

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
GURGAON-122001.**

Consumer Complaint No.1026 of 2024
Date of Institution: 16.08.2024
Date of Decision: 02.07.2025

Vedant Verma, resident of House No. 544/18, Behind Gurudwara, Barafkhana, Civil Lines, Gurugram, Haryana-122001.

.....Complainant

Versus

1. M/s Flipkart India Private Limited, No.6/B, Vaishnavi, Summit, 7th Main, 80 Feet Road, 3rd Block, Koramangala, Bangalore-560034 through its Manager/Deputy Manager;
2. M/s Dhayal Trading, registered address at 80, Dhani Puniyo ki Lakshmipura, Dhantaramgarh, *Sikar Rajasthan*, Pincode, 332710 through its Manager/Deputy Manager;
3. M/s Nokia India Private Limited, at 5th & 6th Floor, Tower A&B, Cyber Green, DLF City-Phase 3, Sector-25A, Pin Code-1220002 through it Manager/ Deputy Manager

.....Opposite parties

Complaint under Section 35 of Consumer Protection Act, 2019.

BEFORE: **SHRI SANJEEV JINDAL, PRESIDENT.
MS.JYOTI SIWACH, MEMBER.
MS.KHUSHWINDER KAUR, MEMBER.**

Present: Complainant in person.
Shri Nitish Desodiya, Advocate for the OP No.1(defence struck off VOD 18.11.2024).
OPs No.2 & 3 proceeded against ex-parte VOD 07.10.2024.

ORDER **JYOTI SIWACH, MEMBER.**

Heard on the complaint in question. The record placed on the complaint file stands perused.

2. Shorn off unnecessary details, briefly stated, it is the case of the complainant that on 17.06.2024, he ordered a new handset namely "*Nokia-6310 Dual Sim Feature Mobile TA-1400 DS*" vide Order Id: OD331542219560322100 through OP No.1 for a sum of Rs.2999/- which was delivered on 19.06.2024 by the OP No.1 through seller i.e. OP No.2 vide invoice number:FAR3M22500002056 (Copy of the invoice/bill of the handset in question stand annexed). After a few days of usage of the handset in question, the complainant started experiencing malfunctioning issues in the handset in question which prompted him to visit a Nokia Authorized Service Centre on 13.08.2024 situated at Old Delhi Road, Rajiv Nagar, Sector-13, Gurugram, whereat, the phone in question was examined accordingly. After the examination of the phone in question by the concerned staff, the complainant was shocked to see the internal records provided by the examining staff regarding the phone in question through its EMEI number to the effect that the phone in question had started from 25th June, 2017 being activation date, whereas the phone had been purchased on 17th June, 2024 by the complainant. Very surprisingly, the activation of the phone had been depicted in the year 2017 in Pakistan.

The internal record provided by the Nokia Authorized Service Centre aforesaid is as under: -

<u>Serial Number Primary</u>	<u>356002082958907</u>
------------------------------	------------------------

<u>Warranty</u>	<u>NO</u>
Sales Model	NOKIA3310
Product Code	059Z0F6
<u>Material Description</u>	<u>NOKIA 3310 DS TA-1030 NV OK</u> <u>WARMRED</u>
<u>Activation Date</u>	<u>25.06.2017</u>
<u>Activation Country</u>	<u>PAKISTAN</u>
<u>Ship to Country</u>	<u>PAKISTAN</u>
<u>Sold to Country</u>	<u>PAKISTAN</u>
Context Date	13.08.2024
Sales Package Code	A00028167

(Copy of the aforesaid internal record has been placed on the record of this file as **Ex.C-4**).

Since, the OP No.2 had sold the second-hand phone to the complainant for a price of a new one under the pretext of a brand new phone, so, it constituted not only deficiency in service but also an unfair trade practice which also came within the ambit of fraud and dark patterns. Thus, the complainant requested the OP for the replacement of the aforesaid product in question but to no avail. Hence, this complaint.

In the end, the complainant prayed that the OPs be directed to refund the price of the handset in question i.e. Rs.2999/- to him along-with interest @ 12% per annum from the date of purchase till its actual realization and to pay an exemplary amount of Rs.5,00,000/- on account of mental agony, harassment, pain and suffering and monetary loss to him coupled with Rs.40,000/- towards litigation expenses. Any other relief which deemed fit by this Court, has also been prayed for.

3. The OPs No.2 & 3 had to be proceeded against ex-parte on 07.10.2024 when they did not bother/opt to appear in this Court till 3.00 P.M despite their due service, whereas, the defense of the OP No.1 had to be struck off vide order dated 18.11.2024 when it failed to file the requisite written statement/reply to the complaint in question within the stipulated period despite having been granted an ample opportunity in that regard by this Court.

4. On 18.11.2024, the complainant in order to substantiate his aforesaid submissions/assertions/averments placed on the record of this file his own affidavit i.e. **Ex.CW1/A** coupled with supporting documents **Ex.C-1 to Ex.C-13** and then closed his evidence. Thereafter, the case was fixed for ex-parte arguments.

5. We have gone through the record on the file of this complaint, carefully and have heard the arguments.

6. As stated above, the complainant in his ex-parte evidence has tendered his own affidavit i.e. **Ex.CW1/A** and other supporting documents **Ex.C-1 to Ex.C-13**. In the aforesaid affidavit, the complainant has reiterated the averments made in his pleadings as narrated above, almost, on the similar lines, in the same fashion, and, hence, the contents of the affidavit in question are not being reproduced here-in-after in order to avoid the repetition.

7. In this regard, the perusal of the documents placed on the record of this file by the complainant in his ex-parte evidence including the documents: **Ex.C-1** i.e. the copy of the invoice/bill dated 17.06.2024, **Ex.C-2** i.e. the copy of criminal complaint dated 14.08.2024 lodged by the complainant against the OPs to the SHO, PS, Civil Lines, Gurugram, **Ex.C-3** i.e. the copy of mail dated 14.08.2024 regarding criminal complaint sent by the complainant against the OPs to the SHO,

PS, Civil Lines, Gurugram, **Ex.C-4** i.e. the copy of internal record provided by the Nokia Authorized Service Centre to the complainant, **Ex.C-5 to Ex.C-7** i.e. the copies of details found based on provided IMEI number, **Ex.C-8 to Ex.C-12** i.e. the copies of photographs of subject phone and **Ex.C-13** i.e. the copies of Live Law further, confirms the aforesaid assertions/submissions of the complainant.

Since, the OPs No.2 & 3 in this case have been proceeded against ex-parte and the defense of the OP No.1 had been struck off and there is no evidence on their behalf on the record of this file, so, on this score also the evidence produced on the record of this file by the complainant goes un-rebutted, and, as such, this Commission does not find any reasons to disbelieve the same.

8. Resultantly, the deficiency in service on the part of the OPs is established in clear-cut terms, and, as such, the OPs are hereby held guilty of providing deficient services. That being so, the present complaint preferred by the complainant is hereby accepted with costs. Accordingly, the OPs are directed, jointly and severally, to refund the cost of the subject mobile i.e. Rs.2,999/- to the complainant along-with interest @ 9% per annum from the date of its purchase i.e. w.e.f. 19.06.2024 till its realization. The OPs are further directed to pay the amount of Rs.15,000/- to the complainant as compensation on account of causing mental harassment, pain and agony coupled with the amount of Rs.11,000/- as litigation expenses. The OPs are directed to pay the aforesaid amount within 45 days from the date of uploading of this order after the expiry of 24 hours (one day) therefrom, failing which the amount will attract interest @ 12% per annum, for the same period, till actual realization.

9. If the order of this Commission is not complied with, then the complainant shall also be entitled to file the execution petition under Section 71(1) of the Consumer Protection Act, 2019 and in that eventuality, the OP may also be held liable for prosecution under Section 72 of the said act which envisages punishment with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than Rs.25,000/-, but which may extend to Rs.1,00,000/-, or with both. The copy of the order be supplied to the parties free of cost as per the rules. The Order be promptly uploaded on the website of this Commission. File be consigned to the record room, after due compliance.

Announced.
02.07.2025

(Jyoti Siwach)
Member

(Khushwinder Kaur)
Member

(Sanjeev Jindal)
President,
District Consumer Disputes
Redressal Commission, Gurgaon