

**H. P. STATE CONSUMER DISPUTES REDRESSAL
COMMISSION, SHIMLA.**

First Appeal No. :SC/2/FA/212/2025
Date of Presentation : 08.08.2025
Order Reserved on : 16.12.2025
Date of Order : 31.12.2025

Rajat Enterprises, Near Geeta Bhawan, Main Bazar, Paonta
Sahib, District Sirmour, H.P., through its Proprietor Sh. Ramesh
Kumar.

.....Appellant/Opposite Party.

Versus

Pradeep Singh S/o late Sh. Surat Singh R/o Village Ubeta, P.O.
Timbi, Tehsil Shillai, District Sirmour, H.P.

.....Respondent/Complainant.

Coram

Hon'ble Mr. Justice Inder Singh Mehta, President
Hon'ble Ms. Yogita Dutta, Member

Whether approved for reporting?¹ Yes.

For the Appellant : Ms. Kiran Sharma , Advocate.
For the Respondent : Ex-parte.

Justice Inder Singh Mehta, President

ORDER

Instant appeal is arising out of the order dated
12.06.2025 passed by Learned District Consumer Commission,

¹Whether reporters of the local papers may be allowed to see the order?

Una Camp at Nahan, in Consumer Complaint No.47/2022 titled Pradeep Singh Versus Rajat Enterprises, whereby the complaint filed by the complainant was allowed and the opposite party was directed to exchange the defective piece of Samsung Mobile phone with new one of the same make and quality free from any manufacturing defect within two months, failing which opposite party shall pay Rs. 9,499/- the price of phone alongwith interest @ 9% per annum from the date of filing of complaint till realization to complaint. The opposite party was further directed to pay Rs. 20,000/- as compensation to the complainant besides litigation costs of Rs. 10,000/-.

Brief facts of Case:

2. Brief facts of the case are that complainant purchased a Samsung mobile phone from opposite party/dealer for a sum of Rs.9,499/- out of which complainant paid Rs.5,000/- in cash to the opposite party. Complainant financed the mobile phone from SBI Timbi, Tehsil Shillai, District Sirmour, and monthly installment of said mobile phone was Rs.751/-. After purchase of said

mobile phone, it started giving software problem due to which said mobile was not functioning properly. Complainant time and again got repaired the said mobile phone from opposite party/dealer but till date, it is not working properly. Complainant visited the opposite party/dealer in the month of December, 2021 and requested to exchange the mobile phone as the same was defective but opposite party/dealer straightway refused to accept the request of complainant. The said act on the part of the opposite party/dealer amounts to deficiency in service. Hence, the present complaint.

3. Notice was issued to the opposite party, but despite service, the opposite party failed to appear before learned District Commission and was proceeded ex-parte vide order dated 26.08.2022.

4. Thereafter, the complainant led evidence in support of his pleadings.

5. After hearing the counsel of the complainant,

learned District Commission allowed the complaint.

6. Feeling aggrieved by the order of learned District Commission, the appellant/dealer has preferred the instant appeal before this Commission.

7. Respondent/complainant did not appear before this Commission, despite service of notice, as such, respondent/complainant was proceeded ex-parte vide order dated 16.12.2025.

8. Arguments heard on behalf of appellant/dealer and perused the record of the case file carefully.

9. Learned counsel of the appellant/dealer has submitted that complainant had purchased one Samsung mobile phone of Rs. 9,499/- from the appellant/dealer out of which the complainant paid only Rs. 5000/- and remaining amount was to be paid by the complainant on monthly installment of Rs. 751/-. She has further submitted that complainant has alleged software problem/defect in the aforesaid mobile phone, but complainant has not made

Samsung company as necessary party in the present complaint. She has further submitted that complainant has not led any expert evidence to prove that mobile phone was having any defect and same was required to be replaced. She has further submitted that mobile phone is with the complainant and he is still using the same from the date of purchase, therefore, the impugned order is bad in law and same is required to be set aside. She prays that appeal of the appellant/dealer be allowed.

FINDINGS

10. The admitted fact emerging on record is that complainant purchased a Samsung mobile phone from appellant/dealer for a sum of Rs.9,499/- out of which complainant paid Rs.5,000/- in cash to the opposite party.

11. The plea of the complainant is that after purchasing the mobile phone, it started giving software problem due to which said mobile phone was not functioning properly. The same was got repaired from the appellant/

dealer but the defect could not be removed. Therefore, defective mobile phone was sold to the complainant due to which the complainant has suffered loss.

12. The onus to prove the defect in the mobile phone, in question, lies upon the complainant. However, there is no expert evidence on record to prove the fact that there was technical defect in the mobile phone, in question. Therefore, the complainant has failed to discharge the said onus.

13. To prove his case, the complainant has only filed his affidavit, but there is no corroborative evidence to support affidavit of complainant (Ext. C-1/1) who could prove that mobile phone purchased by complainant was having technical defect.

14. The complainant has further alleged that said mobile phone was within guarantee period, when defect was occurred in the same, as such, dealer is duty bound to exchange the same or to return the money to the complainant.

15. There is nothing on record to show that mobile phone purchased by the complainant was within guarantee period. Even, in the tax invoice (Annexure C-2/2), no guarantee period is mentioned. Perusal of terms & conditions of tax invoice shows that it is specifically mentioned that goods once sold will not be taken back and the complainant is very much aware about this fact, as said tax invoice is placed on record by the complainant himself. Therefore, the complainant is not entitled for refund of money.

16. Mere saying that defective mobile was sold to complainant is not sufficient to prove that there was technical defect in the mobile phone, particularly when there is no expert evidence placed on record to prove the defect.

17. Since, the complainant has failed to prove any defect in the mobile in absence of expert evidence, therefore, no deficiency in service can be attributed to the appellant/ dealer and complainant is not entitled for refund of amount or

to replace the mobile phone with new one. As such, the impugned order is required to be set aside.

18. In view of the aforesaid discussion, the appeal of the appellant/opposite party is allowed and the impugned order passed by learned District Commission is set aside.

19. Parties are left to bear their own costs.

20. Certified copy of order be transmitted to parties and their counsel free of costs strictly as per rules. File of District Commission alongwith certified copy of order be sent back and file of State Commission be consigned to record room after due completion forthwith. Appeal is disposed of. Pending application(s) if any also disposed of.

Justice Inder Singh Mehta
President

Yogita Dutta
Member

Veena