

Before District Consumer Disputes Redressal Commission, Mumbai
Suburban, New Administrative Building, Third floor, Opp. Dr.
Babasaheb Ambedkar Garden, Bandra (East), District Mumbai
Suburban – 400051.

DCDRC/MS/ CC/600/2023

Date of Admission - 04/01/2024

Judgement Dated – 11/11/2024

Taruna Rajput,

C/o. Kamal Sharma, E- 1102,

Lotus Corporate Park, Off. Western Express Highway,

Near Jay Coach, Goregaon (East),

Mumbai – 400063.

..... Complainant

V/s.

1. FLIPKART INDIA PVT. LTD.,

2. PRABHU BALASRINIVASAN (DIRECTOR),

3. YOGESH GUPTA (DIRECTOR),

4. SWATI BISWAS (DIRECTOR),

Regd. Address – Buildings Alyssa,

Begonia & Clever, Embassy Tech Village,

Outer Ring Road, Devarabeesanahalli Village,

BENGALURU – 560103. (Karnataka)

5. DEEPAK KASHYAP,

Shop plot no. 1, Block no. 1,

Pandav Nagar, Pratap Ganj,

Laxmi Nagar, East Delhi,

New Delhi – 110092.

..... Opposite Parties

Before : - Hon'ble Smt. Samindara R. Surve , President,

Hon'ble Shri. Sameer S. Kamble, Member

For Complainant - Adv. Jajodia. Adv. Dubey

Opposite Party No. 1 to 5 – Ex-parte

JUDGMENT

PER : Hon. Smt. Samindara R. Surve, President

1. The present Complaint has been filed by the Complainant against the Opposite Party under section 35 of the Consumer Protection Act, 2019, inter alia seeking Compensation and cost on account of deficiency in service and unfair trade practice on part of the Opposite Parties.

2. The brief facts of the present case are as under;

The case of the Complainant is that on 9th October, 2023, she purchased a food product from the Opposite Party no.1, an E- business retail market of whom the Opposite Party nos. 2 to 4 are the directors. The Opposite Party no. 5 is the seller of the said food product. On 9th October, 2023, the Complainant placed 5 orders, totalling to 13 small plastic containers of Herbalife Nutrition of Fresh Energy Drink Mix (lemon flavoured) by paying Rs.4,641/-. The Complainant is claiming to be the regular customer of the Opposite Party no.5. The said food product was delivered to her on 14th October, 2023. On or around 21st October, 2023, the Complainant opened the said containers and found that the colour and texture of the said food product was not normal. The Complainant also noticed that no QR code was mentioned on the label of the said products. According to the Complainant, it was a fake duplicate product, which was delivered to her. The Complainant therefore sought to return the said product to the Opposite Party, however the Opposite Party no.1 rejected the request of the Complainant on the ground that the product has no return policy. Thereafter, the Complainant took photographs and exchanged SMS with the Opposite Party no.1 and non-compliance of the request thereof by the Opposite Parties, filed the present Complaint against the Opposite Parties.

3. On admission of the Complaint and insurance of the notice by this Commission to the Opposite Parties, the Opposite Parties neither appeared nor filed their Written Statement within the stipulated time.

Therefore, this Commission by its order dated 27th May, 2024 directed the Complaint to be proceeded ex-parte hearing against the Opposite Parties. The Complainant filed her affidavit of evidence and written argument to treat it as her oral arguments. This commission has considered all the above and framed the following points for determination viz.

Sr. No.	Points	Answer
1.	Whether the Complainant is a Consumer ?	Yes
2.	Whether the Opposite Parties are guilty of and committed deficiency in service and adopted unfair trade practice?	Yes
3.	Whether the Complainant is entitled for the reliefs as claim in the Complaint ?	Yes partly
4.	What order ?	As per final order

Findings

4. As to the Point number 1 - The Complainant in support of her case of buying the product namely, Herbalife Nutrition Fresh Energy Drink Mix (lemon flavoured) has produced the invoice number FAPZBO2400000475, dated 9th October, 2023 for a sum of Rs.1,071/- ;(2)invoice number FAPZBO2400000322 dated 9th October, 2023 for a sum of Rs.357/-: (3) invoice number FAPZBO2400000473, dated 9th October, 2023 for a sum of Rs.1,071/-; (4)invoice FAPZBO2400000458,dated 9th October, 2023 for a sum of Rs.1,071/-; and a (5)invoice number FAPZBO2400000472, dated 9th October, 2023 for a sum of Rs.1,071/-,which shows that the

Complainant (Tani) has purchased the said food product for the consideration paid by her to the Opposite Party no.5, therefore the relationship of Consumer and the Service provider has been established between the Complainant and the Opposite Party no. 5. As far as placing the order is concerned for the said food product, the Complainant has placed the order for the said product from the E-market place of the Opposite Party no.1, hence there is relation of Consumer and service provider has been established between the Complainant and the Opposite Party no.1. We accordingly answer the point number one in affirmative.

5. As to the point number 2 and 3 - The Complainant has produced the photograph showing the texture of the said food product on the record of this Complaint. There is no denial on part of the Opposite Parties about the said photographs. The Complainant in support of her case has also produced the SMS correspondence exchanged between the Complainant and the Opposite Party no.1, which shows that the Opposite Party no.1 has specifically mentioned that this product has 'no return policy'. The Complainant from the SMS has proved that she sought to return the said product for want of quality, however the same was not accepted by the Opposite Party no.1 on the ground that the said product had no return policy. We therefore observe that not taking back the said product by the Opposite Party nos.1 and 5 on the ground of 'no return policy' amounts to adoption of an unfair trade practice on part of the Opposite Party nos.1 and 5. Since the Opposite Party no. 5 has failed either to replace or paid the value thereof to the Complainant, therefore there is a deficiency service on part of the Opposite Party number 5 is proved. The Opposite Party no.1 being the e- business market place is under obligation to see to that the product that is being sold out from its E market place should be of the good quality. From the SMS exchanged between the parties on record, it appears that the Complainant has sought to reach to the customer care of the Opposite Party number 1 and 5, however she has not been entertained on the ground of no return policy of the said food product. We therefore observe that the Opposite Party number 1 and 5 are responsible for sale of the product, and if the product is sought to be returned by the Complainant for want of the quality issue,

she is entitled to get the amount paid for it from the Opposite Party nos. 1 and 5.

6. As far as filing of the Complaint against the Opposite Party nos.2 to 4, being the directors of the Opposite Party no.1 is concerned, there are no personal allegations are being made except to state that they are the Directors of the Opposite Party no.1, responsible for day to day business of the Opposite Party no.1. The Complainant has not made out and proved any case against the said Opposite parties, hence the Complaint deserves to be dismissed against the Opposite Party nos.2 to 4.

7. As far as relief of the compensation as claimed by the Complainant of Rs.50 lakh towards damages is concerned, the Complainant has not made out any case for the same. The Complainant has also not produced any laboratory test report in support of her case that the said food product had harmful ingredients and/or it was a fake product. Hence, the Complainant is not entitled to get the said relief of compensation as well as other ancillary reliefs as sought. We ordered accordingly.

8. The present Complaint has been filed in English language, therefore this judgement is made in English. The present judgement is passed after discussions and unanimously. We ordered that

ORDER

- (i) The Complaint is allowed partly;
- (ii) It is declared that the Opposite Party nos.1 and 5 are guilty of and committed deficiency in service and adopted unfair trade practice;
- (iii) The Opposite Party 1 and 5 are ordered and directed to refund a sum of Rs.4,641/- to the Complainant along with the interest at the rate of 9% p.a. to the Complainant from 21st October, 2023 till the payment and/or realization within a period of 60 days from the date of receipt of this Order;
- (iv) The Opposite Party nos.1 and 5 are ordered and directed to pay sum of Rs.10,000/- towards cost to the Complainant within a period of 60 days from the date of receipt of this order;

- (v) The Complaint is rejected against the Opposite Party nos.2 to 4;
- (vi) The Certified copy of this order to be sent to the parties free of cost, as per rule.

Date :- 11/11/2024

Place :- Bandra – Mumbai.

Sd/-

(Sameer S. Kamble)

Member

Sd/-

(Samindara R. Surve)

President