

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION KANGRA AT DHARAMSHALA, H.P.**

Date of Institution: 29.08.2023

Date of final hearing: 28.05.2024

Date of Pronouncement: 31.05.2024

Consumer Complaint No.-235/2023

IN THE MATTER OF

Kanwaljit Singh S/o Sh. Sohan Singh R/o Rajpur Tanda, Palampur, Tehsil Palampur, Distt. Kangra H.P.

(Through: Mr. Saksham Sharma, Advocate)
.....Complainant

Versus

1. Samsung Auth. Service, Centre, SCO 465-66, Ground Floor, Sec 35C, Chandigarh-160035. through its Manager.

(Through: Mr. Daljit Singh, Advocate)

2. R Rahul Communication, Khoh Bazar, Paprola, Teh. Baijnath, Distt. Kangra, H.P. through Authorized Dealer Paprola.

(Through: Already ex-parte)

3. SAMSUNG India Electronics Pvt. Ltd., 6th Floor, DLF Centre Sansad Marg, New Delhi-110001 through its Managing Director.

(Through: Mr. Daljit Singh, Advocate)
.....Opposite Party(s)

CORAM:

President: Mr. Hemanshu Mishra

Members: Ms. Arti Sood & Sh. Narayan Thakur

Present:- Mr. Ritvik Sharma, Ld. counsel for complainant.
Mr. Daljit Singh, Ld. counsel for opposite parties No.1&3.
Opposite party No.2 already ex-parte.

PER: Mr. Hemanshu Mishra, President:-

ORDER

The complainant has filed instant complaint seeking direction to the opposite party(s) to pay an amount of Rs.4,00,000/- as compensation or to repair/replace the mobile phone of the complainant.

2. Brief facts giving rise to the present complaint are that the complainant purchased a Samsung Galaxy Z Fold 3, 5G, 12 GB/512 GB (Phantom Black) mobile from Opposite Party No.2 amounting to Rs.1,58,000/- only vide bill No.1830 dated 18.05.2022 with one year warranty. It is pleaded that complainant noticed that the inner screen of the said mobile got swelled in the month of April, 2023 and Complainant went to local Samsung Service Centre at Palampur & the person there showed his inability to repair the same and he suggested the Complainant to see the Samsung Service Centre at Dharamshala

but same response was given from Dharamshala Centre and Complainant was suggested to see the Opposite Party No.1 where Complainant could get the work done by hand. Complainant went to Opposite Party no.1 on 20.04.2023 and the staff of Opposite Party no.1 checked the fault and detected the fault as "OCTA/ DISPLAY BLACK BLEEDING AND LINE ON DISPLAY ALWAYS" and they called the Complainant to visit again after ten days with assurance that the fault will be rectified at the spot but when the Complainant went to Chandigarh the staff there betrayed and asked the Complainant to file online complaint. The Complainant filed online complaint on 04.05.2023 and the Opposite Party no.1 sent the acknowledgment by stating Warranty status as Out of Warranty and did not repair nor replaced the mobile. Alleging deficiency in the service on the part of opposite party(s), the complainant has filed the present complaint.

3. Upon notice, opposite party No.3 filed by the reply taking preliminary objections of cause of action, maintainability and locus standi. It is submitted that the services have been provided to the complainant on each and every occasion and on the last occasion, the unit has been duly checked by the engineer of service center and same has been found damaged which caused due to dents on Hinge resulting to the damage to the inner display (I.E. OCTA DAMAGE DUE TO DENTS ON HINGE RESULTING IN DAMAGE TO OCTA) and the service engineer had told the same fact and suggested to get the unit repaired as per warranty policy i.e. paid repair, but knowing well the all circumstances, the complainant has made false story just only to grab illegal benefits of his own wrong. It is the settled position of Law that an expert opinion of an appropriate Laboratory/cogent Evidence is mandatory under section 38 (2) (c) of The Consumer Protection Act 2019 to prove the allegations/averments made by complainant in regards to any imperfection or defect. On the other hand, the engineer of the answering OP has issued the report/job sheet which clearly reveals that the unit is out of warranty.

4. On the other hand, opposite party No.2 did not appear before this Commission despite due service and accordingly opposite party No.2 was proceeded ex-parte.

5. The parties were called upon to produce their evidence in support of their contentions and accordingly the parties have adduced their respective evidence.

6. We have heard learned counsel for the complainant and have gone through the case file minutely.

7. Admittedly, the complainant has purchased Samsung Galaxy Z Fold 3, 5G, 12 GB/512 GB (Phantom Black) mobile from opposite party No.2 amounting to Rs.1,58,000/- with one year warranty. Complainant noticed that the inner screen of the said mobile got swelled in the month of April, 2023.

8. On 20.04.2023 the complainant handed over his phone to the service centre vide annexure R-2, wherein it was mentioned that the phone was under full warranty and defect was described as front UB display broken. In the repair description it was mentioned UB display changed, handset OK. The opposite party has replaced the parts GH82-26476A and GH82-26238A and has handed over the mobile to the complainant after repair vide annexure R-3 and received Rs.13,505/-.

9. On 04.05.2023 the mobile again got defected and defect description was made "OCTA/ DISPLAY BLACK BLEEDING AND LINE ON DISPLAY ALWAYS". This time also mobile was under full warranty, but estimate was not approved. The opposite party No.3 vide annexure R-6 has tried to establish that there were dents in the mobile, so the warranty was void, but the opposite party has not placed any affidavit of the person who has clicked these photographs.

10. The email was answered by one Sh. Mohd. Hafeez annexure R-10, who has stated that mid level dent on device hinge found so support OW only as verified on visual support. Technical report annexure R-11 is dated 18.05.2022, wherein it is observed that dent on hinge and inner display damage and opposite party has given estimate of Rs.55,699.65/- and removal of inner display + hinge +FPCB/FRC estimate of Rs.38,645/- has been made.

11. Though the opposite party has attached an affidavit of one Sh. Krishan Ex OPW3-1, but said Krishan has not mentioned the date when he inspected the unit and found that the OCTA (inner display) of the unit has been damaged. The date of revealing this information to the complainant has also not been mentioned by the said Krishan.

12. In the acknowledgment service request annexure R-5 dated 04.05.2023, declaration column were not tick marked by the complainant. Meaning thereby the complainant was not apprised that phone was out of warranty on 4th of May 2023 and the estimate was not approved.

13. In the annexure R-11, inspection date is again shown as 04.05.2023, but no information on 04.05.2023 was ever given to the

complainant. Name of service engineer has nowhere disclosed in annexure R11, R12 and R13. Now the opposite party No.3 all of sudden had filed the affidavit of One sh. Krishan who posed to be service engineer.

14. The factum of damage has also not been described anywhere, who was supposed to explain the damage specifically in his affidavit and the manner in which the alleged damage can occur, but in affidavit this important aspect has not been explained by the engineer, so affidavit of Sh. Krishan is of no use.

15. The complainant had purchased the mobile on 18th May 2022, The Complainant noticed that the inner screen of the said mobile got swelled in the month of April, 2023. Then just within 15 days again on 4th May 2023, the complainant made a request to repair the defect described as OCTA/Display bleeding and line on display/Always. The acknowledgement of service request Annexure R4 mentions that repair completed by 4th May 2023. There are many discrepancies in the service records of the opposite party No. 3. The handset was produced for repair within 12 months, So in our considered opinion the handset is within the warranty period.

16. The said mobile is two folding mobile. This Commission has already decided 3/4 cases of folding mobiles pertaining to the opposite party No.3. In consumer complaint No.289/2022 titled as Antriksh Chaudhary Versus Grover Brothers, this Commission has already held that the defect has occurred due to folding and unfolding feature, which tantamount to manufacturing defect. In another cases also, we have noticed such manufacturing defect.

17. The detailed discussion above is sufficient for us to hold that the opposite party No. 3 has committed deficiency in service by not repairing the mobile handset within warranty period. Thus the complainant was forced to purchase another mobile phone amounting to Rs.36,300/- on 28th of April 2023 Annexure C3. The complainant is entitled to get the entire amount of the mobile handset refunded along with interest and compensation.

18. Accordingly, the complaint is allowed and opposite party No.3 is directed to refund an amount of Rs.1,58,000/- to the complainant alongwith interest @ 9% per annum from the date of complaint i.e. 29.08.2023 till its realization. Apart from this, opposite party No.3 is also directed to pay compensation to the complainant to the tune of Rs.36,300/-, besides litigation cost quantified as Rs.15,000/-. Upon receiving the refund, the complainant will deposit the handset

Mobile phone Samsung Galaxy IMEI 359482274114278, 359970844114273 in 'as is where is' condition at any service station of opposite party No.3 anywhere in India/through opposite party No.2 within 30 days and thereafter complainant will file compliance report to this Commission.

19. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986/2019. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.

20. File be consigned to record room along with a copy of this Judgment.

(Hemanshu Mishra)
President

(Narayan Thakur)
Member

(Arti Sood)
Member