

First Appeal No.
153 of 2021

Oppo Mobile India Private Limited
Versus
Sh. Vikas Sharma

02.05.2024

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND
DEHRADUN

Date of Admission: 12.11.2021
Date of Final Hearing: 26.04.2024
Date of Pronouncement: 02.05.2024

FIRST APPEAL NO. 153 / 2021

Oppo Mobile India Private Limited
A-154B, Sector-63, Phase-3
Noida, Uttar Pradesh
through its Authorised Signatory Sh. Deepak Kumar
Area Service Manager, Dehradun, Uttarakhand
(Through: Sh. Birandra Kumar Pagwal, Advocate)
..... Appellant

Versus

Sh. Vikas Sharma S/o Sh. Yashpal Sharma
R/o Gughal Road, Pandeywala
Jwalapur, Post Jwalapur, Haridwar
(Through: None)
..... Respondent

Coram:

Ms. Kumkum Rani,
Mr. B.S. Manral,

President
Member

ORDER

(Per: Ms. Kumkum Rani, President):

This appeal under Section 41 of the Consumer Protection Act, 2019 has been directed against the impugned judgment and order dated 25.09.2021 passed by learned District Consumer Disputes Redressal Commission, Haridwar (hereinafter to be referred as “The District Commission”) in consumer complaint No. 125 of 2019, styled as Sh. Vikas Sharma Vs. Oppo Mobile India Private Limited and others, wherein and whereby the consumer complaint was allowed.

2. The facts giving rise to the present appeal, in brief, are, as such that on 09.01.2019, the respondent / complainant had purchased an

Oppo mobile handset bearing model No. F-11, IMEI No. 868474033886274/66 for Rs. 15,041/- from Reliance Digital Retail Limited, Haridwar (opposite party No. 2 to the consumer complaint). The said mobile handset carried one year warranty. At the time of purchase of the mobile handset, the complainant was assured by the opposite party No. 2 that in case any problem occurs in the mobile handset, the same would be immediately resolved; that the manufacturing company has its Service Centre in Haridwar itself. The mobile handset worked properly till 25 days' from the date of its purchase, but thereafter the touch screen of the mobile handset did not function properly and the mobile handset used to get hang. Apart from above, certain other defects erupted in the mobile handset. On 06.02.2019, the complainant visited opposite party No. 3 to the consumer complaint, i.e., the Service Centre of the manufacturing company, who handed over the mobile handset to the complainant after formatting the same and told that now there shall be no problem in the mobile handset. However, the complainant noticed the same malfunctioning in the mobile handset. The complainant again visited opposite party No. 3 on 15.03.2019; 22.03.2019 and 29.03.2019 and every time, the data was removed and mobile handset was handed over to the complainant after updating the same, assuring that no problem shall occur in the mobile handset. After sometime, the mobile handset stopped connecting the call, whereupon the complainant approached the opposite party No. 3 on 10.04.2019, who again formatted & updated the mobile handset, but still the problem in the mobile handset persisted. After few days', the mobile handset even did not get charge and even after plugging in the charger for 3-4 hours, the mobile handset used to get discharged and get switched off. In spite of several requests, the shortcomings in the mobile handset were not cured. The complainant asked the opposite party No. 2 to replace the mobile handset, but the same was refused and the complainant was relegated

to the manufacturing company for replacement of the mobile handset with a new one, stating that there is technical defect in the mobile handset. Thus, by the deficiency act of the opposite parties, the complainant has suffered gross mental agony. Hence, the consumer complaint was submitted by the complainant before the District Commission.

3. The opposite party Nos. 1 & 3 to the consumer complaint filed their joint written statement before the District Commission, pleading that it is incorrect to say that the opposite party No. 2 is authorised sales company of Oppo Mobile India Private Limited. The Oppo Mobile India Private Limited does not have any authorised sales company with the name of Reliance Digital Retail Limited at Opposite Vishal Mega Mart, Old Ranipur More, Haridwar. The allegation made in the consumer complaint with regard to purchase of mobile handset from opposite party No. 2 as well as its warranty, are wrong and denied. It is also incorrect to say that IMEI number mentioned in the consumer complaint, was never allotted for model F-11. No such act has been committed by opposite party Nos. 1 & 3, which falls under the definition of “unfair trade practice”. Therefore, the complainant is not entitled to any relief and the consumer complaint is liable to be dismissed.

4. The opposite party No. 2 to the consumer complaint did not submit any written statement before the District Commission. Hence, vide order dated 09.01.2020 passed by the District Commission, the opportunity of filing the written statement by opposite party No. 2 was closed.

5. Learned District Commission, after hearing learned counsel for the complainant as well as learned counsel for opposite party Nos. 1

& 3 to the consumer complaint and after taking into consideration the entire material available on record, passed the impugned judgment and order on dated 25.09.2021, wherein it has held as under:

“परिवाद स्वीकार किया जाता है। विपक्षीगण को आदेशित किया जाता है कि वह आदेश की तिथि से एक माह के भीतर परिवादी को मुब0-15,041/- रू0 की कीमत का नया मोबाईल फोन, नई वारण्टी के साथ उपलब्ध कराना सुनिश्चित करें।

परिवादी को यह आदेश दिया जाता है कि वह पुराना मोबाईल विपक्षी सं0-3 के पास 15 दिन के अन्दर जमा कराये।”

6. On having been aggrieved by the impugned judgment and order, the present appeal has been submitted on behalf of Oppo Mobile India Private Limited, alleging that Oppo Mobile India Private Limited is the manufacturing company. It was further stated in the memo of appeal that the impugned judgment and order passed by learned District Commission is against facts, evidence and merits of the case and learned District Commission has not taken into consideration the fact that the appellant neither in its written statement, nor oral arguments, stated to give a new mobile handset to the complainant on deposition of old mobile handset. Thus, the impugned judgment and order passed by learned District Commission being against facts, is liable to be set aside.

7. We have heard learned counsel for the appellant and perused the record. None appeared on behalf of respondent / complainant inspite of sufficient service. Hence, vide order dated 06.02.2024, it was directed that the appeal shall be heard ex-parte against respondent.

8. Learned counsel for the appellant – company submitted that no expert report has been submitted on record on behalf of the complainant to the effect that there was any technical or manufacturing defect in the mobile handset in question and the same needs to be replaced with a new one of the same cost.

9. A perusal of the impugned judgment and order has shown that there is no mention therein that the complainant has submitted any expert report to highlight the fact that the mobile handset in question was having inherent technical / manufacturing defect, incapable of being cured / rectified. Learned District Commission has observed that during the course of arguments, learned counsel for opposite party Nos. 1 & 3 has consented to provide a new mobile handset in place of old mobile handset, but the said observation of the District Commission is not borne out from the material available on record. No such averment was made by opposite party Nos. 1 & 3 in their joint written statement filed before the District Commission, nor any such application is available on record, by virtue of which, learned counsel for opposite party Nos. 1 & 3 has stated that the said opposite parties are ready to replace the mobile handset in question with a new one. It is pertinent to mention here that inspite of sufficient service of notice, the respondent / complainant has not appeared before this Commission, which goes to show that the subject mobile handset is properly functioning.

10. In view of the above discussion, it is proved that learned District Commission has wrongly allowed the consumer complaint, ignoring the material available on record, particularly in the absence of any expert report having been submitted by the complainant to show that there is inherent manufacturing defect in the subject mobile handset. Therefore, we are of the considered view that learned District

Commission has allowed the consumer complaint without appreciating the facts, evidence and merits of the case and has exercised the jurisdiction not vested in it by law. The impugned judgment and order is perverse and suffers from illegality & infirmity and is liable to be set aside. Thus, we are inclined to interfere with the finding recorded by the District Commission. Consequently, the appeal is liable to be allowed.

11. Appeal is allowed. Impugned judgment and order dated 25.09.2021 passed by the District Commission is set aside and consumer complaint No. 125 of 2019 is hereby dismissed. No order as to costs of the appeal. The amount deposited by the appellant with this Commission, be released in its favour.

12. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties. A copy of this Order be sent to the concerned District Commission for record and necessary information.

13. File be consigned to record room along with a copy of this Order.

(Ms. Kumkum Rani)
President

(Mr. B.S. Manral)
Member

Pronounced on: 02.05.2024