

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,  
SOUTH MUMBAI**

**Puravatha Bhavan, 1<sup>st</sup> Floor, General Nagesh Marg, Near  
Mahatma Gandhi Hospital, Opp. M.D. College, Parel,  
Mumbai – 400 012.**

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Consumer Complaint No: 84/2017

Date of Filing: 17/04/2017

Date of Order: 12/06/2024

**MR. ABDUL RASHID MOMIN**

166, MURGA GIRAN CHSL,  
5TH FLOOR, FLAT NO.510/511,  
PATTHE BAPURAO MARG,  
MUMBAI 400 008.

**.....Complainant.**

**V/S**

**1. INDUSIND BANK**

THROUGH ITS MANAGER  
INDUSIND, 425, LAMINGTON RD.,  
7, AKSHAY COMPLEX, OPERA HOUSE,  
GIRGAON, MUMBAI 400004.

**2. UNISTORE**

ATLAS RADIO TRADERS (MUMBAI)  
THROUGH ITS MANAGER  
27, NEW QUEENS ROAD,  
DREAMLAND BUILDING,  
OPERA HOUSE, CHARNI ROAD(E),  
MUMBAI 400 004

**.....Opposite Parties.**

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**BEFORE:HON'BLE INCHARGE PRESIDENT SHRI.P.G. KADU.  
HON'BLE MEMBER SMT. S. A. PETKAR.  
HON'BLE MEMBER SMT. G. M. KAPSE.**

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**ADVOCATE ON RECORD:**

For Complainant: Adv.Rupesh Jambhavdekar  
For Opposite Party No.1: M/s.M.V.Kini & Co.  
Opposite Party No.2 –Ex-parte

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**J U D G M E N T**  
**(Decided on:-12/06/2024)**

**HON'BLE MEMBER SMT. S. A. PETKAR.**

- 1) This complaint under section 12(1)(a) of the Consumer Protection Act 1986 is filed by complainant named above alleging deficiency in service on the part of the Opposite Parties. The complaint of Complainant is as under:-
- 2) The complainant is small businessman doing business for his livelihood. He purchased the mobile I PHONE SE 16 GB SPACE GRAY with batch no. 355441076021994 for his son in law for Rs.38,000/-on 16/09/2016 that time the trader i.e. opposite party no. 2 assured that, the complainant can availed credit card facility, with 24 installment and EMI amount of Rs.1842.49 and after availing facility of credit card the complainant will be entitled of Rs.6400/- cash back as per that complainant swapped credit card issued by the opposite party no. 1.
- 3) The complainant paid EMI amount to the opposite party no. 1 as per following chart:-

13/09/2016 to 12/10/2016	Rs.1900/-	1 <sup>st</sup> Installment.
13/10/2016 to 12/11/2016	Rs.1961/-	2 <sup>nd</sup> Installment.
13/11/2016 to 12/12/2016	Rs.1967/-	3 <sup>rd</sup> Installment.
-	Rs.1955/-	4 <sup>th</sup> Installment.

The complainant Paid total amount of Rs.8638/- but still outstanding amount not become less. As per opposite party no.1, the amount of Rs.8638/- was interest on availed credit and replied that the complainant credit card is secondary card, therefore EMI facility is not available but this facility was not refused at the time of purchasing of mobile, therefore the complainant lastly paid full amount of Rs.38,855/- to avoid further heavy interest.

- 4) On 17/11/2016 the complainant wrote letter to the opposite party no.1 for weaving of interest on 28/11/2016. The complainant made conversation with customer care. Lastly on 23/02/2017 the opposite Party no.2 via Email replied that the opposite party no.1 rejected transaction due to use of secondary credit card.
- 5) As per that the opposite parties have done unfair trade practice with complainant, intentionally harassed to the complainant by way of unfair trade practice as well as deficient in service.
- 6) In the circumstances, the Complainant left with no other alternate and efficacious remedy, than to approach this Hon'ble Commission. Therefore present complaint filed and prayed the Opposite Party be directed:-
  - A. To direct and order that the opposite party is deficient in their services with the complainant.
  - B. To direct and order that the opponent to pay amount Rs.8638/- to the complainant.
  - C. To direct and order that the opponent to pay the cost for mental harassment Rs.50,000/- in favour of the complainant.
  - D. To direct and order that the opponent to pay the Legal Expenses Rs.15,000/- for filing the complaint in favour of the complainant.
  - E. Any other order and/or direction be given as the nature and circumstances of the case may require in the spirit of justice, equity and good conscience.

- 7) The complainant has filed a attested copy of documents as per a list of document of the complaint.
- 8) After the complaint was admitted, a notice was issued by Commission to the opposite parties, after duly surf the notice opposite Party no. 2 remain absent hence the matter preceded its party against the opposite party no.2, the opposite party No 1, appeared and filed their reply as under.
  - a) The opposite Party no. 1 for the period of 13/09/2016 to 12/10/2016 and subsequent period the statement of account of relevant period was delivered to the complainant which were describe purchase of mobile Rs.38,000/- previous balance and total amount of Rs.37,999.44
  - b) As per procedure minimum amount due payment was stated Rs.1899.87 due date 01/11/2016, but the complainant not cleared total outstanding dues and only paid minimum amount due, due to which balance outstanding was carried forwarded in his subsequent credit card statement account for the period of 13/10/2016 to 12/11/2016.
  - c) Due to partial payment to the extent of minimum amount due only living behind balance outstanding, interest and other charges as per credit card rules were applied in his account and accordingly statement of account was delivered to the complainant but the complainant Paid only minimum amount due Rs.1960.25 and not paid balance outstanding, but the complainant kept paying only minimum amount due only and not clear total outstanding due to which interest and other charges which were levied as per rule.
  - d) The bill for the period of 13/09/2016 to 12/02/2017 were raised as per credit card rules and bill was not prepared on the basis of EMI payment as no information given to Opposite party no. 1 about purchase of mobile and not provided transaction slip from opposite Party no. 2 and not provided EMI installment and other terms of sale, so in the absence of the same the opposite party no. 1 continued to prepare the statement of account based on purchase of mobile.
  - e) The complainant instead of making entire outstanding due, kept paying minimum amount dues and ask waive the

interest levied in his statement of account as per credit card rules, but that request was not accepted.

- 9) In order to prove their side the complainant has filed pursis for Affidavit of Evidence, Opposite Party no. 1 filed there's Affidavit of Evidence, both parties has file their written argument, heard the argument of both the parties.
- 10) In the light of averment, evidence, and written argument of both the parties, following points arise for consideration. We have recorded our finding thereon for the reason stated below.

<b>Sr.No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	Whether the opposite parties have given deficiency in services by charging interest on the transaction of Credit Card ?	.... <b>Yes</b> .....
2.	Whether the complainant is entitled for relief sought?	.... <b>Yes</b> .....
3.	What Order?	Partly allowed...As per Final Order.

### **REASON FOR FINDINGS**

#### **POINT NO-1 TO 3**

- 11) Heard oral argument of both the parties, perused the evidence on record.
- 12) It is cleared from the invoice bill that on 16/09/2016 the complainant purchased mobile from opposite Party no.2 for 38,000/- he swapped credit card issued by the opposite party no. 1 I.e. Indusind Bank to availed credit card facilities, as per that receipt of HDFC bank, on page no.11 shows the amount of 38,000/- for 24 month tenure, card insured Indusind Bank based amount Rs.38,000/-, EMI amount Rs.1842.49 and at the bottom line it was mentioned that Rs.6400/- cash back. The abovesaid

Evidence speaks that, the credit card of Indusind Bank was used by the Complainant to purchase mobile on the EMI basis.

- 13) The **Indusind Bank Platinum credit card** statement filed at page no.12, statement for the period of 13/09/2016 to 12/10/2016 which shows no any balance amount pending only shows transaction dated 16/09/2016 for Rs.38,000/- the column of total amount dues shows Rs.37999.44 and minimum amount due shows Rs.1899.97 and due date shows 01/11/2016. The opposite party no. 1 argued that the transaction of mobile purchased on EMI basis was not informed to the opposite party no.1 and therefore after due date of 01/11/2016, the interest where levied on that amount as per terms and condition of credit card statement.
- 14) The complainant had paid 4 installment of Rs.8638/- till December 2016, which is on record, but still the amount where not becoming less, from that occasion the complainant started conversation with opposite party no.1 he came to know that opposite party no.1 levied interest on the amount as not paid total amount on due date.
- 15) The complainant clarified the situation and wrote email to the opposite party no.1 on 26/11/2016 and requesting to Waived the interest and starts the EMI scheme as soon as possible but the opposite party no.1 as per E-mail at 23/02/2017 rejected the request of complainant with reason that the said transaction was rejected due to secondary card used.
- 16) It is observed that the opposite party no.1 in his reply said that the mobile purchase transaction were not informed to the opposite party no.1 hence interest charge after due date on amount and on the other hand as per E-mail at 23/02/2017 mentioned that due to secondary card used for transaction hence that transaction where rejected both shows two reasons for rejection.
- 17) The opposite party no.1 not brought on record the terms and condition of secondary credit card also not explained how

secondary credit card cannot use for purchase and EMI installment it is cleared from the email dated 17/11/2016 of complainant that he informed to opposite party no. 1 about mobile purchased on EMI basis. Mere reason mentioned and not explained is not sufficient ground which create doubt, that there is no any such terms and conditions regarding card hence the reason stated by the complainant cannot be considered.

18) As per information by the complainant to the opposite party no.1 it was duty of opposite party no. 1 to accept that transaction on EMI basis and convert it for the same but the opposite party no.1 failed to do so and charge Rs.8638/- as interest on credit card as per that we are on the view that the opposite party no. 1 used unfair practice and given deficiency.

19) As the complainant has paid total Rs.38,000/- and it is proved that the opposite party no. 1 by levying interest on Rs.8638/- given deficiency then as per prayer of complainant opposite party no. 1 is liable to refund Rs.8638/- to the Complainant with 9% interest from date of January 2017 till realization of entire amount. As the complainant suffered mentally and physically, and lost faith on credit card to avail it again for any other transaction, therefore for compensation the opposite party No 1, is liable to pay compensation of Rs.5,000/- and legal charges Rs.5,000/- **Hence the point no. 1 to 3 answer accordingly.**

20) Considering the fact of present case and the evidence on record as discussed above. We find it appropriate to allow the complaint. **Hence we proceed to allow the consumer complaint with the following order.**

#### **FINAL ORDER**

- 1) The **Consumer Case No. 84/2017** is hereby partly allowed.
- 2) It is declared that the Opposite Party no 1 has given deficiency in service and used unfair trade practice to the Complainant.

- 3) The Opposite Party no 1 is directed to pay the amount of Rs.8638/- to the Complainant with 9% interest from date of January 2017 till realization of entire amount.
- 4) The Opposite Party no 1 is directed to pay compensation for mental agony and cost of litigation of Rs.5,000/- (Rupees five Thousand only) to the Complainant.
- 5) The above said order shall be complied within 30 days from the date of order.
- 6) This complaint is dismissed against the opposite party no 2.
- 7) The copy of order be send to both the party with free of cost.

Place- South Mumbai

Date – 12/06/2024

**(SMT. S. A. PETKAR) (SMT. G. M. KAPSE) (SHRI.P. G. KADU)**  
**MEMBER MEMBER IN-CHARGE PRESIDENT**  
**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,**  
**SOUTH MUMBAI**