

Complaint filed on 14/09/2024  
Decided on 31/05/2024

**BEFORE THE UDUPI DISTRICT CONSUMER DISPUTES  
REDRESSAL COMMISSION  
AT UDUPI**

**PRESENT**

**SRI. SUNIL T. MASARADDI : HON'BLE PRESIDENT  
SMT. SUJATA B. KORALLI : HON'BLE MEMBER**

**CONSUMER COMPLAINT NO.114/2023**

**ORDER DATED: 31/05/2024**

**BETWEEN:**

**COMPLAINANT**

Mr. Agam R.,  
Aged about 19 years,  
S/o Mr. Rajesh,  
Residing at "Veetharaga",  
Opposite SP Office,  
Bannanje, Udupi Town - 576 101

(Sri. Prasad S.S., Advocate for complainant)

..... Complainant

**/ Vs. /**

**OPPOSITE PARTIES:**

- 1) M/s. Myntra Designs Private Limited,  
Represented by its Authorized Signatory,  
Buildings Alyssa, Begonia and Clover  
Situating in Embassy Tech Village,  
Outer Ring Road, Devarabeesanahalli Village,  
VarthurHobli, Bengaluru - 560103, India  
Mail address: [updates@myntra.com](mailto:updates@myntra.com),  
[communications@myntra.com](mailto:communications@myntra.com) and  
[ccmanager@myntra.com](mailto:ccmanager@myntra.com)

(Shri. J.K. Alwa, advocate for Opposite party No.1)

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- 2) TITAN Company Ltd.,  
Rep by its Authorized Signatory,  
Mehta Logistic, Babosa Industrial Park,  
No.1 to 8 Mumbai, Nashik Highway, NH-3,  
Saravali Village, Near Natika Hotel,  
Bhiwandi, Maharashtra-421 302.

(Ex-parte: Opposite party No.2)

.....Opposite Parties

**ORDER DELIVERED BY HON'BLE PRESIDENT**  
**SRI. SUNIL T. MASARADDI**

- I. This complaint is filed by the complainant U/Sec.35 of the Consumer Protection Act, 2019 for seeking a direction against Opposite parties for replacement of the incorrect/wrong product, "Abbas" with complainant originally ordered, the "TOMMY HILFIGER Men Black Dial & Black & Black Straps Analogue Watch TH1710491" or refund full value of Rs.15,495/- (Rupees Fifteen thousand Four hundred Ninety five only) to the complainant with interest at 20% per annum from 10/06/2023 till payment along with compensation amounting to Rs.1,00,000/- (Rupees One lakh only) for mental agony and harassment, Rs.20,000/- (Rupees Twenty thousand only) towards full cost of proceedings and also cost of lawyer notice dated: 28/7/2023 of Rs.2,025/- (Rupees Two thousand twenty five only) to the complainant.

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**II. In the present complaint, the salient facts are as follows:**

1) The complainant placed an online order for a Tommy Hilfiger Men Black Dial and Black Straps Analogue Watch TH170491 valued at Rs.15,495/- on the platform of Opposite Party (OP) No.1, Myntra. Upon delivery on June 10, 2023, around 11:30 a.m., the complainant paid the price of Rs.15,495/- for the item without opening the package, assuming it contained the correct product. The complainant immediately opened the parcel after the departure of the delivery person. However, upon opening, the complainant discovered a different watch branded "ABBAS" instead of the ordered Tommy Hilfiger watch. The complainant immediately contacted Opposite party No.1's customer support to initiate a return and refund process. Opposite party No.1 initially acknowledged the return request and confirmed the refund process. However, later communications from Opposite party No.1 stated that the return was on hold due to the product allegedly failing the quality check, with claims of use, damage, or missing tags, which the complainant denies. Further attempts to resolve the issue were met with a refusal from Opposite party No.1 to accept the return or process the refund, citing baseless reasons.

2) The complainant contends that the Opposite party's mistake in dispatching the wrong product constitutes an act of unfair trade practice and a deficiency in service. The complainant issued a legal

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notice to Opposite party No.1 demanding either the correct product or a full refund amount along with compensation for physical and mental distress amounting to Rs.1,00,000/-. Opposite party No.1 did not respond to the notice, which the complainant views as an additional deficiency in service. The complainant seeks compensation for the distress caused, replacement of the incorrect product with the correct one, or a refund of Rs.15,495/- with interest at 20% per annum from the date of purchase until payment is made. The complainant also seeks reimbursement for legal costs associated with the notice and the costs incurred during these proceedings. Hence this complaint.

**III.** After service of notice from this commission, the Opposite Party No.1 has appeared through counsel, the Opposite party no.2 has not appeared and hence the Opposite party no.2 placed an ex-parte, The Opposite party no.1 filed written version by opposing the case of the complainant, praying to dismiss the complaint against them, and contending as under :-

**1)** The Opposite party No.1, Myntra Design Pvt. Ltd., denies all allegations, averments, claims, representations, and statements made in the complaint by the complainant. The complainant's complaint is baseless and frivolous, based on an erroneous interpretation of facts and laws.

**2)** The opposite party No.1 is the owner of the website www.myntra.com and its mobile application, "Myntra,"

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by the buyer at its sole discretion, and the buyer shall be intimated of the same by email or SMS. Any transaction price paid by the buyer in case of such cancellation by the seller shall be refunded to the buyer.

**6)** The complaint filed by the complainant is an abuse of process of law and not maintainable, as it has suppressed material facts and is guilty of 'suppresioveri and' 'suggestiofalsi.' The complaint is liable to be dismissed on this ground alone, with compensatory costs in favour of this opposite party.

**7)** The complainant has failed to disclose any cause of action against the opposite party No.1, as they have committed no act of omission or commission that can be termed a deficiency of service under the provisions of the Consumer Protection Act, 2019 and industry-wide accepted 'good practices' or as per the principle of good and fair dealing. The allegations made in the complaint are vague, baseless, and made with malafide intent. 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.

**8)** The complaint is liable to be dismissed under Section 12(3) of the Consumer Protection Act, 1986, as the bare allegation without any proof and without any alleged act on behalf of the opposite party no.1 necessary to charge it for unfair trade practice or deficiency of service cannot be taken as gospel truth by

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which provide trading and selling facilities over the internet through its platform. The platform is an electronic marketplace model e-commerce platform, as defined under the Consumer Protection Act, 2019 and the Consumer Protection (E-commerce) Rules, 2020. The platform is an electronic marketplace-model e-commerce platform, not a seller.

**3)** The opposite party No.1, an intermediary under Section 2(1)(w) of the Information Technology Act, 2000, is protected by provisions of Section 79 of the Act, which states that an intermediary is not liable for any third-party information, data, or communication link made available or hosted by them.

**4)** The opposite party No.1 is merely an intermediate platform, meaning it is a market place where sellers and buyers can transact freely with strict disclosure and warranties between them. Compliance by the opposite party No.1 is governed by the Act along with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The opposite party No.1 has consistently complied with the act and the rules.

**5)** The complainant placed a product order through this Opposite Party's platform after agreeing to the terms and conditions mentioned on their website. Relevant clauses of the agreement absolve the opposite party No.1 of all liability and allegations in the present case. The seller retains the right to cancel any such order placed

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the Hon'ble Commission to entertain the complaint. It is also settled by the Apex Court of the country that compensation can only be awarded to a consumer in respect of loss or injury suffered by the consumer due to the negligence of this opposite party. In the present case, the complainant has failed to prove any negligence on the part of this opposite party, and as a consequence, loss or injury was suffered by him.

**9)** The opposite party No.1 does not, at any point during any transaction between the buyer and seller on the platform, come into or take possession of any of the products or services offered by the seller, gain title to, or have any rights or claims over the products or services offered by the seller to the buyer. The complainant has failed to prove any deficiency on the part of the opposite party No1, as the opposite party No.1 acts merely as an intermediary between the consumers and the sellers and is absolutely bereft of any kind of liability with respect to any representation or warranty as to the specifics (such as quality, value, salability, etc.) of the products as mentioned in the terms and conditions agreed upon by the complainant at the time of ordering the product.

**10)** The complaint is not maintainable as it alleges fraud, involves complicated questions of facts and law, and would need detailed evidence. The bare allegation that the product was different without any proof and without any alleged act on behalf of the opposite party cannot be taken as gospel truth by the Hon'ble Commission to entertain the complaint, and hence, the

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complaint is liable to be dismissed under Section 12(3) of the Consumer Protection Act, 1986.

**11)** The complainant has filed a complaint against the opposite party, alleging that the complaint is false and perverse. The complainant has not provided any documentary evidence regarding the allegations, and the opposite party has been accused of intentionally not providing any proof to gain undue advantage.

**12)** The opposite party No.1 submits a preliminary reply on the merits of the complaint, stating that the complaint is false, frivolous, and bogus and that the complainant's default lies solely with the concerned seller. The directions sought against this opposite party are without any basis and have no nexus or co-relation with the facts of the alleged dispute. There is no deficiency in services on the part of this opposite party, and this opposite party is known for its great customer-redress mechanism and for providing prompt remedies to its customers.

**13)** The complainant's prayer is also denied, and the complainant is not entitled to all or any of the reliefs sought. Each and every prayer made by the complainant is liable to be dismissed. This Opposite Party respectfully submits that there is no deficiency of service per se on the part of the opposite party No.1.

**IV.** In response to the objection raised by the learned counsel for Opposite Party No.1 concerning the non-

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joinder of the seller as a necessary party to the instant complaint, the complainant has duly addressed the procedural lapse by impleading the seller as Opposite Party No.2. Despite the service of notice to the Opposite Party No.2, there has been a deliberate choice to abstain from participating in the proceedings. Consequently, the absence of Opposite Party No.2 has been duly recorded, and Opposite Party No. 2 is declared ex-parte in this matter.

- V.** During the course of enquiry, complainant i.e. Sri. Agam R. S/o: Mr. Rajesh, has filed affidavit evidence as CW-01 and got marked documents as Ex.C-01 to C-07. On behalf of Opposite party No.1 by name one Sanchi, Legal Counsel-1, has filed affidavit evidence as RW-01 and got marked documents as Ex.R-01 and R-02.

**VI.** Heard.

**VII.** The points arise for consideration are-

- 1) Whether the complainant proves that the Opposite parties have committed deficiency of service?
- 2) Whether the complainant is entitled for relief as sought for?
- 3) What order?

**VIII.** Our findings on the above points are as hereunder:-

- 1) Point No 1:-Affirmative,
- 2) Point No 2:-Partly in affirmative,
- 3) Point No 3:- As per the final order

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**REASONS****IX. Point No.1 and 02 :-**

1) It is an undisputed fact and rather it is proved on record that the complainant placed an order for a Tommy Hilfiger Men Black Dial & Black Straps Analogue Watch, model TH1719491, valued at Rs.15,495/-, to be sold by Opposite Party No.2 through the online platform operated by Opposite Party No.1. Furthermore, it is uncontested that the complainant received a watch of a different brand, specifically "ABBAS," instead of the ordered Tommy Hilfiger watch. Subsequent to this discrepancy, the complainant initiated a return request with Opposite Party No.1. However, the return process has been stalled as the return request was placed on hold due to an alleged failure in the quality check. This has prompted the complainant to seek redress for the non-fulfillment of the order as per the transaction agreed upon.

2) The opposite party No.1 has responded to interrogatories, specifically questions 21 and 23, which were posed by the complainant. The responses indicate that Opposite party No.1 lacks personal knowledge regarding the alleged condition of the watch in question—whether it was used, damaged, or had missing tags. The burden of proof to substantiate these allegations falls on opposite party No.2, who is responsible for addressing the complainant's return request by providing reasons for the same. However, Opposite party No.2 has been placed ex-parte, meaning they are not present to contest the case or

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provide evidence. As a result, there is a failure on the part of the opposite parties to prove the reasons cited for denying the complainant's return request.

**3)** Counsel for Opposite Party No.1 has argued that Opposite party No.1, being an intermediary as defined under Section 2(1)(w) of the Information Technology Act, 2000, is accorded immunity from liability under the provisions of Section 79 of the same Act. This section stipulates that an intermediary shall not be held accountable for any third-party information, data, or communication link that they make available or host. It was further argued that the complainant, having engaged in a transaction on the platform operated by Opposite Party No.1, had consented to the terms and conditions set forth on the website, which include clauses that exonerate Opposite Party No.1 from any liability pertaining to the present allegations. On these grounds, it is argued that Opposite Party No.1 bears no liability in this matter, and the onus rests solely with Opposite Party No.2, the actual seller of the product. Consequently, counsel has prayed that the complaint against Opposite Party No.1 be dismissed on account of the legal protections afforded to intermediaries under the Information Technology Act.

**4)** Upon examining Clause 12 of the Terms of Use for Opposite Party No.1, as provided by the complainant's counsel and sourced from Opposite Party No.1's website, it is apparent that Opposite Party No.1 acknowledges liability for the value of the product purchased through

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their platform. However, Opposite Party No.1 has asserted that the purchase amount has already been refunded. Contradictorily, in response to Interrogatory Question No.52, Opposite Party No.1 has stated that refunds are issued solely in instances where there has been a mistake or service deficiency on their part and maintains that no such deficiency occurred in the present case. Despite this assertion, the incident at hand involves the delivery of an incorrect product, which inherently obligates Opposite Party No.1 to ensure accurate fulfillment of orders placed via their service portal. This responsibility is underscored by the precedent set in the case of Myntra Designs Pvt. Ltd. vs. Monika Thakur, adjudicated by the Honourable State Commission of U.T. Chandigarh, which established the duty of the platform to verify that the correct products are delivered to consumers. However, the opposite party, No.1, did not do so. In this case, the complainant has initiated the return of the product within the stipulated time; hence, he is entitled to a refund the amount.

5) In light of the above discussion, we are of the opinion that both opposite parties have committed deficiencies in service. Therefore, both opposite parties are jointly and severally liable to refund the product value of Rs.15,495/- along with 10% pa interest from the date of 10-6-2023 till realisation. Further, both opposite parties are also jointly and severely liable to pay compensation of Rs.10,000/- towards mental agony and Rs.10,000/- towards the cost of litigation. Accordingly, we answer **Point No.01 in the affirmative and No.02 partly in the affirmative.**

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- x. Point No.03:**In view of our answer on point No.01 and 02, and for the reasons stated above, we proceed to pass the following:-

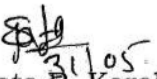
**ORDER**

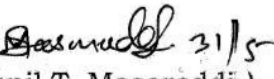
- i.** The complaint filed U/Sec.35 of C.P. Act 2019 is partly allowed.
- ii.** The opposite parties are hereby directed to refund the product value of Rs.15,495/- (Rupees Fifteen thousand Four hundred Ninety five only) along with 10% pa interest from the date of 10-6-2023 till realization to the complainant jointly and severally.
- iii.** The opposite parties are also hereby directed to pay compensation of Rs.10,000/- (Rupees Ten thousand only) towards mental agony and Rs.10,000/- (Rupees Ten thousand) towards the cost of litigation jointly and severely.
- iv.** Order shall be complied by the Opposite parties within 30 days from the date of receipt of copy of this order.

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- v. The office is hereby directed to send copy of the order at free of cost to parties to the complaint.

(Dictated to the stenographer and got it transcribed and corrected and pronounced by us in the open Commission on this day of the 31<sup>st</sup> day of May 2024.)

  
(Smt. Sujata B. Koralli)  
Hon'ble MEMBER

  
(Sri. Sunil T. Masaraddi.)  
Hon'ble PRESIDENT

Gls.

## **ANNEXURE**

### **Witness examined on behalf of the complainant.**

1. **CW-01** - Sri. Agam R.,  
S/o: Mr. Rajesh,  
complainant

### **Documents marked on behalf of the complainant**

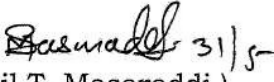
- 1) **Ex.C-1** - Email dated: 9/9/2023  
2) **Ex.C-2** - Email, dated:, 10/06/2023,  
3) **Ex.C-3** - Computerized copy of return request,  
4) **Ex.C-4** - Email, dated: 10/06/2023,  
5) **Ex.C-5** - Certificate U/Sec. 65B of Indian Evidence Act,  
6) **Ex.C-6** - Office copy of legal notice, dated: 28/07/2023,  
7) **Ex.C-7** - Postal Track Consignment Status.

**Witnesses examined on behalf of the Opposite party**

- 1) **RW-01** - Sri. Sanchi Chhabra  
Legal Counsel with Opposite  
party no.2

**Documents marked on behalf of the Opposite party**

- 1) **Ex.R-1** - Xerox copy of Resolution passed  
by the Board of Directors of  
Myntra Designs Pvt. Ltd.,  
dated 12/5/2022,
- 2) **Ex.R-2** - Xerox copy of Myntra  
Terms of Use,

  
(Sri. Sunil T. Masaraddi.)  
Hon'ble President