DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, ERNAKULAM

Dated this the 30th day of December 2024

Filed on: 26/09/2023

PRESENT

Shri. D.B. Binu	Hon'ble President
Shri. V. Ramachandran	Hon'ble Member
Smt. SreevidhiaT.N	Hon'ble Member

CC No. 661 OF 2023

COMPLAINANT

Hariraj M.R, aged 46 years, S/o M R Rajendran Nair, residing at 3B, RDS Nedugadan Residency, Powerhouse Extension Road, Ernakulam-682018, Phone- 9447072461, Email- harirajmr@gmail.com.

(Complainant Rep. By. Gisha.G.Raj, Akhila.S, Alina Anna Kose, Megna Mariyam M, Gayathri Viswanathan, Lakshmi V.S, Karthika Ganesh, Advocates, M.R. Rajendran Nair and Associates, Samatha Law Chambers, Cochin-18)

V/s

OPPOSITE PARTY

1. One Plus Technology India Private Limited, Rep by its managing Director, UB City, 24, Vittal Mallya Road, KG Halli, D'souza Layout, Ashok Nagar, Bengaluru-560001.

2. One Plus Exclusive Service Provider, GEE CELL- First Floor, Xaviers Center, Panampilly Nagar, Kochi- 682036.

FINAL ORDER

D.B. Binu, President

1. **A brief statement of facts of this complaint is as stated below:**

The complaint was filed under Section 35 of the Consumer Protection Act, 2019. The complainant, a practising lawyer at the High Court of Kerala, purchased a OnePlus 9R Lake Blue mobile phone for ₹43,999 on 23/12/2021 from the second opposite party (seller). The phone, manufactured by the first opposite party (OnePlus), developed a pink line on its display in July 2023 following an automatic software update. This issue has been reported in other OnePlus 9R models as well, suggesting a widespread defect.

The complainant approached the authorized service centre on 02/08/2023, where he was promised a free screen replacement. However, due to the unavailability of screens, he was advised to wait. Subsequent communications, including emails on 05/08/2023 and 13/08/2023, failed to resolve the issue. Instead, the opposite parties offered an unreasonable buyback of ₹19,000 or an indeterminate wait for screen replacement. Despite repeated follow-ups, no resolution was provided.

The complainant raised concerns about the phone's inability to accommodate software updates without damaging the display. This failure to consider future updates constitutes a manufacturing defect. Additionally, the opposite parties engaged in unfair trade practices by continuing software updates despite knowledge of the defect.

On 19/09/2023, a second green line appeared on the screen, further compounding the issue. A legal notice sent on 23/08/2023 also elicited no response, causing the complainant significant mental agony and disruption to his professional work.

The complainant alleges a supply of defective goods, deficiency in service, and unfair trade practices. He seeks a refund of ₹43,999, and compensation of ₹1,00,000 for damages and mental agony.

2. <u>NOTICE:</u>

The Commission issued notices to the opposite parties on 09-11-2023. The first opposite party received the notice on 17-11-2023, and the second opposite party received it on 14-11-2023. However, both failed to file their versions within the statutory period and were consequently set ex parte.

3. <u>EVIDENCE:</u>

The complainant submitted a proof affidavit along with eight documents. The documents in the complaint are marked as ***<u>Exhibits A1 to A8.</u>***

- **Exhibit A1**: Bill of purchase and warranty card evidencing the complainant's purchase of the mobile phone from the first opposite party.
- **Exhibit A2**: Email communication to the opposite parties dated 05/08/2023.
- **Exhibit A3**: Email communication to the opposite parties dated 09/08/2023.
- **Exhibit A4**: Follow-up email dated 13/08/2023 seeking a refund of the purchase price and compensation for mental agony.
- **Exhibit A5**: Email communication to the opposite parties dated 14/08/2023, highlighting the lack of response to earlier requests and demanding action.
- **Exhibit A6**: Email correspondence from the opposite parties seeking additional time but failing to provide a resolution.
- **Exhibit A7**: Legal notice issued to the opposite parties on 23/08/2023 demanding resolution.
- **Exhibit A8**: Proof of delivery of the legal notice, showing the lack of response from the opposite parties.

4. **Points for Consideration:**

i) Whether the complaint is maintainable or not?

ii) Whether there is any deficiency in service or unfair trade practice by the opposite parties?

iii) If so, whether the complainant is entitled to any relief?

iv) Costs of the proceedings, if any?

5. **ARGUMENT NOTES SUBMITTED BY THE COUNSEL FOR THE COMPLAINANT**

The Complaint has been filed seeking a refund of the price paid for the defective mobile phone purchased by the complainant from the first opposite party (OnePlus) and fair compensation for the defective goods and deficient service rendered by the second opposite party (authorized service center).

The opposite parties have remained ex parte. The evidence in this case consists of Exhibits A1 to A8 marked through the proof affidavit of the complainant (PW1).

The complainant, a practising lawyer, purchased the phone for ₹43,999. A defect appeared on the display after an automatic software update authorized by the first opposite party. Despite being under warranty, the opposite parties failed to provide an effective solution. The second opposite party initially offered a free screen replacement but later retracted and proposed a buyback for a paltry ₹19,000, as opposed to rectifying the issue.

Multiple communications (Exhibits A2 to A6) and a legal notice (Exhibits A7 and A8) were ignored, demonstrating deficient service and unfair trade practices. The first opposite party's updates damaged the phone's display, a manufacturing defect that has been reported in similar cases nationwide. Precedents, such as **CC 189/2022, Shikha Saxena v. OnePlus Technology India Pvt. Ltd.,** highlight that OnePlus has been held liable for similar grievances.

Given the defective goods, deficient service, and unfair trade practices, the complainant seeks:

- Refund of ₹43,999.
- Compensation of ₹1,00,000 for mental agony.
- Exemplary costs for the opposite parties' conduct.

The complaint deserves to be allowed in its entirety.

We have also noticed that Notices were issued from the Commission to the opposite parties but did not file their version. Hence the opposite parties set ex-parte. The complainant had produced 8 documents marked as Exbt.**A-1 to A-8.** All in support of his case. However, the opposite parties did not make any attempt to appear in the case and participate in the above proceedings before this commission or set aside the ex-prate order passed against it. It was further stated that this illegal, arbitrary and unjustified act of the Opposite Parties amounted to deficiency in service, indulgence in unfair trade practice, and caused mental agony and hardship to the complainant.

The opposite parties' conscious failure to file their written version in spite of having received the Commission's notice to that effect amounts to an admission of the allegations levelled against them. Here, the case of the complainant stands unchallenged by the opposite parties. We have no reason to disbelieve the words of the complainant. ***The Hon'ble National Consumer Disputes Redressal Commission in its Order dated 09/10/2017 in RP No. 579/2017 (2017(4) C.P.R 590) also held a similar stance.***

We have meticulously considered the complainant's detailed submission and thoroughly reviewed the entire record of evidence, including the argument notes.

i). <u>Maintainability of the Complaint</u>

The complaint is filed under Section 35 of the Consumer Protection Act, 2019. The complainant has established himself as a consumer by producing **Exhibit A1** (invoice), which shows the OnePlus 9R mobile phone purchase. The grievance falls under the definition of "deficiency in service" as outlined in Section 2(11) of the Act. The opposite parties failed to address the defect within the warranty period and provided no effective resolution despite multiple follow-ups. Thus, the complaint is maintainable.

ii). <u>Deficiency in Service and Unfair Trade Practice</u>

The opposite parties' actions exhibit a clear case of deficiency in service and unfair trade practice for the following reasons:

- **Defective Goods:** The pink and green lines on the mobile display after a software update **(Exhibit A2 and A3)** indicate a manufacturing defect. The opposite parties did not rectify the issue despite acknowledging it during initial communications.
- **Service Failure:** Despite the promise of a free screen replacement, the second opposite party failed to provide the replacement due to unavailability of parts **(Exhibit A6).** This prolonged delay reflects a deficiency in service.
- **Unfair Trade Practice:** The opposite parties continued rolling out software updates that were incompatible with the device, thereby knowingly causing damage to the product. This practice is violative of Section 2(47) of the Act.
- **Negligence:** The failure to respond to a legal notice **(Exhibit A7)** or provide alternative remedies demonstrates neglect in addressing legitimate consumer concerns.

iii). <u>Liability of the Opposite Parties</u>

As the manufacturer, the first opposite party is directly liable for supplying defective goods. The second opposite party, as the authorized service provider, is responsible for failing to fulfill the warranty obligations. Their inaction and disregard for statutory notices further strengthen their liability.

Findings and Conclusions

1. **Deficiency in Service:** The opposite parties failed to repair or replace the defective mobile phone despite the warranty terms. Their failure to provide an alternative resolution amounts to deficient service.
2. **Unfair Trade Practice:** Continuing software updates despite knowledge of their impact on the device constitutes an unfair trade practice.
3. **Mental Agony:** The complainant, a practicing lawyer, suffered disruption in professional work due to the defective phone and the

opposite parties' negligence, warranting compensation for mental agony.

4. **Ex-Parte Proceedings:** The opposite parties' failure to file a response within the statutory period constitutes an implied admission of the allegations against them.

This case highlights not just the legal implications of consumer protection laws but also the human element of trust and reliance placed by consumers on manufacturers and service providers. The complainant, as a professional, faced significant disruption to his work and personal life due to the negligence and unfair trade practices of the opposite parties. This judgment sends a strong message to businesses about their accountability and reinforces the principle that consumer satisfaction and rights are paramount in fostering a fair and reliable marketplace. This Commission emphasizes the importance of manufacturers and service providers adhering to their statutory obligations under the Consumer Protection Act. The consumer's rights to safe and defect-free goods must be protected to foster trust in trade and commerce.

We determine that issue numbers (I) to (IV) are resolved in the complainants' favour due to the significant service deficiency on the part of the Opposite Parties. Consequently, the complainant has endured considerable inconvenience, mental distress, hardships, and financial losses as a result of the negligence of the Opposite Parties.

In view of the above facts and circumstances of the case, we are of the opinion that the Opposite Parties are liable to compensate the complainant.

Hence the prayer is allowed as follows:

I. The 1st opposite party shall refund **₹43,999** (Rupees Forty-Three Thousand Nine Hundred and Ninety-Nine only) to the complainant as the full purchase price of the mobile phone, as per **Exhibit A1:** purchase invoice evidencing the complainant's purchase of the mobile phone.

II. The opposite parties shall pay **₹25,000** (Rupees Twenty-Five Thousand only) to the complainant as compensation for the mental agony and financial loss caused by the deficiency in service, unfair trade practices, and the hardship endured by the complainant.

III. The opposite parties shall pay **₹10,000** (Rupees Ten Thousand only) to the complainant towards the costs of the proceedings.

After compliance the order the first opposite party can take back the product in question from the complainant.

The opposite parties are jointly and severally liable for the fulfilment of the above orders, which must be executed within ***45 days*** *from the date of receiving this order. Failure to comply with the payment orders under points I, and II will result in interest at the rate of* ***9% per annum*** *from the date of filing the complaint* **(26/09/2023)** *until the date of full payment realization.*

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me, and pronounced in the Open Commission.

Pronounced on this the 30th day of December 2024.

D.B. Binu, President

V. Ramachandran, Member

Sreevidhia T.N, Member