**BEFORE THE CONSUMER DISPUTES REDRESSAL DISTRICT FORUM AT SOUTH GOA**

ORIGINAL COMPLAINT NO. \_\_\_\_\_\_/2023

(Filing Date: \_\_.\_\_.2023)

Shri Sebastiao A.T. Gonsalves,

Major, s/o late Shri Nazareth Teles,

R/o. H. No. 132, 2nd Daddio,

Telaulim, Navelim, Salcete,

Goa, 403707………………………………………………………………………….Complainant

Idea Cellular Limited,

Suman Tower, Plot 18,

Sector 11, Gandhinagar,

Gujarat, 382011…………………………………………………………………….Opposite Party

**COMPLAINT UNDER S. 35 OF THE CONSUMER PROTECTION ACT, 2019**

1. The address of the Complainant for the purpose of service of summons, notice etc is as shown in the cause title above and that of his counsel
2. The address of the Opponents for the very purpose is the same as shown in the cause title above.
3. Herein the above-named Complainant most respectfully submits as under:

That he is a prepaid subscriber of cellular phone services offered by OP2 and has been using a smartphone bearing number 7776801379 for more than the last five years. OP1 was responsible for conducting the day-to-day business activities of OP2, which affects its customers.

That the complaint is related to the alleged subscription of extra paid services by the OPs without the Complainant's consent. The Complainant has pointed out that a "Flash SMS" is defined as SMS that does not keep a record on the phone of the recipient and has a peculiar characteristic that the user of the phone has to "deal" with it first before he can continue with the normal use of the phone. There is no record in the Complainant's phone email account, which shows that he had voluntarily subscribed to any of the extra paid services offered by the OPs.

That it is likely that the so-called subscriptions, which were allegedly availed by the Complainant, were done via Flash SMS's sent by the OP's. On 31/08/2017, at 12.25 p.m, the Complainant received two SMS's from number 54300 informing him about the activation of "Skillderby Gaming Service". Similar SMS repeated on 04/09/2017 for "Bollywood Diary" and on 07/09/2017 for “Game Mania” respectively.

That he unequivocally denies that he had subscribed/made a request to subscribe to any of these services. He also sent an email to the OP on 14/09/2017, seeking a refund of ₹ 126/- that had been deducted illegally from his account. Despite his attempts to seek redressal, the Complainant did not receive any response from the OP, which has led him to file a complaint.

That this Commission is requested to hold that the OP has indulged in unfair trade practice and/or deficiency of service by subscribing him to value added services without his consent via Flash SMS.

**Cause of Action**

The cause of action arose out of OP charging the Complainant for value added services in 2017. The cause of action is still continuing due to willful negligence and failure to resolve the Complainant's grievances by the Opposite Parties till date. Hence the present complaint.

**Limitation Period and Court Fees**

The present complaint is being filed within a period of two years from the date of cause of action, as prescribed under section 69 of the Act, 2019. The Complainant declares that requisite court fees as per statutory rules is being paid on the present complaint.

**Territorial Jurisdiction**

This Hon'ble Commission has territorial jurisdiction to entertain and adjudicate upon the present complaint as the cause of action has arisen within its jurisdictional limits where the Complainant is a permanent resident.

**Pecuniary Jurisdiction**

The value of the present complaint is less than Rs. 50 lakhs, as the amount of compensation of Rs. 6,126, including Rs. 126 as the impugned charges, Rs. 1000 for mental harassment and Rs. 5000 as exemplary damages, is well within the pecuniary jurisdiction limits prescribed for this Hon'ble Commission.

**Evidence Relied Upon**

1. E-mail notice of Complainant dated 14.09.2017
2. Details of SMS received/sent by Complainant
3. E-mail dated 14.09.2017 from OPs to the Complainant
4. Flash SMS/alleged response of Complainant
5. Printout of website of OP
6. Printout of website of OP
7. Directions dated 04.07.2011 issued by TRAI
8. Directions dated 10.07.2013 issued by TRAI

**Prayer**

In view of the above stated facts and circumstances, and in the interest of justice, it is most respectfully prayed that this Hon'ble Commission may be pleased to:

1. Refund the complainant the amount of Rs. 126 wrongfully charged.
2. Grant Rs. 1000 as compensation for mental agony.
3. Additionally levy Rs. 5000 as exemplary damages on OP for their unfair trade practices.

**VERIFICATION**

I, Sebastiao A.T. Gonsalves, resident of Telaulim, Navelim, Salcete hereby declare that I have not misrepresented any facts nor have tried to hide any information in my above complaint. All the facts mentioned herein are true to the best of my knowledge.

Name & signature of the complainant