

Amazon Seller Services Private Limited vs Dinesh on 16 February, 2018

Cause Title/Judgement-Entry

STATE CONSUMER DISPUTES REDRESSAL

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

U.T., CHANDIGARH

Appeal No.

:

21 of 2018

Date of Institution

:

12.02.2018

Date of Decision

:

16.02.2018

Amazon Seller Services Private Limited, Registered office at Brigade Gateway, 8th floor

V e r s u s

Dinesh S/o Sh. Deep Ram, resident of H.No.125, Village Dadumajra, Chandigarh.
Panasonic India Pvt. Ltd., No.88, 6th Floor, Spic Building Annexe, Mout Road, G
Shree Govind Electronics Pvt. Ltd., Ground Floor, R-4, Transport Nagar, Jaipur-
Shri Ganesh Mobile Solutions, Shop No.9/1, Maheshpur, Sector 21, Near Shiv Man

...Respon

Appeal under Section 15 of the Consumer Protection Act, 1986 against order dated 08

Argued by: Mr.Vishall Khattar, Advocate for the appellant.

BEFORE: JUSTICE JASBIR SINGH (RETD.), PRESIDENT.

MRS. PADMA PANDEY, MEMBER PER JUSTICE JASBIR SINGH (RETD.),
PRESIDENT Appellant/Opposite Party No.1 has filed this appeal against order dated 08.12.2017 passed by the District Consumer Disputes Redressal Forum-I, U.T., Chandigarh (in short 'the Forum' only), ordering refund of invoice value of the mobile handset alongwith compensation and litigation expenses.

2. As per facts on record, respondent No.1/complainant booked a mobile phone set through internet for an amount of Rs.10418/-. Thereafter, the product was delivered to the complainant. When it started giving trouble in operating, the matter was taken up with the appellant/OP No.1 within the prescribed period of 10 days and request was made to replace the mobile handset. It was so done vide invoice dated 8.5.2016. In the month of September, 2016, the mobile handset again started giving problem of networking. The complainant approached service centre/OP No.3. A job sheet was prepared on 14.9.2016. The mobile handset was returned after a month by rectifying the problem. However, the mobile handset again stopped working. The complainant again went to respondent No.4/OP No.4 on 28.10.2016 and then on 17.11.2016. The complainant received an email on 7.9.2016 from OP No.4 stating that his mobile set was ready. The complainant went to the office of OP No.4 and when checked, the mobile handset was still found not working properly. He refused to collect it. The mobile handset was neither repaired, nor replaced. By not doing so, as per the complainant, the OPs have indulged into unfair trade practice and also were deficient in rendering service.

3. Upon notice, Opposite Parties No.2 & 4 went ex parte. Appellant/ OP No.1 filed reply. Averments made in the complaint were denied and controverted. It was stated that as per the policy, after 10 days of purchase, the product cannot be replaced. It was also so informed to the complainant. In case, complaint is made within 10 days, the product is replaced, or in the alternative, if it is out of stock, its price is refunded. The handset was working properly for 5 months. Fault, if any, lies on other OPs/respondents in not repairing the handset to the satisfaction of the complainant.

So far as OP NO.3/respondent No.3 is concerned, its name was deleted from the arrays of OPs on 8.5.2016, on the basis of statement made by the complainant before the Forum.

4. Both the parties led evidence. The Forum, on analysis of pleadings of the parties, evidence on record, and arguments addressed, allowed the complaint granting following relief to respondent No.1/complainant ;

To immediately refund the invoice value of the mobile handset i.e. Rs.10,418/- to the complainant;

To pay Rs.5,000/- to the complainant as compensation for mental agony and harassment caused to him;

To pay to the complainant Rs.5,000/- as costs of litigation.

When granting above relief, it was observed by the Forum as under ;

" Perusal of the various job sheets reveal that the complainant suffered due to the supply of a sub-standard product. OP-1 through its written statement is taking dual stand. On the one hand, it is showing its goodwill by giving support to the complainant by getting the handset replaced from the seller and, on the other, contrary to the same, it is saying that the product was in the stock of the seller, therefore, refund was not the option to be given to the complainant. We are of the opinion that the complainant invested his hard earned money to facilitate himself and not to run to the service centre, time and again, for repair and later on to this Forum for the redressal of his grievance. In the present case, the handset was admittedly replaced by the OPs, but, thereafter also the complainant was facing problems in the replaced handset. Hence, the act of OPs in supplying a substandard product to the complainant and later on non-repairing the same to the satisfaction of the complainant, that too within the warranty period, proves deficiency in service and unfair trade practice on their part which certainly has caused mental and physical harassment to the complainant."

5. We are of the opinion that the view expressed by the Forum is perfectly justified. In a similar case titled as Amazon Seller Services Private Limited Vs Gopal Krishan & others, Appeal No.27 of 2017 decided on 17.2.2017, wherein a complaint was filed against this very appellant & others alleging defect in the mobile handset purchased. The Forum allowed the complaint. In appeal filed by the appellant, observations made by the Forum were approved by this Commission, by observing as under ;

" Contention of the appellant that it cannot be burdened with liability, was rejected by the Forum, by noting that the mobile handset was purchased through the appellant, in online transaction. 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. "

6.. Contention was raised by the Counsel for the appellant that the appellant was only an intermediary and had not received any benefit from the complainant, as such, it could not be held

liable. Similar contention was rejected by this Commission in the case Amazon Seller Services Pvt. Ltd Vs Gopal Krishan & Ors (supra) by observing as under;

"Contention of Counsel for the appellant that as per terms and conditions of sale, no liability can be fastened upon the appellant, is liable to be rejected. 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."

7. Otherwise also, liability imposed vide order under challenge is joint and several so far as OP No.1/appellant and respondents No.2 & 4 are concerned. On electronic media, appellant is being projected virtually as seller. Individuals are invited to purchase goods/products. Many incentives are being offered on such purchases. It is not the case of the appellant that it is not charging anything from those who are putting their product for sale on its portal. Through advertisement also, which are appearing on the screen, when products are purchased, appellant may be earning crores of rupees. It is expected that out of the amount paid by the consumers in purchasing the products, some portion might be shared by the appellant. Counsel for the appellant failed to rebut the above expression at the time of arguments. No case is made out to interfere in the order under challenge.

8. For the reasons recorded above, the appeal, being devoid of merit, must fail, and the same is dismissed, at the preliminary stage, with no order as to costs. The order of the District Forum is upheld.

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

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

Pronounced.

16.02.2018

[HON'BLE MR. JUSTICE Jasbir Singh]

PRESIDENT [DEV RAJ] MEMBER [PADMA PANDEY] MEMBER