

# **Myntra Design Pvt. Ltd. vs Monika Thakur on 29 November, 2019**

Daily Order

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

U.T., CHANDIGARH

Appeal No.

:

279 of 2019

Date of Institution

:

18.11.2019

Date of Decision

:

29.11.2019

Myntra Design Private Limited, A K R Tech Park, 3rd Floor, 7th Mile, Krishna Reddy Indus

.....Appellant/Opposite Party.

Versus

Monika Thakur D/o Shri Gurpal Singh Thakur, #2031, G.F., Sector 45-C, Chandigarh - 12110

Respondent/Complainant.

Appeal under Section 15 of the Consumer Protection Act, 1986

BEFORE: JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT.

MRS. PADMA PANDEY, MEMBER.

MR. RAJESH K. ARYA, MEMBER.

Argued by:

Sh. Atul Sharma, Advocate for the appellant.

PER RAJESH K. ARYA, MEMBER                      In this appeal, the opposite party has challenged the order dated 05.09.2019 passed by District Consumer Disputes Redressal Forum-II, U.T., Chandigarh (in short 'the Forum'), whereby, it allowed the complaint bearing No.566 of 2018 and directed the opposite party to refund Rs.1,859/- to the complainant besides payment of lumpsum amount Rs.7,000/-

towards compensation and litigation expenses. The order was to be complied with by the opposite party within a period of 30 days from the date of receipt of its copy, failing which, the opposite party was held liable to pay additional compensatory cost of Rs.5,000/-. The Forum also directed the complainant to return the wrongly delivered product i.e. Grey Blazer to the opposite party.

2. It is not in dispute and rather proved on record that the appellant/opposite party initially supplied wrong blazer of Grey colour to the respondent/complainant against her order of Black colour blazer. On sending return request by her, the opposite party asked for Bar code vide email dated 26.09.2018 in order to initiate the request, which was duly supplied by her. To her utter surprise, again wrong blazer of Grey colour was delivered to the complainant. In view of admission position on record, the Forum rightly held that non-delivery of item as ordered by the complainant i.e. Black Blazer and not taking back the wrong delivered item, constituted gross deficiency in service and unfair trade practice on the part of the opposite party, which further caused her mental agony and harassment and forced her to enter into avoidable litigation.

3. During the course of arguments at the preliminary stage, Counsel for the appellant/opposite party assailed the order of the Forum on the ground that it is an open online platform where independent third party sellers list their products for sale and therefore, such sellers are responsible for their respective products listed on the website of the opposite party and it is not responsible for any products that are listed on its website by various third party sellers or for any delivery of wrong product. He also argued that the appellant was only an intermediary and had not received any benefit from the complainant and rather it earned from the advertisements listed by such independent sellers on its website.

4. It may be stated here that the aforesaid argument of the Counsel for the appellant/opposite party has duly been taken care of by the Forum in Para 11 of its order, which reads thus:-

"11] The consumer(s) place order with Opposite Party with a hope that it will get good bargain and better products, but their faith shatters when they are not provided with better quality products and sometimes are delivered with the products other than the products ordered as has also happened in the present case. The Opposite Party cannot escape from its liability stating that it is not the manufacturer of the product and only provides portal for sale, because the Opposite Party allows the companies to project their products for sale on their portal, so it is their legal obligation to keep a check for the rightful delivery of the products sold through their portal services."

5. It is also not out of place to mention that similar question arose for consideration before this Commission in case titled Amazon Seller Services Private Limited Vs. Gopal Krishan, First Appeal No.27 of 2017 decided on 17.02.2017. In the said case, through a web domain (online portal) owned, managed and controlled by Amazon Seller Services Pvt. Ltd., a mobile handset Xiaomi Redmi Note 3 was purchased by Sh. Gopal Krishan on 11.5.2016 for an amount of Rs.9998/-. Payment was made online and the handset was found defective. In the said case, it was observed that it was

bounden duty of the facilitator to ensure that goods sold through any individual are manufactured as per quality standard. If the goods purchased through online are found not up to the mark, online portal through which goods were purchased, cannot escape its liability. Further, the contention raised that as per terms and conditions of sale, no liability can be fastened upon the appellant (Amazon), was rejected by this Commission by observing as under:-

"8..... An agent, who sells a product, is duty bound to ensure its quality, and if the product is found defective, agent shall be vicariously liable for the loss caused to the purchaser, alongwith the manufacturer of the product. It was so held by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi in the case titled as Emerging India Real Assets Pvt. Ltd. & Anr. Vs Kamer Chand & Anr. Revision Petition No.765 of 2016 decided on 30.3.2016."

6. Not only above, in a subsequent judgment passed by this Commission in the case of Amazon Seller Services Private Limited Vs. Dinesh & Ors., First Appeal No.21 of 2018 decided on 16.02.2018, above view as expressed in the case of Amazon Seller Services Private Limited Vs. Gopal Krishan (supra) was reiterated.

7. Similar is the view held by this Commission in recent judgment passed on 30.09.2019 in First Appeal No.210 of 2019 titled M/s Hello Travel Vs. Harish C. Jain & Anr., wherein the complainant in the said case approached the Hello Travel (Opposite Party No.2) online, the search engine, for providing tour package for Goa from 27.9.2018 to 30.9.2018 and finalized Opposite Party No.1 (Your Tour Advisor Pvt. Ltd.). He paid/transferred the amount in the account of opposite party No.1. However, even after booking & advance payment, opposite party No.1 did not send Hotel Vouchers & other documents regarding stay/booking at Goa. Despite, numerous emails and telephone calls, nothing was done. This Commission while dismissing the aforesaid appeal, held in Para 8 as under:-

"8. In the instant case also, admittedly, the appellant/opposite party No.2 is an online discovery platform, which works like a Search Engine namely [www.hellotravel.com](http://www.hellotravel.com). As such, it also cannot escape its liability and take benefit by merely saying that it is not privy to the negotiation, offer, acceptance/payment which took place between opposite party No.1 and the complainant. It is a kind of selling or service provider platform. It has to ensure the quality of the product coming to its platform for sale or the service, which is being provided through it by third party. By ensuring the quality of product and services hired, through their website/portal, to the complete satisfaction of the consumers, they can fetch more confidence. It is generally seen that lot of complaints qua the products purchased online or services hired are increasing day by day, which is creating a shabby picture of online selling portals/search engines."

8. In the instant case also, the appellant/opposite party failed to provide due service to the respondent/complainant as a wrong product was supplied to her against her booking. Instead, the appellant was supposed to replace the wrong colour blazer i.e. Grey blazer with black one as per the booking made by the respondent/complainant and by not doing so, it was not only deficient in rendering service but also indulged into unfair trade practice. It was the bounden duty and

responsibility of the appellant/opposite party to assist the respondent/complainant and deliver him Black colour blazer forthwith but it tried to escape its liability one way or the other.

9. In our considered opinion, the Forum rightly directed the opposite party to refund Rs.1,859/- to the complainant besides payment of lumpsum amount Rs.7,000/- towards compensation and litigation expenses.

10. Hence, we are of the opinion that the order passed by the Forum, being based on the correct appreciation of evidence and law, on the point, does not suffer from any illegality or perversity.

11. For the reasons recorded above, the appeal filed by the opposite party is dismissed being devoid of merit, at the preliminary stage, with no order as to costs. The impugned order dated 05.09.2019 passed by District Forum-II, U.T., Chandigarh in Consumer Complaint bearing No.566 of 2018 is upheld. Consequently, Miscellaneous Application bearing No.972 of 2019 for ad interim exparte stay stands disposed of having become infructuous.

12. Certified copies of this order, be sent to the parties, free of charge.

13. The file be consigned to Record Room, after completion.

Pronounced.

29.11.2019..

[RAJ SHEKHAR ATTRI] PRESIDENT (PADMA PANDEY) MEMBER (RAJESH K. ARYA)  
MEMBER Ad