

**BEFORE THE SOUTH MUMBAI DISTRICT CONSUMER
DISPUTES REDRESSAL COMMISSION,
PuravathaBhavan, 1st Floor, General Nagesh Marg, Near
Mahatma Gandhi Hospital, Opp. M.D. College, Parel,
Mumbai – 400 012.**

Consumer Complaint No:35/2022

Date of filing : 23/02/2022

Date of Order:30/11/2023

KalpanaShantilal Shah,

Address: 9 BansdawalaBldg,

1st floor,3rd Marine St.,Dhobitalao,

Mumbai 400002

Address: 1st floor, Room No. 23,42

Rassiwala Building, 2nd Marine street,

Dhobitalao, Mumbai-400002

.....**Complainant.**

V/S

Grofers India Pvt. Ltd. (blinkit)

Krsilon House, 4th floor, Saki Vihar Rd.,

Off, KrishanlalMarwah Marg,

Complex, Andheri (E),

Mumbai 400072

.....**Opposite Party.**

**BEFORE: HON'BLE PRESIDENT SHRI.PRADEEP G. KADU.
HON'BLE MEMBER SMT. S. A. PETKAR.
HON'BLE MEMBER SMT. G. M. KAPSE.**

Adv. for Complainant: AmanSakaria.

Adv. for Opposite Party Ex-parte.

J U D G M E N T

(Decided on 30/11/2023)

HON'BLE PRESIDENT SHRI.PRADEEP G. KADU.

This complaint under section 35(1)(a) of the Consumer Protection Act 2019 is filed by complainant named above alleging deficiency in service on the part of the Opposite Party. The complaint of Complainant is as under:-

- 1) The Opposite party is widely known and trusted brand in terms of groceries delivery. The complainant placed the order for delivery of groceries to the opposite party on 25th January 2020 which was delivered on 28th January 2020, at the address mentioned at the time of placing the order. The complainant had placed an order for the home delivery of goods through the online portal of the Opposite Party.

- 2) After receiving the ordered goods, the Complainant while verifying the delivery of goods, he came to know that (item no.3) from the ordered goods, one item namely

"**tarboojmagaj** was missing. Whereas the items ordered were mentioned in the invoice and payment for the same was also made when the order was delivered.

- 3) The Complainant immediately called the delivery boy and informed him that one item was missing. The delivery boy told the Complainant that he will inform the manager. Thereafter, the Complainant did not receive any response from neither the delivery boy nor the manager.
- 4) In absence of proper reply complainant lodged a formal complaint through customer support to opposite party. After some follow up customer support team informed the complainant that according to their records all items were delivered properly, nothing was short and closed the complaint at their end. Looking to the companies reply complainant further tried to find out some other mode of contact.
- 5) On 30/01/2020 through Google the Complainant got to speak to an agent of the Opposite Party(7439148707) to whom the entire incident was explained. The agent asked the Complainant to accept a refund for the item that was not delivered to which the Complainant denied upfront because she wanted the particular item i.e. tarboojmagaj. Thereafter, the Complainant got a call from one number (6289652931)

who represented himself as one of the agents of the Opposite Party and said that the item could take another 15-20 days or even more than that to be delivered. The agent further said that if he provides the Paytm number of complainant then the refund would be credited immediately.

6) Since, the refund for the missing item was a more prudent option, the Complainant reluctantly agreed for a refund. And she gave her son's Paytm number and asked the agent to transfer the money on his number. Soon after, the Complainant got a call from the same number asking her to forward the messages that her son will receive on the specified Paytm number for the initiation of the refund process. The Complainant forwarded 2 messages that was sent on her son's mobile number. The first one was a normal text message and the other one was a link. After forwarding the messages he asked the Complainant to wait for some time while the transaction was in process. After a few minutes the Complainant's son received a message from his bank (Central Bank Of India) stating that a sum of Rs.5000/- has been debited.

7) The Complainant and her son were shocked to see the constant debit transactions happening to an unknown person automatically without them initiating any of them and rushed

to the find the nearest ATM. By the time, the Complainant and her son could get to the nearest ATM to block the debit card in order to stop any online transactions by deliberately typing incorrect PIN thrice, a total sum of Rs.40,000/ was debited from the Complainant's son's bank account.

8) That the Complainant and her son immediately sent an email to the concerned bank stating the illegal transactions. Accordingly, the Complainant sent an email that night to the Central Bank of India's head office to stop the illegal transactions from taking place. And in Azad Maidan Police Station got a complaint registered about the entire incident on 11/02/2020, and file an FIR. Accordingly, FIR No. 37/2020 u/s 420, 34 r/w 66C and 66D was registered at Azad Maidan Police Station. Also written a letter dated 28/07/21 to the Bank Ombudsman against the Central Bank of India after repeated multiple failed attempts to get an answer about the illegal transactions who were immediately after the illegal transaction directed to stop the same.

9) That till date neither the Complainant nor her son has received any form of reply/message/call regarding the said undelivered grocery "tarboojmagaj" from the Opposite Party thereby making it very evident how much they really care about their customers. This shows their recklessness and

inability to deliver to their customers, at least what is promised and paid for. That the Complainant is a single mother and belongs from a middle-class family and she has been cheated of her hard earned money.

10) In the aforesaid circumstances, the Complainant left with no other alternate and efficacious remedy, than to approach this Hon'ble Commission. Therefore present complaint file and prayed the Opposite Parties be directed:-

- a) To direct and order that The Opposite party to refund a sum of Rs.31/- or the undelivered and paid of grocery item i.e. tarboojmagaj.
- b) To direct the Opposite Party to reimburse a sum of Rs.40,000/- alongwith interest @18% p.a. Direct the Opposite Party to pay Rs.5,00,000/- as compensation towards legal damages for deficiency in contract for services.
- c) To direct The Opposite party to pay to the complainant a sum of Rs.5,00,000/- towards compensation for mental and physical harassment.
- d) To direct The Opposite party to pay to the complainant a sum of Rs.50,000/- towards the costs of the complaint.
- e) Any other order and/or direction be given as the nature and circumstances of the case may require in the spirit of justice, equity and good conscience.

- 1) The complainant has filed attested copy of documents as per list of documents at page no 14.
 - a) **Exhibit "A"**- the invoice of the order (order ID being 82571815).
 - b) **Exhibit "B"** - screenshot of the chat with the customer support.
 - c) **Exhibit "C"**- screenshots of the bank messages regarding the multiple debits received by the Complainant's son.
 - d) **Exhibit "D"** -screenshot of the mail sent to the bank of the Complainant's son to stop the illegal transactions from taking place.

- 2) After the complaint was admitted, a notice was issued by Commission to the opposite party. Though duly served the opposite party remain absent and not filed their written version. Hence on dated 22/08/2022 Ex-parte order against opposite party has been passed.

- 3) In order to prove her side the complainant has filed their affidavit of evidence and written argument, heard final argument.

- 4) In the light of averment in the complaint and evidence of the complainant and written argument, following points arise for consideration.We have recorded our finding thereon for the reason stated below.

Sr. No.	POINTS	FINDINGS
01.	Whether complainant is a consumer?yes.....
2.	Is there any deficiency in the service by opposite party ?Yes.....
03.	Is consumer eligible to get refund and interest upon the amount of non delivered goods yes.....
04.	Is consumer liable to get compensation	...yes....
05	Is opposite party responsible for reimbursement of payments syphoned from consumers account by unknown person ?	...No....
06	What is the order ?	Partly allowed....As per Final Order.

REASONS FOR FINDING

POINT NO-1 to 6

- 5) Heard argument of complainant, perused the evidence on record.
- 6) The opposite party not appeared and not filed written version therefore Ex-party order against the opposite party has been passed. Therefore, we have no scope other than relying on the complainants' evidence.
- 7) From the **Exhibit "A"** order invoice, it come to the knowledge that, the complainant has ordered grocery from opposite party and paid consideration for all items and as per that the opposite party delivered the grocery as per ordered.
- 8) The disputes arises when as per grocery list the item no.3 i.e. tarbujmagaj was not delivered with other grocery items. As per the **Exhibit "B"** which is a conversation with customer care of opposite party. Therefore the complainant on the basis of chat conversation claims that the opposite party accepted their fault and ready to refund the amount of Rs.31/-.
- 9) During the process of handling the issue through telephonic conversation, complainant got the phone call from another number pretending to be from the opposite party. Complainant after discussing the issue with the person pretending from the opposite party, agreed to accept refund and followed the instructions given by the said contact number person. From the submissions of the facts it can be noticed that the said pretended person called the complainant

directly. Complainant without verifying the authenticity of the caller came under influence of the caller and accepted the proposal given by him and followed the instructions given by the said caller for initiating the refund. There are multiple incidences of online fraud and cheating and those are widely publicised in media reports. Every bank and financial institutions time and again warns their customers as well as in general to follow proper guidelines while making online transactions. One such instruction is not to share OTP of transaction to the another party. Complainant shared the OTP to the unknown caller. Complainant was supposed to confirm the callers authenticity before proceeding to the transaction. Complainant failed to do this. This is complainants negligent behaviour towards his own financial transaction. Hence in our opinion opposite party could not be held responsible for the negligent behaviour of the complainant. Complainant was needed to file proper complaint to the police station which he did. In the said issue of syphoning of amounts from complainants accounts , he need to follow with the concern investigation authorities for further remedies. Complainants prayer of reimbursement of the syphoned amount from his bank account from opposite party is hereby rejected.

- 10) From the abovesaid observation, and documentary evidence, it is proved that the tarbujmagaj was not delivered and also not refunded the amount. Therefore we are on the

view that by this act the opposite party has given deficiency in service.

- 11) As per abovesaid discussion it is proved that the opposite party has given deficiency in service, therefore the prayer of the complainant for refund of Rs.31/- is justified, it is proper to direct the opposite party to refund Rs.31/- with 9% interest from the date of 28/01/2020 till realisation.
- 12) Grocery is a thing which used as a daily basis, and one of the essential stuff for living life. The complainant keep blind faith on the service provider for there online service which is provided by the opposite party to public at large. Therefore the negligence and reluctant nature is not expected from the opposite party.
- 13) In the said case by showing there harsh approach towards complainant we are of the opinion that the opposite party has rendered deficiency in service in the impugned matter.
- 14) Looking into this harsh approach of opposite party towards the complainant, hence he is entitled for the compensation for the deficiency in the service. Thus, it will be desirable to direct the opposite party to pay towards compensation for mental agony of Rs.5,000/- and towards cost of litigation Rs.3,000/-
- 15) Considering the facts of present case, Circumstances and the evidence on record as discussed above, we find it appropriate to

allow the complaint. **Hence we proceed to allow the consumer complaint with the following order.**

FINAL ORDER

1. The **Consumer Case No.35/2022** is hereby partly allowed.
2. It is declared that the Opposite Party have given deficiency in service and used unfair trade practices to the Complainant.
3. The Opposite Party is directed to refund the amount of Rs.31/- with 9% interest to the Complainant from the date of 28/01/2020 till realization of entire amount.
4. The Opposite Party is directed to pay compensation for mental agony of Rs.5,000/- (Rupees five Thousand only) and also directed to pay litigation costs of Rs.3,000/- (Rupees three Thousand only) to the Complainant.
5. The above said order shall be complied within 30 days from the date of order.
6. The copy of order be sent to both the party with free of cost.

Place- South Mumbai

Date – 30/11/2023

(SMT. S. A. PETKAR) (SMT. G. M. KAPSE) (SHRI.PRADEEP G. KADU)

MEMBER

MEMBER

PRESIDENT

SOUTH MUMBAI DISTRICT CONSUMER DISPUTES

REDRESSAL COMMISSION