

Amazon Seller Services Private Limited vs Dr. Ajaydeep Singh on 14 August, 2024

ADDITIONAL BENCH

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
PUNJAB, CHANDIGARH

First Appeal No.316 of 2023

Date of Institution : 12.05.2023
Date of Reserve : 22.07.2024
Date of Decision : 14.08.2024

Amazon Seller Services Private Limited, Registered Office : at
Brigade Gateway, 8th Floor, 26/1, Dr.Rajkumar Road,
Malleshwaram (W), Bengaluru-560055, Karnataka, India through
its authorized signatory Mr.Rahul Narayanan.

And : (90) 1401 to 1421, 14th Floor, Block E, International Trade
Tower, Nehru Place, New Delhi, Delhi 110019.

.....Appellant/Opposite party No.1

Versus

1. Dr.Ajaydeep Singh, R/o 119, Defence Colony, Jalandhar,
Punjab-144001.

....Respondent No.1/complainant

2. Cloudtail India Private Limited, Farrukh Nagar, through its
Manager or appropriate authority, Logistic Park LLP,
Farrukhnagar, District Gurgaon, Village Khalikpur, District
Jhajjar, Haryana, 122001.

....Respondent/opposite party No.2

First Appeal under Section 41 of the
Consumer Protection Act, 2019 against the
order dated 02.03.2023 of the District
Consumer Disputes Redressal Commission,
Jalandhar.

First Appeal No 316 of 2023

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Quorum: -

Mr.Vishav Kant Garg, Member Present:-

For the appellant : Sh.Brijesh Kumar, Advocate for Sh.Atul Goyal, Advocate For respondent No.1 : Dr.Ajaydeep Singh, in person For respondent No.2 : Ex-parte HARINDERPAL SINGH MAHAL, PRESIDING JUDICIAL MEMBER This appeal has been preferred by the appellant/opposite party No.2 - Amazon Seller Services Private Limited, against the order dated 02.03.2023 passed by District Consumer Disputes Redressal Commission, Jalandhar (in short 'District Commission'), whereby the complaint filed by the complainant under the Consumer Protection Act (in short 'the Act') was partly allowed and both the opposite parties were jointly and severally held liable for the deficiency in service and were directed to refund the price of the LED i.e. Rs.64,999/- with interest @6% per annum from the date of purchase i.e. 30.09.2019. The complainant was directed to return the LED to the opposite parties at the time of receiving the award amount against receipt. The opposite parties were further directed to pay compensation of Rs.10,000/- to the complainant for causing mental tension and harassment and Rs.5,000/- as litigation expenses.

It would be apposite to mention that hereinafter the parties will be referred, as have been arrayed before the District Commission.

2. Briefly stated facts of the case are that complainant Dr.Ajaydeep Singh purchased one 43 inch Sony Bravia TV from the website of opposite party No.1 and the TV was sold by opposite party No.2 through opposite party No.1. There was a scheme of OAKTER Smart Home Kit which was to be delivered free of cost with the TV. The complainant received invoice dated 02.10.2019 on his email, whereby it was mentioned that the TV is 43" in size and was to be delivered along with OAKTER Smart Home Kit Offer. On delivering of the TV, the complainant was surprised to see that the TV supplied was only of 38" instead of 43" and OAKTER Smarthome Kit was also not supplied as committed by the opposite parties. On this, the complainant asked the opposite parties for replacement of TV with immediate effect. He even called the customer care helpline number of Amazon and requested them to take back the product but their officials refused to return the TV, which amounts to deficiency in service as the delivery was not as per the promises made by the opposite parties. This is also the violation of policy of Amazon of Free Open Box delivery, which includes the Open Box Inspection at the time of delivery to ensure the delivery of same product in proper order. This service is available on pre-paid schedule delivery orders for TV, microwave, washing machine and refrigerator products. In case the product found to be defective or otherwise damage, the customer can refused to take the delivery can refund will be credited to his account. The order of the complainant was also covered under the same policy having 10 days time to return the item but despite that the delivery was not taken back and the complainant was informed by the executive of opposite party No.1 that the complainant was not eligible to the OAKTER Smart Home Kit and he has not clicked the same at the time of purchase of TV. It is pertinent to mention here that OAKTER Smart Home Kit was to be given free of cost along with TV by Sony India and not by Amazon India. Again on 06.10.2019 and 12.10.2019, the complainant communicated his grievances

to the executive of opposite party No.1 regarding the delivery of TV of 38" and without any OAKTER Smart Home Kit and despite that the TV was not replaced and in this way, the services provided by the opposite parties was also deficient. Legal notice was also served upon the opposite parties on 09.10.2019 but to no effect. Ultimately, the complainant filed the complaint before the District Commission seeking following relief:-

- i) to return the said TV make Sony Bravia 43 inches;
- ii) to make the payment of Rs.64,999/- i.e. the amount of the said TV;
- iii) to pay interest @18% per annum on the amount of Rs.64,999/-;
- iv) to pay Rs.20,000/- as litigation expenses; and
- v) to pay Rs.1,00,000/- as special damages on account of mental stress, strain, agony and tension.

3. Upon notice, opposite party No.1 filed its written reply and refuted the allegations of the complainant and they also referred to the provisions of Consumer Protection Act and alleged that the complainant is not maintainable. However, they admitted that the complainant ordered the 43" Sony Bravia TV product for an amount of Rs.64,999/- but the allegations of the complainant regarding the non-supply of free product is not correct because the complainant was to select the offer and did not follow the instructions to claim the free offer and it was not the responsibility of the answering opposite party to supply the free product. The complaint is bad for non-joinder of the necessary parties. The answering opposite parties have nothing to do with the allegations imputed by the complainant. The complainant has approached the Commission with unclean hands by twisting the facts. The answering respondent i.e. Amazon Seller Services Private Ltd. alleged that free offer was only offered at the website and that is according to the offer. It is further averred that it was in the knowledge of the complainant that product was to be measured diagonally and not horizontally and the complainant never contacted the opposite parties regarding his grievances towards the product and the complainant has filed this frivolous complaint by suppressing the number of real facts and prayed for dismissal of the complaint.

4. Opposite party No.2 filed its separate reply taking preliminary objections and averred that the complainant is perturbed by non-receipt of Free Product with the purchase of the product. It is submitted that the offer of Free Product could only be availed upon selecting the offer at the time of checkout on the website. It is further submitted that the complainant had nowhere raised any issue against the answering opposite party. The complaint is liable to be dismissed on the ground of misjoinder of parties as the answering opposite party has nothing to do with the complaint and the answering opposite party has been made a party to the complaint without any cause of action. The complainant has approached the Commission with unclean hands by twisting the facts of the complaint. It is admitted fact by the complainant during the communication with the representative of opposite party No.1 that the product was to be measured diagonally and not horizontally. The acceptance of the fact is duly recorded in transcript of the communication between representative of

opposite party No.1 and complainant dated 06.10.2019. The complainant never contacted the answering respondent regarding his grievances relating to the product within the stipulated window. It is submitted that as per the replacement policy as enunciated on the website makes it clear that the product can only be replaced within the replacement window of 10 days in case of defects, damage or features does not match the description provided. Rest all the averments as averred by the complainant in his complaint were denied and prayed for dismissal of the complaint or to delete the answering opposite party from the array of the parties.

5. The parties led their evidence in support of their respective contentions before the District Commission and after hearing the contentions of the parties, the complaint was partly allowed, vide impugned order dated 02.03.2023.

6. Aggrieved by the said order, this appeal has been filed by the appellant/opposite party No.1 for setting aside the impugned order dated 02.03.2023 and to allow their appeal.

7. Notice of the appeal was issued to the respondents through Registered Post. The respondent No.1/complainant, appeared in person but respondent No.2 did not appear despite service and was proceeded against ex-parte, vide order dated 01.03.2024.

8. We have heard the contentions of the parties and have carefully gone through the record as well as written arguments filed by the parties. We have also given our thoughtful consideration to the same.

9. Learned counsel for the appellant filed written arguments as well as orally submitted that there is no relationship of the respondent/complainant with appellant/opposite party No.1 because the appellant/opposite party No.1 is only the intermediary between the buyer and seller and they have nothing to do with the services provided towards the consumers. The allegations of the respondent/complainant that the appellant/opposite party No.1 is equally responsible is not tenable in the eyes of law because it is very explicit that the offer on selling of Sony Bravia TV was displayed by the appellant/opposite party No.1 on their website and they are only mediatory because first of all the order was placed with them and after receiving the order and as per the invoice delivered the goods and the same was received by the respondent / complainant, which clearly shows that the respondent/ complainant purchased the product purely from the appellant/ opposite party No.1 from their platform and the respondent/ complainant never contacted with the respondent/opposite party No.2, who sold the product and the appellant/opposite party No.1 cannot be held responsible for any deficiency in service. The appellant/opposite party No.1 has also referred the following authorities in support of their contentions:

i) Venkataraman Krishnamurthy and another v/s Lodha Crown Buildmart Pvt. Ltd. (2024 SCC Online SC 182),

ii) Bharti Knitting Company v/s DHL Worldwide Express Courier Division of Airfreight Ltd. (AIR 1996 SC 2508),

iii) Paramananda Tripath v/s Bank of Baroda [3(1992 CPJ 231];

iv) SGS India Limited v/s Dolphin International Limited, Civil Appeal No.5759 of 2009 (SC)

10. On the other hand, the respondent / complainant, appeared in person, contended that the appellant/opposite party No.1 is misleading the Commission by claiming that it is only an intermediary. As per the information available on the internet, the seller Cloutail India Pvt. Ltd. was a joint venture between the appellant/opposite party No.1 and respondent/opposite party No.2. It is further argued that after complaining about the size of the TV, the appellant/opposite party No.1 modified its website by adding the photograph of TV screen informing that 43 inches is the diagonal. The representative of the appellant/opposite party No.1 is confessing that the reason for not returning the TV is that, the moment the TV was switch on it's price started depreciating and being a High End Product, the appellant/opposite party No.1 will make a loss if it takes the TV back and sells it as a re-furbished product. It is submitted that as per the evidence, the TV was switched on by SONY Installation team working in co-ordination with the appellant/opposite party No.1. He further argued that it has nowhere mentioned that whether the display size of the TV as 43" is to be measured horizontally or diagonally. The terms and conditions for non-return of the product certainly amount to an unfair contract. The respondent/complainant put a note under his signatures on the delivery sheet of the delivery courier that the free gift has not been delivered along with the TV, which has also not been produced by the appellant/opposite party No.1. It is prayed to dismiss the appeal of the appellant/opposite party No.1 and upheld the order of the District Commission as the order passed by the District Commission is a well reasoned order.

11. Admittedly, the respondent/complainant ordered a 43 inch Sony Bravia TV from the website of the appellant/ opposite party No.1 by making the online payment of Rs.64,999/-. The invoice issued by the appellant/opposite party No.1 was received by the respondent/complainant on 02.10.2019, vide Ex.C-1, wherein it has been specifically mentioned about the Oakter Smart Home Kit Offer. It is also not disputed that the appellant/opposite party No.1 has the 10 day return policy in an unlikely event of damaged, defective or different/wrong item delivered to you. It is an admitted fact that the item Oakter Smart Home Kit was not delivered to the respondent/ complainant along with the TV.

12. The appellant/opposite party No.1 raised the issue that the respondent/complainant made an order of 43" Sony Bravia TV by using the website of the appellant/opposite party No.1 but the transaction of sale was executed by and between the respondent/ complainant and respondent/opposite party No.2 and this issue need to be discussed elaborately by producing lengthy evidence. However, the contention as raised by the appellant/opposite party No.1 is not relevant to be discussed at this stage because the consumer complaint is filed under the Consumer Protection Act and as per the Act if a person who buys any goods or avail the services from a dealer or shopkeeper can file the consumer complaint. In this case also, the respondent/complainant purchased a SONY Bravia TV from the website of appellant/opposite party No.1 which was supplied by respondent/ opposite party No.2. The only point which is to be determined by the Consumer Fora is qua the deficiency committed or not by the opposite parties. Therefore, the contention of the appellant/opposite party No.1 that the Commission has no jurisdiction to entertain the complaint is

hereby rejected.

13. The other controversy to be settled that the respondent/ complainant ordered for 43" Sony Bravia TV but when he measured, it comes to 38" and has alleged that this mischief is played by the opposite parties upon him to sell their product of less quality on higher price. To rebut the argument of the respondent/ complainant, the appellant/opposite party No.1 alleged that TVs are always measured diagonally and they are not measured horizontally or vertically and this is also displayed separately under the head 'Product Information' but the perusal of the file reveals that this information is nowhere disclosed by them anywhere on their website while the respondent/complainant purchased the product, in question. However, after receiving the legal notice of the respondent/complainant they updated the website by mentioning the size as diagonal. Even from the perusal of the transcription produced on file itself shows the appellant/opposite party No.1 were not sure about this fact to put the note on public platform or not and that is why they subsequently clarified this point that TVs are to be measured diagonally. However, at the time of purchase of the TV, in question, the respondent/complainant was not made aware of this fact of measurement and the contention of the respondent/complainant appears to be reasoned that he has not been supplied the proper item of his order and his argument on this fact is quite sustainable.

14. Now, the other issue agitated by the appellant/opposite party No.1 that the claim of the respondent/complainant that he has not received the free OAKTER Smart Home Kit under the scheme as offered by the appellant/opposite party No.1 on their website is not correct and is not supported with any authenticated document. However, on the other side, the respondent/complainant in support of his contention has already placed on record the invoice, Ex.C-1 issued by the appellant/opposite party No.1, wherein it has been specifically mentioned that the SONY Bravia 108 cm (43 inches) 4K UHD Certified Android LED TV KD-43X8500F (Black) (2018 model) I with Oakter Smart Home Kit Offer I Bo7DNSRPWR (Bo7DNSRPWR), which clearly proves that the TV, in question, was to be delivered along with OAKTER Smart Home Kit with free of cost and the contention of the appellant/opposite party No.1 that the respondent/complainant has not ticked the choice for OAKTER Smart Home Kit while purchasing the TV, in question, is not proved. Moreover, the respondent/complainant has also specifically mentioned in their complaint that he made remarks on the receipt that he has not received the OAKTER Smart Home Kit under the scheme along with the TV, in question. This contention of the respondent/ complainant has nowhere rebutted by the appellant/ opposite party No.1, neither in their written reply nor during the arguments. It has further been proved from the communication of the respondent/ complainant to the executive on customer care helpline that he was not supplied the free product offered under the scheme, which itself proves that he was entitled to get the product under the scheme free of cost.

15. Since the respondent/complainant purchase the TV, in question, from the online portal of the appellant/opposite party No.1 i.e. Amazon Seller Services Private Limited and he was registered with the said Company and the product was delivered to the respondent/complainant along with the invoice, issued by the appellant/opposite party No.1 then the appellant/opposite party No.1 cannot wriggle out from their responsibility by alleging that it was just an intermediary between the purchaser and seller. Even the amount has been credited to the account of the amazon and not in the account of the seller i.e. respondent/opposite party No.2 directly.

16. The appellant/opposite party No.1 has also referred to various authorities in support of their contentions, however, perusal of the same shows that the facts of the case, mentioned in the authorities, are quite different and are not supported to the present case.

17. We rely upon the judgment of the Hon'ble National Commission passed in the case titled "Emerging India Real Assets Pvt. Ltd. & Anr. Vs. Kamer Chand & Anr." in Revision Petition No.765 of 2016 decided on 30.03.2016 wherein it has been observed that it was the 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.

18. The District Commission while deciding the complaint of the respondent/complainant has rightly observed that the appellant/opposite party misrepresented the respondent/ complainant regarding the product and held deficient.

19. Sequel to the above discussions, we do not find any merit in the appeal of the appellant/opposite party No.1, accordingly the same is hereby dismissed and the order of the District Commission is upheld.

20. The appellant/opposite party No.1 had deposited a sum of Rs.47,200/- (Rs.46,913+287) at the time of filing of the appeal. This sum, along with interest accrued thereon, if any, shall be remitted by the Registry to the District Commission, after the expiry of 45 days of the sending of certified copy of the order to them. The concerned party may approach the District Commission for the release of the above amount to the extent of his/its entitlement and the District Commission may pass the appropriate order in this regard, in accordance with law.

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

(HARINDERPAL SINGH MAHAL) PRESIDING JUDICIAL MEMBER (VISHAV KANT GARG)
MEMBER August 14th ,2024 parmod