering OP. The complainant make false and fabricated story. All other allegations are wrong and hence denied and prayed that the complaint of the complainant may kindly be dismissed with cost.

4. The complainant in person has tendered affidavit as ExCW1/A and documents as Ex.C1 to Ex.C4 and closed the evidence. The counsel for the OP no. 1 made a statement that written statement already filed be read as part of evidence and closed the evidence.

5. The complainant in his arguments reiterated the facts as mentioned in the complaint. Ld. Counsel for the Op no. 1 in his arguments reiterated the version as mentioned in the written statement. With the kind assistance of counsel for the parties, the entire record of file including documentary evidence has also been properly perused and examined.

6. It is undisputed fact that the complainant ordered Clarks Walking Shoes vide ID no.OD120176482891808000 through OP no. 1. It is also undisputed that after making the payment of product the complainant received the product on

12.11.2020. It is also undisputed that after receiving the product the complainant made the complaint to OP no. 1 regarding receiving of old shoes. The case of the complainant is that after receiving the defective and old shoes he made a complaint on toll free number of the OP no. 1 for redressal of his grievances and Op no. 1 rejected the request of the complainant on 15.11.2020 i.e. within 3 days of delivery.

7. In order to prove his case the complainant placed on file copy of invoice Ex.C-3, photo of defective shoes Ex. C-1 to show that he received the shoes in such poor condition. By seeing this photograph it is very much clear that the one shoe is not having laces and both shoes are in very bad condition. On the other hand, the defence of OP no. 1 is that after receiving the complaint of the complainant being a inter- mediator he assisted the complainant on each and every occasion but being inter-mediator is not liable for any defect in the product. He is not liable for advertisement with regard to price, specification, quality and description etc. are listed by the manufacturer of the product.

8. We have gone through the file the complainant filed the present complaint on 17.11.2020 i.e. within 5 days after receiving of the said product. The complainant implead the seller as OP no. 2. He identified the name of seller from invoice Ex.C-3 which is provided by the Op no. 1 after receiving the payment. The OP no. 1 was directed to provide the correct address of OP no. 2 within 30 days. Many opportunities were given to OP no. 1 to provide the correct address but OP no. 1 did not file correct address. He made a statement that he is not having any correct

address of OP no. 2. As per direction of this Commission on dated 18.7.2023 the OP no. 1 failed to provide the correct address of OP no. 2 seller then OP no. 1 will be liable for responsibilities of Op no. 2. As per guidelines for Foreign Direct Investment dated 29.3.2016, Marketplace model goods/services made available for sale electronically on website should clearly provide name, address and other contact details of the seller. Post sales, delivery of goods to the customers and customer satisfaction will be the responsibility of the seller. The complainant ordered the product through OP no. 1 Flipkart Internet Private Limited but OP no. 1 did not provide the correct address of the seller (OP no. 2). It was the duty of the Op no. 1 to provide correct address of the seller to the complainant as well as to the Commission but even after direction of the Commission he did not provide correct address. The OP no. 1 did not place on file any documentary evidence to show that what kind of action was taken by the OP no. 1 for redressal of genuine grievances of the complainant. The OP no. 1 did not disclose the complaint number of the complainant and he did not resolve the complaint of the complainant. It was the duty of the OP no. 1 to get investigated the matter but he did not take proper action on complaint of the complainant. The complaint is duly supported by the affidavit of the complainant. The Op no. 1 did not specifically reply the material facts mentioned in the complaint. The complainant filed the present complaint within one week after receiving the defective product after making efforts to redress his grievances which shows that the complainant took immediate action after receiving poor quality

product. OP no. 1 did not resolve the genuine claim of the complainant. Therefore the complainant was constrained to file the present complaint for the redressal of his genuine claim. Therefore the complainant is entitled for compensation and litigation expenses for the mental, physical, emotional and financial harassment faced by the complainant.

9. Consequently, this Commission is of considered view that there is merit in this complaint and the same is hereby accepted with the direction to Op no. 1 to refund amount of Rs.3999/- alongwith 9% p.a. interest from the date of receiving of the payment i.e. 12.11.2020 till its actual realization. Further Op no. 1 is directed to pay Rs.3,000/- as compensation and Rs.3,000/- as litigation expenses. The complainant is directed to hand over the defective product to the OPs at the time of receiving of the amount mentioned above. This order be complied with by the Op no. 1 within 45 days, from the date of passing of this order, otherwise the amount shall carry an interest at the rate of 12% per annum for the default period i.e. after 45 days of this order. The OP no. 1 is at liberty to recover the amount paid by him from OP no. 2 as per their contract with the OP no. 2

If the order of this Commission is not complied with, then the complainant shall be entitled to file execution petition under section 71 and to file complaint/application under Section 72 of the Consumer Protection Act in that eventuality, the Op no. 1 may also be liable for prosecution under Section 72 of the said Act which envisages punishment of imprisonment which may extend to three

years or fine upto Rs.one lac or with both. Copies of this order be sent to the parties free of costs, as per rules, and this order be promptly uploaded on the website of this Commission. File be consigned to the record room after due compliance.

Announced

Dated:23.05.2024

(Jagdeep Singh),
President,
District Consumer Disputes
Redressal Commission,Hisar

(Rajni Goyat)
Member

(Amita Agarwal)
Member

Typed by:Varsha Rani, Stenographer.

