

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/292/2019

Date of Admission - 11/09/2019

Judgement Dated – 11/02/2025

V/s.

1. Amazon. In

Through its Director,

2. M/s. Amazon Seller Services Private Limited (ASSPL),

Before : - Hon'ble Smt. Samindara R. Surve , President,
Hon'ble Shri. Sameer S. Kamble, Member

Complainant in person

Opposite Party no. 1 – Ex-parte

Opposite Party no. 2 – Without Written Statement /

Adv. Nadeem M.S. Shaikh

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

1. The present Complaint has been filed by the Complainant against the Opposite Party under the provisions of Consumer Protection Act, 1986 inter alia seeking Compensation on account of deficiency in service and unfair trade practice.

2. The brief facts of the present case are as under;
The Complainant place the order for a 'Motu Patlu Kids Rakhi' on 2nd August, 2019 on the Opposite Party, the online portal by paying Rs.100/- ,the seller being one Dhanashree Rakhi. Originally the Complaint was filed against the entity operating the website. Later on the Complainant amended the Complaint and brought on record the Company M/s. Amazon Seller Services Ltd. (Hereinafter termed as the Opposite Party). The schedule for delivery was fixed between 8th to 13th August, 2019. The Complainant accordingly followed up with the Opposite Party, who confirmed the delivery thereof on 13th August, 2019. As per the tracking report, the said Rakhi was shipped on 25th July, 2019 i.e. before the order was placed by the Complainant. From the website of the Opposite Party, the Complainant came to know that according to the seller, the Rakhi was send by one Poonam Courier, however, the Complainant found that the said Courier company was permanently closed. The Complainant therefore continuously followed up for the said Rakhi with the Opposite Party by sending the emails. The Opposite Party failed and neglected to send Rakhi and deposited Rs.100/- in the bank account of the Complainant on 14th August, 2019. On taking search by the Complainant, she came to know that there are many people who have such nature of complaints against the Opposite Party. The Complainant sent the legal notice and sought compensation and non -compliance of the demand made therein filed the present Complaint.

3. On admission of the present Complaint and issuance of the notice by this Commission to the Opposite Parties, the Opposite Party no.1 did not appear and the Opposite Party no.2 filed its written Statement beyond the stipulated time. This Commission therefore by its

order dated 9th March, 2021 passed 'No written statement' order against it. The Complainant filed her affidavit of evidence and written arguments. The Complainant and the Opposite Party no.2 advanced their 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 Party is guilty of and committed deficiency in service and adopted unfair trade practice? | Yes |
| 3. | Whether the Complainant is entitled for the reliefs as prayed in the Complaint ? | Yes partly |
| 4. | What order ? | As per final order |

Findings

4. As to the point number 1- Admittedly, the Complainant has placed the order with the Opposite Party for 'Motu Patlu Kids Rakhi' with the Opposite Party on 2nd August, 2019 by paying Rs.100/-. Thus, in the present case the Opposite Party has accepted the Online Offer and the Complainant has paid the consideration for the Rakhi and therefore she became the Consumer as provided under Section 2(1) (d) of the Consumer Protection Act and the Opposite Party has accepted the amount and agreed to send Rakhi to the Complainant became the service provider. We accordingly answer the said point in affirmative.

5. As to the Points nos.2 and 3 - It is the admitted fact that the Complainant placed the Order for the said Rakhi upon the Opposite Party on 2nd August, 2019, who in turn agreed to deliver the said Rakhi between 8th to 13th August, 2019 and instead of delivering it cancelled the said transaction and directly deposited a sum of Rs.100/- in the bank

account of the Complainant. The Complainant has pleaded that on tracing the delivery status it was revealed that the said Rakhi was shipped on 25th July, 2019 i.e. even prior to the order was placed by the Complainant, which was couriered by one M/s. Poonam Courier, however it was already closed permanently and the tracking ID no.7069465373 was fake, which is a misleading information provided by the Opposite Party. The case of the Complainant is that the Opposite Party neither provided the details of the Seller of the said Rakhi to her nor delivered the Rakhi.

6. As against this, the Opposite Party no.2 argued that it did not sale or offer to sell any product or advertise it on its website and it is merely an online market place where independent third party sellers list their products for sale and they are not responsible for their respective listing and they are merely the facilitator and cannot control the sale transaction and reiterated the stand it had taken in its reply dated 14th October, 2019 sent to the legal notice of the Complainant. However, the fact that the Opposite Party has accepted the Order for the said Rakhi and non -delivery thereof has return the money of Rs. 100/- directly in the account of the Complainant. There is no document on record to show that the amount was paid over by the Opposite Party to the said "Dhanashree Rakhi" which proves that the said amount of Rs.100/- was lying in its account only and it was not paid over it to the seller. Therefore, the subject transaction of sale of the said Rakhi is between the Opposite Party and the Complainant and the Opposite Party itself is responsible for delivery thereof to the Complainant. Although the Opposite Party is an online market place, and sought to contend that it acts as facilitator, however it is duty bound to the Complainant as well as to her money. The online market place viz, the Opposite Party earns the revenue each time a consumer clicks on its website. Moreover, the transactions thereof are being done as per the terms and conditions between the online portal company and the seller for a consideration. Therefore, it is the duty of the Opposite Party that it should verify the whereabouts as well as the status of the seller before accepting the order of the respective product as the Opposite Party is providing service and enabling delivery of online contents to the end user. The delivery of

the Rakhi to the Complainant was through the Opposite Parties, hence it is liable for the consequence of non delivery of the said product and not doing so amounts to deficiency in service on its part. We therefore observe that although the Opposite Party has acted as facilitator/intermediary, the amount of the said Rakhi was with it and hence responsible for its timely delivery. And non doing it has committed deficiency in service and adopted unfair trade practice.

7. As far as the claim of the Complainant of Rs.4,50,000/- towards the deficiency in service and unfair trade practice is concerned, in support thereof, the Complainant has not produced any cogent evidence apart for stating that the said Rakhi was ordered for her brother's son and non delivery thereof caused emotional hurt and harassment to her. It is pertinent to record that the Rakhi is not such a commodity, which is not available in the open market. However, since the Complainant has made out case for deficiency in service, she is entitled for the reasonable damages. We pass the order accordingly.

8. The pleadings of the present Complaint have been filed in English language; hence the present judgement is passed in English. The same is passed after discussion and unanimously. We Order that

ORDER

1. The Complaint is partly allowed.
2. It is declared that the Opposite Parties are guilty for deficiency in service and adopted unfair trade practice;
3. The Opposite Parties are ordered and directed to pay a sum of Rs.30,000/- (Rupees Thirty thousand Only) towards compensation to the Complainant within 60 days from the date of receipt of this order, failing which to pay the interest at the rate of 6% p.a. thereon till the payment and/or realization;
4. The Opposite Parties are ordered and directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand Only) to the Complainant towards the Cost of the present proceedings within 60 days from the date of receipt of this order;

5. Certified copies of this order be sent to the parties free of cost as per rule.

Date :- 11/02/2025

Place :- Bandra – Mumbai.

Sd/-
(Sameer S. Kamble)
Member

Sd/-
(Samindara R. Surve)
President