

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
CHANDIGARH DISTRICT COMMISSION
CONSUMER COMPLAINT NO. DC/AB1/44/CC/427/2021**

Simranjeet Singh Sidhu

PRESENT ADDRESS - S/o Sh. Iqbal Singh, R/o H. No. 815, Sector 16D, Chandigarh-160015.CHANDIGARH,CHANDIGARH.

.....Complainant(s)

Versus

Flipkart India Pvt. Ltd.

PRESENT ADDRESS - Office at Buildings Alyssa, Begonia & Clover, Embassy Tech Village, Outer Ring Road, Devarabeesanahalli Village, Bengaluru-560103, Karnataka, India.CHANDIGARH,CHANDIGARH.

William Penn Pvt. Ltd.

PRESENT ADDRESS - Plot No. 4797, 121-E, Bommasandra Industrial Estate, Bangalore Karnataka, Bangalore-560099CHANDIGARH,CHANDIGARH.

.....Opposite Party(s)

BEFORE:

**AMRINDER SINGH SIDHU , PRESIDENT
BRIJ MOHAN SHARMA , MEMBER**

FOR THE COMPLAINANT:

FOR THE OPPOSITE PARTY:

DATED: 12/12/2025

ORDER

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-II

U.T. CHANDIGARH

Consumer Complaint No.	:	CC/427/2021
Date of Institution	:	09/07/2021
Date of Decision	:	12/12/2025

that vide bill dated 20.6.2021, he placed order for “Caran D’Ache 849 Ball Pen black WP00157” of yellow colour and black refill (hereinafter referred to as the “pen in question”) worth 1,611/- from OP-1, which was to be supplied by OP-2. However, OPs delivered a wrong product on 26.6.2021 i.e. of non yellow body. Complainant requested for replacement on the same day, which was initially accepted by OP-2 but subsequently cancelled on 30.6.2021. On 30.6.2021, complainant again requested for replacement, which was accepted. However, OPs again delivered wrong product on 6.7.2021 i.e. a non yellow pen with blue refill whereas he had ordered for a yellow pen with black refill. Alleging that the aforesaid acts amount to deficiency in service and unfair trade practice on the part of OPs, complainant has filed the instant consumer complaint seeking replacement of the product and delivery as ordered alongwith compensation and litigation expenses.

2. In its written version, OP-1 averred that it is not engaged in the business of sale of any product to the end customer and it is wholesaler and is only engaged in B2B sales. It is stated that the complainant appears to be aggrieved with marketplace platform ‘flipkart.com’ which is owned and operated by a separate entity incorporated under the Companies Act under the name of Flipkart Internet Private Limited and the same is separate and distinct from OP-1. It is alleged that the contract of sale is only between the seller (OP-2) and complainant and OP-1 cannot be held liable for any liability arising out of such contract. Remaining allegations have been

denied being false. Pleading that there is no deficiency in service or unfair trade practice on its part, OP-1 prayed for dismissal of the consumer complaint.

3. In its separate written version, OP-2 admitted that the complainant ordered for the pen and it delivered the exact model of the pen as ordered by him. It is also admitted that the complainant made a request for replacement on 26.6.2021 which was cancelled by OP-2 as he sought refund and the refund was settled on 9.7.2021. Cancellation of first replacement request was due to initiation of refund and the second replacement request was accepted since the complainant insisted on delivering the product and OP-2 again delivered the product. It is stated that the product delivered to the complainant on both the occasions were the same model as available on the website and difference in appearance and colour can be attributed to the screen in which the website/product is viewed since screen's resolution plays a major role in displaying colours in a website. It is maintained that since the complainant has taken refund on the pen, he is no longer a customer. Remaining allegations have been denied being false. Pleading that there is no deficiency in service or unfair trade practice on its part, OP-2 prayed for dismissal of the consumer complaint.

4. Complainant chose not to file replication.

5. Parties led evidence in support of their case.

6. We have heard the learned Counsels for complainant and OP-2 and have gone through the documents on record, including written arguments.

7. Admittedly, complainant had placed order dated 20.6.2021 for the pen in question which was to be supplied by OP-2, as is also evident from invoice dated 21.6.2021 (Annexure C-1) and the same was delivered to him. The case of the complainant is that since the colour of the pen delivered was different than the one ordered by him, therefore, he sought replacement but even the replacement provided by OP-2 was not as per the order. On the other hand, defence of OP-2 is that the difference in colour can be due to screen resolution and since refund has already been processed, complainant has no case.

8. No doubt, the entire thrust of the complainant in his consumer complaint is only to seek replacement of the pen in question, but, if the product delivered was not as per complainant's satisfaction, due to difference in colour as alleged by him, he had always the option to seek refund. Otherwise also, mere difference in the colour of the product received by the complainant, by any stretch of imagination, cannot be termed as deficiency in service or unfair trade practice on the part of OP-2, especially when it is not the case of the complainant that OP-2 ever refused to refund the amount.

9. Now coming to the question of refund of amount, no doubt it is

the defence of OP-2 that it had already processed the refund on 9.7.2021 and in this regard has relied on Annexure R-2/2, however, perusal of the same reveals that the last entry on it i.e. of 14.7.2021 mentions 'Returned' whereas the entry of 9.7.2021 mentions 'settlement date' and there is no mention in it regarding refund of the amount at all. Not only this, if OP-2

had actually processed/refunded the amount of the invoice to the complainant, it should have appended some cogent documentary evidence to prove the same e.g. account statement, ledger entry etc., but, no such document has seen the light of the day.

10. It is settled law that one who asserts must prove and since in the present case it is OP-2 who has asserted that it had processed the refund, therefore, burden to prove the same lies on its shoulders only. Here we are fortified by the judgment of the Hon'ble Apex Court in

Mahakali Sujatha

Vs. Branch Manager, Future Generali India Life Insurance Co. Ltd. &

Anr., II (2024) CPJ 66 (SC) and the relevant portion of the same reads as under:-

"50. The cardinal principle of burden of proof in the law of evidence is that "he who asserts must prove", which means that if the respondents herein had asserted that the insured had already taken fifteen more policies, then it was incumbent on them to prove this fact by leading necessary evidence. The onus cannot be shifted on the appellant to deal with issues that have merely been alleged by the respondents, without producing any evidence to support that allegation..... A fact has to be duly proved as per the Evidence Act, 1872 and the burden to prove a fact rests upon the person asserting such a fact....."

In view of the ratio of law laid down above, mere bald averments of OP-2 in its defence, sans any cogent documentary evidence in support of the same, cannot be believed. Thus, it is safe to hold that OP-2 did not refund the invoice amount to the complainant, and the said act certainly amounts to deficiency in service and unfair trade practice on its part and the present consumer complaint deserves to succeed.

11. In view of the above discussion, the present consumer complaint succeeds, the same is accordingly partly allowed and OP-2 is directed as under :-

- (i) to refund the amount of 1,611/- to the complainant alongwith interest @9% per annum w.e.f. 20.6.2021 till the date of actual realization.
- (ii) to also pay 7,000/- to the complainant as compensation for the harassment caused as well as litigation expenses.

12. This order be complied with by OP-2 within 60 days from the date of receipt of its certified copy.

13. Since no deficiency in service or unfair trade practice has been proved against OP-1, therefore, the consumer complaint against it stands dismissed with no order as to costs.

14. The pending application(s), if any, stands disposed of accordingly.

15. Certified copy of this order be sent to the parties, as per rules. After compliance file be consigned to record room.

12/12/2025

[AMRINDER SINGH SIDHU]

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PRESIDENT

[B.M. SHARMA]

MEMBER

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AMRINDER SINGH SIDHU
PRESIDENT

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BRIJ MOHAN SHARMA
MEMBER