

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION, SONEPAT.**

Complaint No.240 of 2020

Instituted on: 18.08.2020

Date of order 09.11.2023

Sonu S/o Sh. Umesh Paswan R/o Halwai Hatta, Near Bada Jain Mandir,
Sonapat-131001.

.....Complainant.

VERSUS

1. Tata Cliq, Head Office: Tata Sons, Bombay House, 24, Homi Mody Street, Mumbai-400001 through its General Manager. E-mail hello@tatacliq.com
2. Apple India Pvt. Ltd., 19th Floor, Concord Tower-C, UB City, No. 24, Vital Malya Road, Benglore-560001, India through its General Manager/ Administrator.

.....Respondents.

COMPLAINT U/s 35 OF CONSUMER PROTECTION ACT

BEFORE- VIJAY SINGHPRESIDENT.
Dr.SHYAM LAL.....MEMBER.
Ms. DEEPA JAIN.....MEMBER.

Argued by: Sh. Bijender Singh, Adv. for complainant.
Sh. S.K.Kaushik, Adv. for OP No. 1.
Sh. Sourabh Chugh, Adv. for OP No. 2.

ORDER



Sonu (hereinafter referred to as “the complainant”) has filed the present complaint under the Consumer Protection Act, 2019 against the respondents (hereinafter referred to as “OPs”) with the averments that on 08.02.2019 he had purchased a mobile bearing IMEI No.357227092950698 Apple iphone XS of 256 GB colour Gold for a sum of Rs.1,11,356/- from OP No. 1 online from Sonapat vide Invoice No. TC/18-19/3257 order No. 190208-004-026737 with prepaid payment mode. The said mobile was manufactured by OP No. 2 and same is delivered by OP No. 1 to complainant on 10.02.2019. It is further averred by the complainant that on the same day when he opened the box of the above said phone and found that the said mobile phone was in damaged condition. He sent the mail to OP No. 1 on the same day regarding the receiving of damaged mobile phone according to return policy. The OP No. 1 approved the request of the complainant on dated 22.02.2019 and OP had picked up the alleged phone through courier vide AWE No.1125943972820 but till the filing of the present complaint OP neither return/replace the said phone nor paid the cost of the said mobile phone to the complainant despite his repeated requests which amounts to deficiency in service on the part of OPs.



2. So, the complainant has filed the present complaint before this Commission with the prayer to direct the OPs to pay the cost of phone i.e. Rs.1,11,356/- alongwith interest to the complainant. It is further prayed that OP also may kindly be directed to pay Rs.50,000/- as harassment and Rs.11,000/- as litigation expensed to the complainant.
3. OPs appeared and filed their separate independent written statement.
4. OP no.1 in its written statement has submitted that actual sale takes place between the Seller and the buyer and that TATA CLIQ is classified as an "Intermediary" as per the provisions of the Information Technology Act, 2000. It is further averred that return request was rejected on April 15, 2019, with the reason reflected in the system as display/screen broken and quality checks failing with the message product mismatch(customer issue)-different product returned than requested. OP no.1 has denied any deficiency in service on their part and prayed for the dismissal of the present complaint.
5. OP no.2 in its written statement has submitted that there is no record to show that the said device was damaged at the time of delivery. They have no knowledge about the interaction between the complainant and OP

Handwritten signature

No. 1 regarding the allegedly damaged mobile. OP No. 1 is directly responsible to explain how and why it collected the allegedly damaged mobile on 22.02.2019. It is further submitted that a perusal of the warranty clearly states that OOW products are not covered under warranty. The product produced by the complainant is an OOW product, which he claims to be supplied to him. The OP No. 2 never supplied OOW products and the complainant is not liable to received and replacement of repayment warranty. There is no relationship between the OP No. 2 and the other opposite parties in this transaction. They are not aware about when and how the said device was allegedly sold in a damaged condition by OP No. 1 and it is not privy to the said transaction. The answering OP does not supply damaged products either directly or indirectly. It has not sold the said allegedly damaged iPhone to the complainant and it was sold directly by the OP No. 1, who have also collected it after admitting his complaint. OP no.2 has denied any deficiency in service on their part and prayed for the dismissal of the present complaint.

6. In evidence, learned counsel for the complainant has filed affidavit Ex.CW1/A and tendered the documents Annexure C1 Tax Invoice, Annexure C2 and C3 Mails received from Ops, Annexure C4 photograph of crack on the screen, Annexure C5 photograph of the specifications display on

the box of the phone and Annexure C6 photocopy of the tax invoice and closed his evidence.

On the other hand, learned counsel for OP No.1 has filed affidavit Ex.RW1/A on behalf of OP no.1 and tendered the document Annexure R3 i.e. Quality Control Document and closed his evidence.

Learned counsel for OP No. 2 has filed affidavit Ex.RW2/A on behalf of OP no.2 and tendered the documents Annexure R1 i.e. Instructions regarding Warranty & Annexure-R2 i.e. Job Sheet and closed his evidence.

7. We have heard the arguments advanced by learned counsel for both the parties and with their able assistance have gone through the case file carefully and minutely. It is not disputed that on 08.02.2019, complainant purchased mobile phone bearing IMEI No. 357227092950698 Apple Iphone XS of 256 GB colour Gold vide invoice Annexure C1 for a sum of Rs.1,11,356/- from OP No. 1 through online. The tax invoice Code is TC/18-19/3257. The payment was made through online and the product was delivered at the door of the complainant accordingly. The grievances of the complainant is that when the aforesaid mobile was delivered by OP No. 1 to complainant on 10.02.2019 and when he opened the box, he found the mobile phone in damaged condition. Complaint was made to OP No. 1 through mail

and thereafter OP picked up the alleged phone through courier Delhivery vide AWE No. 1125943972820 but despite repeated requests through email and telephonically neither the product was returned to complainant after repair or otherwise nor the sale price of the same was returned to the complainant.

8. Whereas the OP no. 1 has taken a specific stand that actual sale takes place between the Seller i.e. OP No. 2 and the buyer i.e. complainant whereas OP No. 1 is simply an "Intermediary", that complainant has filed this complaint with suppressing of the facts in order to raise a premeditated, false and frivolous complaint to harass the OP. As, the complainant has not suffer from any physical or mental loss due to wrongful act of OP. Thus complaint is liable to be dismissed. OP no. 1 has also taken a specific plea that though on receipt of complaint of the complainant, the product picked from his house but the return request was rejected on 15.04.2019 because the product so returned by the complainant was different from the one which was purchased by him and thus the present complaint has been filed with a malafide and wrongful intent.

9. OP No. 2 has also taken a similar pleas stating that complaint has filed just to mislead to Hon'ble Commission with dishonest intention and to gain undue benefits and unjust enrichment. It is also pleaded by the OP No. 2

that only those devices which covered within warranty policy are repairable or replaced. Provided they are not damaged or out of warranty products, but cannot be replaced merely at the discretion of the complainant. OP has also disputed the complaint on the basis of plea as averred in their respective written statements but the only controversy arising between the parties is whether the complainant had sent a different product than the one he had received or delivered at his house by OP No. 1 on 10.02.2019. Perusal of the invoice Annexure C-1 or invoice Code TC/18-19/3257 goes to show that the particular of the product was Apple – Iphone XS-256-GB-Gold IMEI No.:- 357227092950698. Perusal of the Annexure C-4 which is a photograph of the delivered product goes to show that there was a hairline crack on the screen and Annexure C-2 & Annexure C-3 shows that having received the complaint regarding the damaged product, OP respond stating to the complainant that his return has been approved and product will be picked up within 3 working days, but the tags and labels should be intact, its manuals, original packaging should be returned as well. Annexure C-2 further reveals that the refund amount was to be credited to the Bank Account of the complainant within 3-4 working days after taking 48 hours to process the refund once the product has cleared a quality check. Further Annexure C-3 mail of OP No. 1 dated

07.05.2019 reveals that the product was picked up through Courier Delivery with AWB Number-1125943972820. It was made clear that once the product reaches them(OPs), quality check will be conducted to make sure it meets our returns standards. But thereafter the claim of the complainant was rejected mentioning that the product mismatch because it was different product than that of delivered by the Ops. But the OP have not mentioned the IMEI number of the product picked from the house of the complainant via Courier Delivery. IMEI is a unique number of the mobile phone to identify the same but none of the OP mentioned the IMEI number of the product received by them through courier Delivery. Though, it is mentioned in the mail Annexure C-3 by OP that they have picked up Apple Iphone XS-256-GB-Gold IMEI No.:-357227092950698 against order no. 190208-004-026737. During the arguments none of the Counsel of the OP have able to satisfied us how in absence of IMEI number, it can be said that the product received by OP was mismatch or was not the same which was delivered to the complainant vide aforesaid Invoice Annexure C-1. No doubt OP No. 1 is intermediary to supply the product or to delivered the product after lifting the same from OP No. 2 who is manufacturer. It is not in dispute that only those device which covers within warranty policy are to be replaced or repaired if the same are not

damaged or not out of warranty but here the question is not that the product is not covered within warranty. But question is whether the complainant had send a mismatch product and thus the request of the complainant was rejected. The burden was upon OPs to prove that they had received mismatch product from complainant. This fact could have been proved by producing cogent evidence but OP have miserably failed to prove the same by leading such evidence. Mere bald statement that complainant had send mismatch product is not helpful for them. OP could have proved the fact that they have received mismatch product by mentioning IMEI Number of the return product but the same has been withheld by them and no reasonable explanation for withholding the IMEI number has been put forward. Even during argument counsel for the OP have failed to explain why the IMEI Number of the damaged product is not mentioned in the email. The identity of the mobile, whether complainant sent some other mobile than the one which has been delivered at his address by OP No. 1, was to be established only with the IMEI Number. As no explanation has been given for withholding the said number of mobile, thus we presumed that the same has been withheld by OP intentionally and deliberately.

Wan

10. The product sold by OP to complainant against the amount paid i.e. Rs.1,11,356/-, found damaged and in view of the complaint regarding sending the damaged product, the same was picked up by OP for replacement. Thus it is clear that complainant is a consumer of OP and he had availed the serviced of OP to rectify the defect or make the product free from any complaint but the same was not fulfilled by OP which amounts to deficiency in service as well as malpractice on the part of the OP, causes mental agony, humiliation, financial loss to the complainant for which the complainant deserves compensation from the OP.

11. Since OP No. 1 is an online sale agency and OP No. 2 is a manufacturer, so it is quite possible that the product purchased by the complainant might have been damaged before delivery of the product by OP No. 1.

12. In view of the aforesaid discussion, we find force in the present complaint and thus, the same stands allowed with the direction to OPs as under:-

- a) Make the payment of the cost of the mobile phone i.e. Rs.1,11,356/- with interest at the rate of 7% per annum from the date of delivery i.e. 10.02.2019 till the actual payment.

- b) To pay a sum of Rs.10,000/- as compensation, causing mental agony, harassment, financial loss etc.
- c) To make the payment of Rs.5500/- as litigation expenses to the complainant.

OPs are directed to make the compliance of this order within 45 days from the date of receipt of certified copy of this order, failing which, the amount of Rs.1,11,356/- shall fetch interest at the rate of 10% per annum with the same conditons.

13. Application pending, if any, stands disposed off in terms of the aforesaid order.

14. Certified copy of this order be provided to both the parties free of cost forthwith.

15. File be consigned to the record-room after due compliance.

SD
Member
D.C.D.R.C
Sonapat

SD
Member
D.C.D.R.C
Sonapat

SD
(Vijay Singh)
President
D.C.D.R.C Sonapat

Dated:09.11.2025