

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-II
Udyog Sadan, C-22 & 23, Qutub Institutional Area
(Behind Qutub Hotel), New Delhi- 110016

Case No.49/2024

Utkarsh Srivastava

A-32, Ground Floor, Balbir Saxena Marg,
Gulmohar Park, New Delhi-110049

....Complainant

Versus

Flipkart Internet Private Limited

(Building Alyassa, Begonia and Glove)

Embassy Tech Village

Outer Ring Road, Devarabeesanahalli Village
Bengaluru-560103

....Opposite Party

Date of Institution : 22.02.2024

Date of Order : 10.07.2025

Coram:

Ms. Monika A Srivastava, President

Ms. Kiran Kaushal, Member

Present: Complainant in person.
None for OP.

ORDER

President : Ms. Monika A Srivastava

Complainant has filed the present complaint seeking interim order of Rs.2.5 lakhs towards compensation for causing mental agony, harassment, deficiency of services, unfair trade practice and litigation expense of Rs.40,000/-.

1. It is stated that he placed an order of 'sketchers go walk this motley walking shoes'; on 25.11.2023 in black colour size 9 which was shown available on the website of the OP. It is stated that the seller i.e. Slope e-commerce listed on the Flipkart accepted the order and was to be delivered at his residence in Gulmohar Park (annexure A-1).



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2. It is stated that further on 26.11.23 the complainant received a message from OP that the order would be delivered on 28.11.2023 instead of 27.11.2023 as there was some logistical constraint annexure (A-2).
3. It is stated that on 27.11.2023 complainant received another message stating that the order has been cancelled and no reason were provided annexure (A-3). It is further stated that the complainant called the customer care on 28.11.2023 trying to find out the issue of unilateral cancellation of the order (Annexure-4).
4. It is further stated that customer care representative admitted that the order was unilaterally cancelled though at the time when the order was placed the website showed it being 'available' and 'in stock' and the complainant even received a message from OP that the order was processed by the seller after a few hours of acceptance of the order (Annexure A-5 & A-6).
5. It is further stated that the complainant informed the customer care representative that it is clear deficiency of service as has been held in many cases. Complainant wanted to know the name of the Manager but the representative refused to share the details of his full name or the details of the Manager or the Grievance officer. It is the case of the complainant that OP has violated Rule 5(3) and Rule 5(5) of the Consumer Protection (e-Commerce Rules), 2020 by failing to provide information regarding any Grievance Officer or seller details.
6. It is further stated that in the next morning complainant again called the customer care to enquire about the Grievance Officer since the number of Grievance Officer provided on the website was unreachable even after multiple attempts. Complainant was told to call after sometime as the Grievance Officer was not available (A-6).
7. Complainant sent an email informing the OP of his intention to take legal action against them on account of their deficiency in service annexure A-8. At 2.40 PM on the same day complainant received a call from the Flipkart grievance team who apologised to the complainant and offered Rs.300/- as token amount but the complainant declined it as inadequate. Complainant informed the official that DCDRC Chandigarh had awarded Rs.5500/- damages in identical factual matrix and the Hyderabad DCDRC awarded Rs.27,000/-.



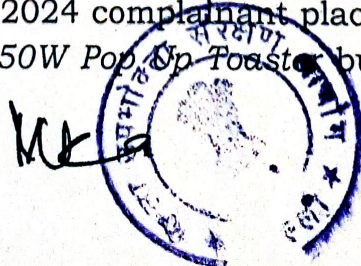
8. It is stated that after listening to that conversation the OP called again and informed the complainant that they cannot offer any more money and in case complainant wished to take any action he may do so. Complainant is distressed, disturbed and agonised by the complete disregard of the rules 5(3) and 5(5) of the Consumer Protection (e Commerce Rules) 2020. Complainant then sent a legal notice dated 20.12.2023 which was received by OP on 26.12.2023.

9. On 21.12.2023 complainant placed an order of 12 paints each costing Rs.300/- which got cancelled by the seller namely 'Inorbit' listed on OPs website after a few hours of placing the order even though the items were in stock claiming that the quantity acceded consumption limit even though no quantity restriction was mentioned on the website. Complainant again called the customer care and after his 5th time was able to place a successful order only for five items.

10. It is further stated that on 10.01.2024 complainant placed an order for "VAS collection Home Wooden Wall décor Jali Panel" which was being sold by Dealopedia which was processed on 13.01.2024 and was to be delivered on the same day but at 01.54 AM on 14.01.2024 order was cancelled by OP stating "tried, could not be located". Complainant raised complaint with the customer care and was asked to place fresh order and the grievance was marked as 'resolved' on the app. During the conversation with the customer care agent, it was revealed that the seller had cancelled the order due to unforeseen reasons and courier delivery unable to locate the address and also apologised for the unilateral cancellation. Complainant thereafter placed a fresh order on 14.01.2024, this too was cancelled on the next day on 15.01.2024 even though the courier booked the package on 16.01.2024 from the warehouse of OP (Annexure 23).

11. Another complaint relating this was raised. It is stated that the agent again admitted that the order was cancelled because of unforeseen reason (annexure-24). It is further stated that the complainant's brother who is staying in the same house ordered the exact thing two day ago from the same seller on the OP's website which was delivered at the address without any hassle.

12. It is stated that on 18.02.2024 complainant placed an order for bread toaster (Pigeon) 16075 750W Pop Up Toaster but the same was also



not delivered and the order was cancelled post-midnight after stating that it was out for delivery on 22.02.2024.

13. Complainant again placed an order on 29.02.2024 on "Zebronics Pro Series Z Intel Core I 7 12 Gen. 1255 U" Laptop of blue colour that had the feature of open box delivery (annexure 29) wherein the delivery agent opens the box and shows that the product matches the description for the reason that in various instances people have ordered I-phone but received soap bars (annexure-30).
14. It is further stated that on 02.03.2024 the agent came to the door step with the laptop. Complainant asked him for physical inspection to see whether one can switch on the laptop to see whether it was properly working but the agent informed that only physical inspection was possible. The complainant told him that he would like to confirm it from the customer care. Complainant called the customer care who clarified that only physical inspection is covered so complainant agreed to pay for the laptop however by this time delivery agent had cancelled the order so complainant objected to it and asked the name of the delivery agent who refuse to identify himself. It is stated by the complainant that customer care executive was on line and he could hear the entire conversation but once the complainant finished the call, the delivery agent simply cancelled the order and told the complainant to place a fresh order. The call recording with the customer care executive where he was a witness to the chat between the complainant and the delivery agent is annexure-32.
15. The customer care representative stated that he will place fresh order of the same product and that that would be also an open box delivery but when the product came on 04.03.2024 the delivery agent refused open box delivery (annexure 33) despite the complainant informing him about the assurances received in the past. (Annexure 29).
16. It is further stated that complaint was raised with OP but no redressal was forthcoming and the issue of the complainant was marked as 'resolved'. It is further stated that complainant again called the customer care executive who reiterated that she would ensure open box delivery as the laptop was delivered on that day but the delivery agent refused to show up. On 09.03.2024 the complainant was informed that in case he placed fresh order he would not have the feature of open box delivery as the new website page of OP does not have the feature of open box delivery (annexure-35).



17. It was further informed that the replacement order did not have the feature of open box delivery therefore the delivery person was right in refusing the complainant for open box delivery. Complainant informed the representative that it was not a fresh order and the product had to be ordered again as the delivery agent has misbehaved and refused to hand over the product. It is further stated that though the laptop was ordered on 29.02.2024 and that it was shown as 'out for delivery' it was not delivered to the complainant and the complainant received a message at his phone that his order is cancelled because OP did not want to make the complainant wait in longer (annexure-36).

18. It is further stated by the complainant that OP has indulged in deficiency in service for unilaterally cancellation for over 15 orders, withholding of seller details, manager details, Grievance Officer's details and in failing to address the concerns of the complainant. It is stated that OP is indulging in vindictive cancellation of order as from the same house complainant's brother is placing his order and also receiving the product.

19. In its reply, OP has stated that the complainant has suppressed true and material facts. OP provides an online marketplace platform/technology and/or other mechanism/services to the sellers and buyers of products to facilitate the transactions, electronic commerce for various goods, by and between respective buyers and sellers and enables them to deal in various categories of goods including but not limited to mobiles, camera, computers, watches, clothes, footwear, healthcare and person products, home appliances, electronics, etc.

20. It is stated that the platform of the OP is an e-platform which acts as an 'intermediary' to facilitate sale transactions between independent third party sellers and independent end customers. It is stated that OP falls within the definition of an 'intermediary' under section 2(1)(w) of the Information Technology Act, 2000 which is reproduced as under:-

"intermediary", with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record or provides any



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service with respect to that record and includes telecom service providers, network service providers, internet service providers, webhosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes;" and therefore protected by the provision of Section 79 of IT Act 2000.

21. It is further stated that in the instant complaint it can be evidenced from the invoice that the actual seller of the product is a third party seller who has not been impleaded hence the request for replacement/refund cannot be fulfilled by the OP.

22. It is further stated that any kind of assurance whether in terms of warranty on the product, price, discounts, promotion offers, after sale service are offered and provided by the seller or manufacturer of the products and not by OP. It is further stated by OP that the complainant does not fall under the category of consumer as the OP is neither a trade nor a service provider and nor there is any privity of contract between the complainant and the OP and therefore no relief can be granted against the OP. It is stated that complainant has purchased the product from one of the sellers listed on its platform which can also be evidence from the copy of the seller tax invoice which clearly states that the order is 'ordered through Flipkart'. It is stated that OP is not involved in the entire transaction executed between the seller and the complainant and there is no privity of contract between the complainant and the OP.

23. It is further stated that as a user of the platform complainant is bound by the terms which clearly states that the contract of sale is a bipartite contract between the buyer and seller and OP is not a party today. "All contractual/commercial terms are offered by and agreed to between the buyer and the seller alone. The contractual/commercial terms include without limitation price, shipping cost, payment method, payment terms, date, period and mode of delivery, warranties related to products and services and after sale services related to products and services. Flipkart does not have any control or does not determine or advise or in any way involve itself in the offering or acceptance of such contractual/commercial terms between the buyer and the seller.

24. It is stated that the complaint Transpires that the product order allegedly got cancelled and in such circumstances the grievance of the complainant should have been only against the seller of the product



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who is not impleaded as a party. It is stated that product delivery and replacement/refund is provided by the seller who is independent third party seller and in OP. It is stated that OP That the complainant approach to op the matter was escalated to the concerned authority and according to the information received by the seller and the Courier service provider, the complainant was informed that the order was cancelled by the seller due to unforeseen reason. Since it was a cash on delivery order hence no amount was paid by him and no loss was suffered by him. Further without accepting any liability add a good as a good gesture the seller was also ready to give him Rs.300 but the complainant refused to take the offer.

25. It is further stated that this information was transmitted to the complainant by the OP but the complainant has concealed is information only to defame the OP and to extort money in illegal manner. It is stated that complainant is trying to mislead and manipulate the Commission. It is reiterated that seller manufacturer Courier service provider and the OP are separate and distinct entities and the op has no role in other's work. It is the responsibility of the seller to have the product delivered. In this regard OP has relied on the judgment of the Hon'ble Supreme Court passed on 27.09.2022 in *Moreskar Yadaorao Mahajan Vs. Vyankatesh Sitaram Bhedi*.

26. It is further stated that being an intermediary, OP has assisted the complainant on each and every occasion when the complainant has approached the OP. Reliance is placed on *Sanchayani Saving Investment Vs. State of West Bengal* passed by the Hon'ble Supreme Court.

27. In his rejoinder, complainant has denied the averments made by the OP in their reply. Complainant has reiterated the averments made in the complaint. It is stated that complainant did not place the order directly on seller and since the complainant has used the platform of the OP, complainant is a consumer of OP.

28. Both the parties have filed their evidence affidavits as well as written arguments. This Commission has gone through the entire material on record. It is seen from the material placed on record by the complainant that complainant placed orders on the website of OP which has not been denied by the OP.

29. There is no denial from the side of the OP regarding the allegations made by the complainant however, the only defence which has been



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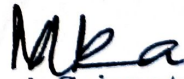
taken up by the OP is that OP is not the seller and therefore not responsible. It is not in dispute that the order of the shoes of the complainant was cancelled unilaterally. It is further seen that many of the orders of the complainant were not delivered and no cogent reason has been provided for the same. It is also seen that the complainant was not provided physical inspection of the laptop ordered by him even though it was an open box delivery and further the order of the laptop of the complainant was cancelled.

This Commission is of the view that OP cannot wash off his hands by merely stating that it is an intermediary and has no role to play in the buying and selling of any product. OP does not deny that the payment were to be made to it and that the orders were placed on the website of the OP. It is seen that users carry out activities on market place of the OP. OP plays an active role in facilitating the sale/purchase. OP also charges from sellers and therefore it is highly unreasonable on the part of the OP to shirk their liability by calling itself intermediary.

This Commission therefore directs the OP to pay a sum of Rs.10,000/- as compensation for the harassment caused to the complainant within three months from the date of pronouncement of this order failing which OP would be liable to pay interest @6% per annum at the said amount. Complainant is not entitled to any other relief.

Copy of this order be given to the parties as per rules. File be consigned to record room. Order be uploaded on the website


(Kiran Kaushal)
Member


(Monika A Srivastava)
President

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