

# Amazon Seller Services Pvt. Ltd. vs Mukesh Varma & Anr. on 11 April, 2017

CHHATTISGARH STATE  
CONSUMER DISPUTES REDRESSAL COMMISSION,  
PANDRI, RAIPUR (C.G.).

Appeal No.FA/2016/440  
Instituted on : 01.09.2016

Amazon Seller Services Pvt. Ltd.  
Having its registered office at Brigade Gateway,  
8th Floor, 26/1, Dr. Rajkumar Road, Malleshwaram (W),  
Bangalore - 560055, India. ... Appellant/O.P. No.1

Vs.

1. Mukesh Verma, S/o Shri Shyam Verma,  
R/o : Near Jamaat Mandir,  
P.S. & Teh. Kawardha, District Kabirdham  
(Kawardha) ... Respondent No.1/Complainant

2. Cloudtail India Pvt. Ltd.  
At S-405, Lower Ground Floor,  
Greater Kailash Part 2,  
New Delhi - 110048, Delhi .... RespondentNo.2/O.P. No.2

PRESENT :

HON'BLE SHRI JUSTICE R.S. SHARMA, PRESIDENT  
HON'BLE SHRI D.K. PODDAR, MEMBER  
HON'BLE SHRI NARENDRA GUPTA, MEMBER

COUNSEL FOR THE PARTIES :

None for appellant (O.P. No.1).  
Shri R.K. Bhawnani, Advocate for the respondent No.1 (complainant).  
Shri Saurabh Mishra, Advocate for the respondent No.2 (O.P. No.2).

ORDER

DATED : 11/04/2017 PER :- HON'BLE SHRI JUSTICE R.S. SHARMA, PRESIDENT.

This appeal is directed against the order dated 09.06.2016, passed by District Consumer Disputes Redressal Forum, Kabhirdham (Kawardha) (C.G.) (henceforth "District Forum") in Complaint Case No.CC/35/2015. By // 2 // the impugned order, the learned District Forum, has allowed the complaint of the complainant and directed that :-

(a) The OPs will jointly and severally pay the price of the mobile Rs.6,999/- (Rupees Six Thousand Nine Hundred Ninety Nine), postage expenses Rs.232/- (Rupees Two

Hundred Thirty Two), Rs.20,000/- (Rupees Twenty Thousand) towards compensation for mental agony, and Rs.5,000/- (Rupees Five Thousand) towards advocate fees and cost of litigation along with interest @ 12% p.a. from the date of filing of the complaint i.e. 26.10.2015 till realisation to the complainant within 30 days.

2. Briefly stated the facts of the complaint of the complainant are that the complainant purchased through online Yu-Yuphoria (Buffed Steel) mobile on 20/21-6-2015 by making payment through cash on delivery. There was technical defects in the mobile. Sim is not shown in the mobile and the battery is becoming discharged immediately. The complainant informed the O.P. No.1 regarding technical defects in the mobile through Toll Free Number, then the O.P. No.1 told the complainant to sent the mobile back and within a week another mobile will be sent. The complainant sent the mobile to the O.P. No.1 by registered post, which was received by the O.P. No.1 on 02.07.2015. The O.P. No.1 did not send the another mobile to the complainant after a week, inspite of receiving mobile from the complainant, then the complainant talked with the O.P. No.1 and O.P. No.1 assured the complainant // 3 // to send the mobile within 1-2 days, but the O.P. No.1 did not send new mobile. Thereafter, the complainant asked the O.P. No.1 many times, but the O.P. No.1 was excusing to sent the mobile within 1-2 days, but inspite of lapse of 2 ½ months, the O.P. No.1 did not send the mobile. Thus, the O.P. No.1 committed deficiency in service by not providing mobile to the complainant. The complainant sent notice through advocate by registered post to the O.P. No.1, but the O.P. No.1 refused to take the same. Hence, the complainant filed instant complaint before the District Forum and prayed for granting reliefs, as mentioned in relief clause of the complaint.

3. The O.P. No.1 has filed its written statement and averred that Amazon Seller Services Private Limited neither sells nor offers to sell any products and merely provides a technology an online marketplace where independent third party sellers can list their product for sale. The sellers themselves (and not Amazon Seller Services Private Limited) are responsible for their respective listings and products on the Website. Amazon Seller Services Private Limited is neither responsible for the products that are listed on the website by various third party sellers, nor does Amazon Seller Services Private Limited intervene or influence any customers in any manner. Amazon Seller Services Private Limited is not involved in the sale transaction between the customer and seller. The conditions relating to the customer's use of the website (as expressly available on the Website) and specifically agreed by the customers have stated that Amazon Seller Services Private Limited is only a facilitator // 4 // and cannot be a party to or control in any manner any transaction on the Website. The contract of sale of products on the Website is strictly a bipartite contract between the customer and the seller. The present complaint is a gross abuse of the process of law and has been filed with ulterior motives and malafide intentions and hence needs to be dismissed. The present complaint is false, frivolous, vexatious and abuse of the process of the District Forum, therefore, the same is liable to be dismissed under Section 26 of the Consumer Protection Act, 1986. The complainant does not fall within the definition of "Consumer" under the Consumer Protection Act, 1986. Admittedly the complainant has not bought any goods from Amazon Seller Services Private Limited nor has the complainant paid any amount / consideration to Amazon Seller Services Private Limited The goods have been bought by the complainant from third party seller selling its products on the Website operated by the O.P. No.1 Accordingly the complainant does not fall within the

definition of "Consumer". The O.P. No.1 has merely provided a technology platform (an online marketplace) where independent third party sellers have listed their products for sale. The O.P. No.1 is neither a necessary nor a proper party in the complaint. The seller in the instant case is Cloudtail India Private Limited and the O.P. No.1 is not involved in the contract of sale between the complainant and the seller. The complaint is liable to be rejected on this ground alone. The present complaint does not raise any "consumer dispute" as defined under the Act, and therefore, the same is liable to be dismissed. The complainant has purchased the Yu-Yuphoria (Buffed Steel) // 5 // mobile from a third party seller i.e. Cloud Tail India Private Limited, through the website managed and operated by the O.P. No.1., and hence the seller and buyer are governed by "Conditions of Use" enumerated on the Website of the O.P. No.1. As per these "Conditions of Use", the O.P. No.1 is only a facilitator and cannot be a party to or control in any manner in any sale transaction on the Website. At no time, does the O.P. No.1 assume any responsibility for the actions, products, and content of anything listed on the Website, and the contract of sale of products on the Website is strictly a bipartite contract between the buyer and the seller. The complainant placed an order for the Product, sold by O.P. No.2, manufactured by the Manufacturing Company, from the website of the O.P. No.1 on 11.06.2015 and the said product was delivered at the address of the complainant by the Seller. According to the complainant, the mobile in question is sent to the O.P. No.1 through registered post on 26.06.2015 and was received by O.P. No.1 on 02.07.2015. As on 12.08.2015, the product was not received at the warehouse of the O.P. No.1. The complainant has sent a snapshot of the tracking information which showed it was still in transit. No tracking is available now on the website. Since the O.P. No.1 has not received the product sent by the complainant, hence the O.P. No.1 is not in a position to confirm whether the product (phone) was defective or if it was damaged by the customer during usage. The O.P. No.1 is not liable to pay any compensation to the complainant, as there is no deficiency or adoption of unfair trade practice on the part of O.P. No.1. The role of the O.P. No.1 is limited to that of a facilitator and not the // 6 // seller / manufacturer, and hence it was neither liable nor responsible for any actions or inactions of sellers nor any breach of conditions, representations or warranties by the sellers of manufacturers of the products. The relief claim by the complainant in the instant complaint is beyond the realm of the terms and conditions of usage and sale (as available on Website) and expressly agreed by the complainant himself, thus the complainant had no reason to mount a liability on O.P. No.1, which was beyond purview of the aforesaid terms, as such, the complaint against the O.P. No.1 is not maintainable. The O.P. No.1 neither has the knowledge nor the facility to ascertain if the alleged defects in the product are due to manufacturing flaws or customer abuse, and it is only the Manufacturer and / or the Authorized Service Centre of the Manufacturer that can resolve any alleged defects with the product. The warranty of the product in question is provided by the manufacturer, and is subject to their warranty terms and conditions, and the O.P. No.1 has no role to play in these warranty terms & conditions, and the same is clearly enumerated under Condition 13 of Conditions of Use - Disclaimer. The District Forum has no jurisdiction to entertain the present complaint. The complainant purchased the product from O.P. No.2 through the Website of O.P. No.1 and there is no liability that can be fastened on O.P. No.1. The alleged defects claimed by the complainant cannot be absolved by O.P. No.1 in no manner whatsoever as the O.P. No.1 does not have any technical knowhow/knowledge or facility to ascertain if the alleged defects and are due to inherent manufacturing defects or customer abuse. It is the sole duty of // 7 // the manufacturer and their Authorized Service Centre to remove the defects, if any, to the entire satisfaction of the customer.

Hence, whether the product is defective or not will only be decided by the Manufacturing Company or its Authorized Service Centre. The returned product would be sent to the Manufacturing Company for detection of defect. Hence, no replacement order was created for the customer. As on August 12, 2015, the product was not received at the warehouse of the O.P. No.1. The complainant had sent a snapshot of the tracking information which showed it was still in transit. No tracking is available now on the website. The O.P. No.1 did not receive the product sent by the complainant, hence a refund was not issued. Replacement order was not created for the complainant, therefore, replacement of the product would not be possible. The complaint filed by the complainant is completely vague and is debarred of any merits as the complainant is trying to mislead the District Forum by presenting prompt service to its customer and hence would not be held guilty of deficiency in service. The District Forum has no jurisdiction to entertain the present complaint as neither the O.P. No.1 resides within the jurisdiction of the District Forum, Kabirdham (C.G.) nor do they have any branch office for doing business. The complaint be dismissed with exemplary costs in favour of the O.P. No.1 and against the complainant.

4. Before the District Forum, the O.P. No.2 was represented through its counsel Atit Parihar, and several opportunity was granted to O.P. No.2 for // 8 // filing written statement, but the written statement was not filed, then the right of the O.P. No.2 to file written statement, was closed by the District Forum.

5. The complainant has filed documents. Document A-1 is Retail / Tax Invoice / Cash Memorandum., A-2 is letter dated 11.09.2015 sent by SSPO'S Durg Dn. Bhilai HO to the complainant, A-3 is registered legal notice dated 24.09.2015 sent by Shri Pokhraj Singh Parihar, Advocate to Manager, Amazon Company, A-5 is the envelope returned back, A-5 is order placed by the complainant to the O.P. No.1 through net for purchasing mobile, A-6 is order confirmation, A-7 is shipment tracking order, A-8 is shipment status, A-9 is Retail / Tax Invoice / Cash Memorandum, A-10 is sticker, A-11 is message from Customer Service, A-12 is declaration/certificate etc., A-13 is letter sent by the complainant to Sub Postmaster, Collectorate, Kawardha, District Kabirdham, A-14 is letter dated 11.09.2015 sent by the SSPO'S Durg Dn. Bhilai HO to the complainant, A-15 is Detailed Track Events for RC1466135321N, A- 16 is message from customer service.

6. The O.P. No.1 has filed documents. Document OP-1 is authority letter, OP-2 is Certified True copy of the Resolution passed by the Board of Directors of Amazon Seller Services P. Ltd. in its 26th Meeting held on Monday, September 22, 2014 at Karnataka, OP-3 is condition of use, OP-4 I Notice and procedure for making claims of Right infringements, OP-5 is Amazon Software terms, OP-6 is photocopy of receipt, OP-7 is detailed track events for RC1466135321N, OP-8 is Conditions of sale (between sellers and customer) // 9 //

7. Learned District Forum, after having considered the material placed before it by the parties, has allowed the complaint and directed the OPs to jointly and severally pay the amounts to the complainant, as mentioned in para 1 of this order.

8. Earlier, the respondent No.2 (O.P. No.2) has also filed appeal No.FA/2016/607 against the impugned order dated 09.06.2016 before us, which was dismissed by this Commission vide order

dated 19.10.2016 as barred by time.

9. Before us on 28.03.2017 when the case was taken up for final hearing, none presence on behalf of the appellant (O.P. No.1), but the appellant (O.P. No.1) has taken a ground in the appeal memo that the appellant (O.P. No.1) has neither sold nor offered to sale any product to the respondent No.1 (complainant) and has merely provided an online marketplace where independent third party sellers have listed their products for sale nor does Amazon Seller Services P. Ltd. intervene or influence the customers in any manner whatsoever. The appellant (O.P. No.1) never received the product from the respondent No.1 (complainant), therefore, no refund / exchange of the product could be initiated. The product that has allegedly been sent by the respondent No.1 / complainant on 26.06.2015, which however never reached the warehouse of the appellant (O.P. No.1), hence no refund could be initiated in favour of the respondent No.1/ complainant. The District Forum, Kabirdham (Kawardha) (C.G.) has no jurisdiction to decide the complaint.

// 10 // The respondent No.1 (complainant) does not come within purview of consumer as defined in the Consumer Protection Act, 1986 and there is no relationship of service taker and service provider between the respondent No.1 (complainant) and appellant (O.P. No.1). The complaint is not maintainable and is liable to be dismissed. The impugned order passed by the District Forum is erroneous and is liable to be set aside.

10. Shri R.K. Bhawnani, learned counsel appearing for the respondent No.1 (complainant) has argued that respondent No.1 (complainant) purchased through online Yu-Yuphoria (Buffed Steel) mobile on 20/21-6-2015 by making payment through cash on delivery . There was technical defects in the mobile. Sim is not shown in the mobile and the battery is becoming discharge immediately. The complainant informed the appellant (O.P. No.1) regarding technical defects in the mobile through Toll Free Number, then the O.P. No.1 told the respondent No.1 (complainant) to send the mobile back and within a week another mobile will be sent. On being assurance given by the appellant (O.P. No.1), the respondent No.1 (complainant) sent his mobile to the appellant (O.P. No.1) by registered post, which was received by the appellant (O.P. No.1) on 02.07.2015, but the appellant (O.P. No.1) did not send new mobile to the respondent No.1 (complainant). Thereafter, the respondent No.1 (complainant) continuously contacted the appellant (O.P. No.1) to provide new mobile, but the appellant (O.P. No.1) did not send new mobile and thus committed deficiency in service. The respondent No.1 // 11 // (complainant) deposited the amount for the mobile to the appellant (O.P. No.1) through on line and payment was made from Kabirdham (C.G.), therefore, the respondent No.1 (complainant) is consumer of the OPs and the cause of action also accrued at Kabirdham (Kawardha) (C.G.), therefore, the District Forum, Kabirdham (Kawardha) (C.G.) has jurisdiction to take cognizance in the matter. The impugned order passed by the District Forum, is just and proper and does not call for any interference by this Commission. The appeal filed by appellant (O.P. No.1) be dismissed.

11. Shri Saurabh Mishra, learned counsel appearing for the respondent No.2 (O.P. No.2) has filed written arguments. The notice issued by the District Forum was served on O.P. No.2 and Atit Parihar, Advocate appeared before the District Forum on behalf of O.P.No.2 on 09.02.2016, 26.02.2016, 04.03.2016 and 21.03.2016 and the District Forum has afforded sufficient opportunity

to the O.P. No.2 to file written statement but the O.P. No.2 did not file written statement and on 30.03.2016, the District Forum has closed the right of the O.P. No.2 to file written statement. It appears that the O.P. No.2 had not filed written statement before the District Forum.

12. Earlier, the respondent No.2 (O.P. No.2) M/s Cloutail India Pvt. Ltd. also filed an appeal before this Commission against the impugned order dated 09.06.2016, which was registered as FA/2016/607. Vide order dated 19.10.2016, the appeal filed by the respondent No.2 (O.P. No.2) was dismissed by this Commission on the ground that the appeal is belated by 69 days. The // 12 // respondent No.2 (O.P. No.2) has not filed copy of order of Hon'ble National Commission to show whether the respondent No.2 (O.P. No.2) has filed Revision Petition before the Hon'ble National Commission against the order passed by this Commission, hence the order passed by this Commission has attained finality against the respondent No.2 (O.P. No.2), therefore, the impugned order passed by the District Forum dated 09.06.2016 is binding on respondent No.2 (O.P. No.2). Therefore, the written arguments filed by the respondent No.2 (O.P. No.2) is not considered by this Commission.

13. We have heard arguments of learned counsel for the respondent No.1 (complainant) and have also perused the record of the District Forum as well as the impugned order.

14. We shall consider whether the respondent No.1 (complainant) is consumer and whether the District Forum, Kabirdham (Kawardha) (C.G) has jurisdiction to take cognizance in the matter ?

15. The respondent No.1 (complainant) pleaded that the O.P. No.1 is selling electronic articles like T.V., Mobile, Computer, Cloth, Shoes etc. through on line. The respondent No.1 (complainant) contacted the appellant (O.P. No.1) through its toll free no. and he opened his account and gave his address through email to the appellant (O.P. No.1) Previously, the respondent No.1 (complainant) also purchased mouse of computer, mobile of Lava Company, T. Shirt, Memory Card etc. from the appellant (O.P. No.1). On // 13 // 11.06.2015, the respondent No.1 (complainant) ordered for Yu-Yuphoria (Buffed Steel) mobile to the appellant (O.P. No.1) and appellant (O.P. No.1) sent the mobile to the respondent No.1 (complainant) through courier. The respondent No.1 (complainant) paid a sum of Rs.6,999/- cash on delivery at Kawardha. The appellant (O.P. No.1) pleaded that the respondent No.1 (complainant) purchased the product from respondent No.2 (O.P. No.2) through Web Site of appellant (O.P. No.1). In para 5 of the complaint, the respondent No.1 (complainant) pleaded that he paid Rs.6,999/- to the appellant (O.P. No.1) at Kabirdham (Kawardha) (C.G.) cash on delivery and the above pleading was not denied by the appellant (O.P. No.1). The mobile was delivered in Kabirdham (Kawardha) (C.G.) and the respondent No.1 (complainant) received it at Kabirdham (Kawardha) (C.G.). From bare perusal of the complaint and written statement filed by the appellant (O.P. No.1), it appears that the order for purchase of the mobile was given by the respondent No.1 (complainant) to the appellant (O.P. No.1) at Kawardha and the payment of Rs.6,999/- was also made at Kabirdham (Kawardha). The payment was made at Kabirdham (Kawardha) and mobile was received by the respondent No.1 (complainant) at Kabirdham (Kawardha) (C.G.) and the respondent No.1 (complainant) sent back the defective mobile to the appellant (O.P. No.1) from Kabirdham (Kawardha) (C.G.), therefore, the respondent No.1 (complainant) is consumer and the OPs are service provider. The dispute falls within consumer

dispute. The District Forum, Kabirdham (Kawardha) (C.G.) has jurisdiction to take cognizance in the matter.

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16. In para 15 of the impugned order, learned District Forum has observed that "the C.D. (Annexure A-22), which is containing recording of the conversation held between the respondent No.1 (complainant) and the appellant (O.P. No.1) is an important document. After hearing the same, it appears that on 25.06.2015, the respondent No.1 (complainant) sent back the mobile to the appellant (O.P.) and also emailed postal receipt. On 06.07.2015 the appellant (O.P. No.1) assure the respondent No.1 (complainant) that when the appellant (O.P. No.1) receive the mobile sent by the respondent No.1 (complainant), the amount would be refunded and the postal charges Rs.232/- was sent, but the respondent No.1 (complainant) denied to have received above amount. On 08.07.2015 also, the appellant (O.P. No.1) told that mobile had not been received, therefore, when the mobile is received, the amount would be refunded. On 11.07.2015 the appellant (O.P. No.1) accepted that the mobile was received and assured that the amount would be refunded at the earliest. On 18/08/2015, 18.09.2015 and 21.09.2015 the appellant (O.P. No.1) told that the mobile which was sent by the appellant (O.P. No.1) was not provided to the respondent No.1 (complainant), therefore, when the price of the mobile has not been paid, then amount cannot be refunded." Looking to the above observation made by the District Forum, it appears that initially the appellant (O.P. No.1) was telling that when the mobile is received, the amount would be refunded, thereafter it was accepted that the mobile was received, but thereafter the appellant (O.P. No.1) is saying that mobile had not // 15 // been provided to the respondent No.1 (complainant), whereas the only defence of the appellant (O.P. No.1) in the written statement is that the mobile, which was sent back by the respondent No.1 (complainant) was not received by the appellant (O.P. No.1). On the basis of pleadings of the parties and observation made by the District Forum, it appears that the respondent No.1 (complainant) purchased the mobile from the appellant (O.P. No.1) and the said mobile was defective, therefore, the respondent No.1 (complainant) gave intimation regarding the defects in the mobile to the appellant (O.P. No.1).

17. The respondent No.1 (complainant) specifically pleaded that he sent back the mobile to the appellant (O.P. No.1) and the appellant (O.P. No.1) received the above mobile on 02.07.2015. The respondent No.1 (complainant) filed document Annexure A-6, which is information given by SSPO'S Durg DN, Bhilai HO to the respondent No.1 (complainant) in which it is specifically mentioned that the "Article delivered on 02.07.2015 manually". It appears that the respondent No.1 (complainant) sent back the defective mobile to the appellant (O.P. No.1), who received the same on 02.07.2015. Therefore, it is established that the respondent No.1 (complainant) returned back the mobile to the appellant (O.P. No.1) on 02.07.2015. The appellant (O.P. No.1) pleaded that the postal charges Rs.232/- was returned to the respondent No.1 (complainant), whereas there is no reply or evidence in this regard. The appellant (O.P. No.1) did not make clear anywhere that by which mode // 16 // postal charges Rs.232/- was returned to the respondent No.1 (complainant). In absence of evidence, we find that the appellant (O.P. No.1) has not refunded Rs.232/- to the respondent No.1 (complainant). In spite of returning the mobile by the respondent No.1 (complainant) to the appellant (O.P. No.1), the OPs did not refund the price of mobile Rs.6,999/- and postal charges to

the respondent No.1 (complainant).

18. Therefore, the finding recorded by the District Forum, is just and proper and does not suffer from any infirmity, irregularity and illegality, hence does not call for any interference by this Commission.

19. Hence, the appeal filed by the appellant (O.P. No.1) being devoid of any merits, deserves to be and is hereby dismissed. No order as to the cost of this appeal.

(Justice R.S. Sharma)  
President  
11/04/2017

(D.K. Poddar)  
Member  
11/04/2017

(Narendra Gupta)  
Member  
11/04/2017