

**DISTRICT CONSUMER DISPUTE REDRESSAL COMMISSION
KOLKATA UNIT-III(South),West Bengal
18, Judges Court Road, Kolkata 700027**

**Complaint Case No. CC/458/2021
(Date of Filing : 23 Sep 2021)**

1. Ms. Sweta Agarwal alias Sweta Chakraborty
residing at Block O/18, Flat-11, B.P.Township, Patuli, P.S.
Patuli, Kol-700094.

.....Complainant(s)

Versus

1. M/s Exotica Orchids.
Birnagar, Raiganj, Dist-Uttar Dinajpur, P.S. Raiganj, West
Bengal-733134.

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. Sudip Niyogi PRESIDENT
HON'BLE MR. Subir Kumar Dass MEMBER**

PRESENT:

Dated : 04 Dec 2023

Final Order / Judgement

Date of Filing: 23/09/2021

Date of Judgement: 04/12/2023

Sri Subir Kumar Dass, Hon'ble Member

Complainant order 08 pieces of Phalaenopsis matured plants on 22/05/2021 against consideration of Rs.5,780/- from the OP vide Order No.EO2756P and also ordered for some materials (potting-mix) for the said plants against consideration of Rs.1,449/- vide Order No.EO2759P dtd 23/05/2021. Due to packing in a small container, the plants were found damaged on delivery. On being reported the OP instructed the complainant to send back the plants to them but complainant could not send those as she could not visit the Courier Service facility offered by the OP due to Covid-19 Pandemic. Her grievance remained unattended by the OP despite repeated communications from her end. Thus to get her grievances redressed, she filed the instant complaint with the prayer for directing the OP to refund Rs.5,700/- along cost towards compensation and litigation. The above fact is reflected in the amended complaint filed by her on 22/02/2023.

The OP contested the case by filing written version on 06/04/2022 wherein the OP primarily disputed with the name of the complainant which as per complaint petition was Smt. Sweta Aagarwal and stated that the Order No.EO2756P was received from Smt. Sweta Chakraborty for purchase of 7 nos. of orchid plants costing Rs.4,730/- and packing cost of Rs.1,050/-, in total Rs.5,780/-. OP also filed written objection against the prayer for amendment of petition by the complainant stating that there was no dispute ventilated in the initial complaint with respect to the potting-mix ordered vide Order No.EO2759P. The OP also mentioned that there was no deficiency in service from their end.

POINTS TO BE DECIDED

Whether the complainant is eligible to get relief(s).

DISCUSSIONS AND FINDINGS

The complainant filed evidence and also advanced oral argument during final hearing. The OP neither filed any evidence nor appeared on the date of final hearing for advancing argument on their behalf. The dispute with respect to the name of the complainant got resolved through the amended complaint filed by her.

Since the OP did not participate in filing evidence as well as any argument, the written version along with the content of written objection to the amendment of complaint are taken together along with its Annexure for consideration and evaluating as evidence on the part of the OP.

Going by the copy of Order No.EO2756P, filed by the OP, we find that 7 nos. of Phalaenopsis matured plants was ordered at the price of Rs.4,730/- with Shipping Charges of another Rs.1,050/- i.e. collectively for Rs.5,780/-. The complainant in her petition of complaint and also in the evidence did not mention anything in excess of receipt of damaged plants against Order No.EO2756P. Thus potting-mix ordered by her vide Order No.EO2759P dated 23/05/2021 remained beyond the periphery of her complaint alleging deficiency in service thus need not be considered and discussed in the present case.

The complainant ordered the plants by sending the amount Rs.5,780/- online to the OP. As we know that in cases of such online purchase, mere 'clicking the button' automatically causes to effect agreement with the terms and conditions ultimately displayed by the supplier of goods without giving opportunity to the buyer to disagree on any point and/or to negotiate. Hence such 'clicking the button' may not be equated with 'informed consent'.

It is obviously a fault on the part of the complainant that she could not take necessary step to return the damaged plants to the OP. But considering the adverse situation of pandemic period prevailed during the time of receipt of the plants as well as in view of the age of the complainant, we are of the opinion that such adversity being well known to the OP, it would have been proper for them to collect the plants from the place of the complainant by way of further extending the facility of pick-up, already extended by them.

Though the OP contended in their written version that the plants supplied by them were fully matured and in good condition, but they failed to file any full proof evidence to that effect save and except photography of plants sent to them by the complainant. In absence of anything contrary to it, we are inclined to conclude that the plants were received by the complainant in damaged condition. From the terms and conditions of the OP, we find that refund is admissible only to the extent of price of the plants and shipping charges cannot be included in it.

Finally we are of the opinion that the complainant has successfully established her case with respect to deficiency in service on the part of the OP to the extent of receiving damaged plants only.

Accordingly she is entitled to get relief to that extent.

Hence it is

ORDERED

That CC No.458 of 2021 is allowed, in part, with cost against the OP.

The OP is directed to refund Rs.4,730/- to the complainant along with Rs.2,000/- towards compensation within 45 days from the date of this order.

In the event of non compliance by the OPs, the complainant shall be at liberty to initiate necessary action as per law after expiry of the aforesaid period.

Dictated and corrected by

Member

[HON'BLE MR. Sudip Niyogi]
PRESIDENT

[HON'BLE MR. Subir Kumar Dass]
MEMBER