

# Amazon Seller Services Pvt. Ltd. vs Jatinder Pal on 21 September, 2018

Daily Order

FIRST ADDITIONAL BENCH

STATE CONSUMER DISPUTES REDRESSAL COMMISSION, PUNJAB

SECTOR 37-A, DAKSHIN MARG, CHANDIGARH

First Appeal No.252 of 2018

Date of Institution : 30.04

Order Reserved on :18.09.2018

Date of Decision : 21.09.2

Amazon Seller Services Private Limited Registered Office: At Brigade Gateway, 8th Floor,

Appellant/Opposite party n

Versus

1. Jatinder Pal, House No. 739, Street No.1A, Block D, Guru Nanak Colony, Behind Pa

Respondent no.1/Complainant

2. Green Mobiles, Ajaneya Infrastructure, Project No.38 & 39, Soukya Road, Kanchara

Respondent no.2/Opposite party no.2

First Appeal against order dated 01.03.2018 passed by the District Consumer Disputes Red

Quorum: -

Shri J. S. Klar, Presiding Judicial Member

Smt. Kiran Sibal, Member.

Present:-

For the appellant : Sh.Vishal Khattar, Advocate

For the respondent no.1 : Sh.Jimmy Singla, Advocate

For the respondent no.2 : Ex-parte.

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J.S KLAR, PRESIDING JUDICIAL MEMBER :-

Challenge in this appeal by appellant is to order dated 01.03.2018 of District Consumer Disputes Redressal Forum Sangrur directing the appellant and respondent no.2 of this appeal to replace the mobile set in question of respondent no.1 of this appeal with new one of the same model, as per their policy. They are further directed to pay consolidated amount of compensation of Rs.5,000/- to respondent no.1 of this appeal. Respondent no.1 of this appeal is complainant in the original complaint before District Forum and appellant of this appeal is opposite party no.1 therein and respondent no.2 of this appeal is opposite party no.2 therein and they be referred as such hereinafter for the sake of convenience.

2. The complainant has filed the complaint U/s 12 of the Consumer Protection Act, 1986 (in short, "the Act") against OPs on the averments that he booked one Honour 8 Pro (Black, 6GB RAM + 128GB Memory) with opposite party no.1 on their website (amazon.com) on 10.07.2017, vide order I.D No.408-8904827-8981924. OP no.2 issued invoice no.BLRS-43197 to him and he paid an amount of Rs.29,999/- to OP no.2. OPs gave one year warranty of the said mobile set if any manufacturing defect has arisen due to poor workmanship. OP no.2 dispatched the said mobile set, vide invoice dated 13.07.2017, which was received by complainant on his residential address. After some time from the date of purchase, he was shocked to see that above said mobile was giving problem and it did not allow the complainant to call many of the numbers and when he tried to call someone, it rang and automatically disconnected the call, charging problem, signal problem. The complainant lodged complaint with OPs seeking refund of the price of the mobile phone due to its inherent defects. OPs told the complainant through email dated 19.07.2017 that mobile phones, which are provided through email will no longer be eligible for refund. The complainant has received defective or heating issue mobile phone and he is entitled for its free replacement due to inherent defect. The complainant has filed complaint praying that OPs be directed to refund the price of the mobile set of Rs.29,999/-with interest @ 18% per annum from the date of its purchase till actual payment on account of inherent defects in the mobile set. The complainant also prayed for Rs.50,000/- as compensation for mental harassment and Rs.5500/- as costs of litigation.

3. Upon notice, OP no.1 appeared and filed written reply and contested the complaint of the complainant by raising preliminary objections that complaint is false, frivolous and vexatious. The complainant does not fall within the definition of 'consumer' under Consumer Protection Act 1985. It was averred that OP no.1 neither sells nor offers to sell any products and merely provides an online marketplace, where independent third party sellers can list their products for sale. The sellers themselves are responsible for their respective listings and products on the website. OP no.1 is neither responsible for products that are listed on the website by various third party sellers nor OP no.1 intervenes or influences any customers in any manner. OP no.1 is not involved in the sale transaction between the customer and seller. OP no.1 is only a facilitator and cannot be a party to

control in any manner. The complainant has not purchased any goods from OP no.1 nor has the complainant paid any amount/consideration to OP no.1 for purchased product. The complainant alleged that he placed an order for Honor 8 Pro (Black 6 GB Ram + 128 GB Memory) vide order ID 408-8904827-8981924 from the website of OP no.1 on 10.07.2017. Though, the website is managed and operated by OP no.1, but transaction was between seller and complainant, which was governed by 'conditions of use' enumerated on the website of OP no.1. The seller in the instant case is Green Mobiles/OP no.2 and OP no.1 not involved in the contract of sale between the complainant and the seller. Rest of the averments of the complainant were denied by OP no.1 and it prayed for dismissal of the complaint.

4. OP no.2 was set exparte by District Forum, vide its order dated 26.10.2017.

5. The complainant tendered in evidence his affidavit Ex.C-1 along with copies of documents Ex.C-2 to Ex.C-8 and closed the evidence. As against it; OP no.1 tendered in evidence affidavit of Rahul Sundaram Senior Corporate Counsel at Amazon Seller Services Private Limited as Ex.OP-1 and closed the evidence. On conclusion of evidence and arguments, the District Consumer Forum Sangrur accepted the complaint of the complainant by virtue of order dated 01.03.2018. Aggrieved by above order of the District Forum Sangrur, opposite party no.1 now appellant carried this appeal against the same.

6. We have heard learned counsel for the parties and have also examined the record of the case. The seller of mobile phone has been set exparte in this case and has not appeared not led any evidence and remained away from the proceedings of the Forum. The complainant Jatinder Pal tendered in evidence his affidavit Ex.C-1 in support of his arguments, as pleaded in the complaint. He stated that after some time from the date of purchase of mobile phone, it developed some manufacturing defects. He sought refund of the amount with interest, but to no effect. Ex.C-2 is letter from Customer Service to complainant by Amazon dated 19.07.2017. Ex.C-3 is download account statement showing withdrawal of amount of Rs.29,999/- from the account of the complainant. This statement is for the period from 05.07.2017 to 20.07.2017. Ex.C-4 is tax invoice bill of supply cash of the product. The complainant sent legal notice to OPs, vide Ex.C-5 supported with postal receipts Ex.C-6 and Ex.C-7. Ex.C-8 is reply sent legal notice dated 30.08.2017 by counsel of OP no.1.

7. To refute this evidence, OP no.1 also tendered in evidence affidavit of Rahul Sundaram Senior Corporate Counsel (Litigation) at Amazon as Ex.OP-1.

8. From appraisal of entire evidence on the record and hearing respective submissions of counsel for the parties, we have come to this conclusion that there was some manufacturing or inherent defects in the mobile set and District Forum directed OPs to replace the same with new one of the same model, as per their policy. On the other hand, submission of counsel for appellant is that as per customer reviews given on Amazon portal, there was 10 days for replacement of product. Manufacturer gives warranty which operates at least for six months period for any product, if the product sold by OP no.2 through platform of OP no.1 to complainant was found with manufacturing defect, then it is primarily the liability of his manufacturer/OP no.2 to replace the same with new

one of same model free of cost as per policy. The complainant also pleaded in para no.3(c) of the complaint that he is eligible for free replacement and as per email dated 19.07.2017 sent by OPs, he would not be entitled to refund of price of the mobile set. The District Forum has, thus, correctly passed the direction to replace the defective mobile set sold to complainant with new one of the same model.

9. In view of above facts and circumstances of the case, we modify the order of the District Forum and direct OP no.2/manufacture of mobile set to replace the same with new one of the same model. So far as the liability of both OPs with regard to compensation of Rs.5000/- along with costs is concerned, we find no ground to interfere with the same. OP no.1 facilitated the sale of product of OP no.2 through its portal customers. OP no.1 also invited customers for purchasing the product of OP no.2 through its portal. OP no.1 now appellant cannot be absolved of its liability to pay the compensation for mental harassment and cost of litigation to complainant. Consequently, order of the District Forum Sangrur dated 01.03.2018 is affirmed by holding that liability of OPs no.1 and 2 is joint and several with regard to payment of compensation of Rs.5000/- to complainant including cost of litigation. So far as the liability of replacement of mobile set in question with new one of the same model is concerned, it is liability of manufacturer/OP no.2 only and not of OP no.1. The order of District Forum is modified as referred to above and appeal of the appellant is disposed of accordingly with above modification in the order of the District Forum.

10. The appellant had deposited an amount of Rs.17,500/- in this Commission at the time of filing the appeal and further deposited Rs.20,000/- in compliance of the order of this Commission. Out of these amounts, a sum of Rs.5000/- be remitted to complainant, as per order passed by District Forum and affirmed in this appeal, by way of crossed cheque/demand draft after 45 days from receipt of certified copy of this order. Remaining amount along with interest accrued on the above said two amounts, if any, shall be remitted to appellant of this appeal within 45 days, subject to stay order if any.

11. Arguments in this appeal were heard on 18.09.2018 and the order was reserved. Certified copies of the order be communicated to the parties as per rules.

12. The appeal could not be decided within the statutory period due to heavy pendency of court cases.

JUDICIAL MEMBER

(J. S. KLAR)

2018

(ravi)

PRESIDING  
(KIRAN SIBAL)  
MEMBER September 21 ,