

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM  
ERNAKULAM**

**Complaint Case No. CC/19/297  
( Date of Filing : 01 Aug 2019 )**

1. SREEKUMAR

HARIVILASAM HNO.209 VEDARAPLAVU ALAPUZHA .....Complainant(s)

Versus

1. M/S FLIPKART

CONSULTING RM.PM LTD DBS BUSINESS CENTRE  
WORLD TRADE TOWER BARAKAMBA LANE  
CONNAUGHT PLAZA NEW DELHI REP BY MD

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. D.B BINU PRESIDENT  
HON'BLE MR. RAMACHANDRAN .V MEMBER  
HON'BLE MRS. SREEVIDHIA T.N MEMBER**

**PRESENT:**

**Dated : 29 Jul 2023**

**Final Order / Judgement**

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM**

**Dated this the 29<sup>th</sup> day of July,**

**2023**

Filed on: 01/08/2019

**PRESENT**

Shri.D.B.Binu President

Shri.V.Ramachandran Member

Smt.Sreevidhia.T.N Member

**CC NO. 297/2019**

**Between**

**COMPLAINANT**

Sreekumar S., S/o. Sivaraman Nair, Harivilasam, House No. 209, Vedaraplavu, Alapuzha  
690505.

**VS**

**OPPOSITE PARTIES**

1. M/s. JVC, Customer Response Cell, We Care Centre, Regd. And Corporate Office D239, Sec-63, Noida, Uttar Pradesh. Rep. by its Managing Director.
2. M/s. Flipkark, Consulting Rooms Pvt. Ltd., 202 DBS, Business Centre FF, World Trade Tower, Barakamba Lane, Connaught Place, New Delhi 110001. Rep. by its Managing Director.

(Rep. by Adv. N.S. Ajay, Prudence Attorney's, Fathima Plaza, Providence Road, Ernakulam 682018)

3. M/s. BJ Enterprises, Town Hall Road, South Kalamassery, Kochi 33. Rep. by its Proprietor.

## **FINAL ORDER**

**Sreevidhia T.N., Member:**

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

The complainant had purchased a JVC 55 inch Smart TV, model No. LT55N7105C for Rs.39,999/- from the 2<sup>nd</sup> opposite party, manufactured by the 1<sup>st</sup> opposite party. The delivery of the TV was on 08/04/2019 at the office address of the complainant and the same was installed on 16/04/2019. The carton box covering the smart TV had the specifications that 1 GB RAM and 8 GB memory and this was against the promised and notified 2GB RAM, 16 GM memory. The complainant protested to the service engineer who installed the JVC smart TV. The service engineer after contacting the office of the 1<sup>st</sup> opposite party informed the complainant that the smart TV packed in an old carton box that is how the specifications occurred.

The opposite parties have provided one year warranty. On 06/07/2019, when the complainant was switch on the smart TV, it is found that there is a web like crack on the left side panel, that is behind the panel. Immediately this matter was informed to the service engineer of the 3<sup>rd</sup> opposite party. But in spite of repeated reminders and follow ups there was no positive response. On 12/07/2019, the complainant had directly given a complaint to the 1<sup>st</sup> opposite party. Finally on 15/07/2019, the complainant received a message from the opposite party that the smart TV panel has no warranty. The damage to the panel of the smart TV in such a short time has occurred only due to the defect in the panel. The complainant states that the smart TV manufactured and sold by the opposite parties is having manufacturing defects. There is deficiency in service from the part of opposite parties. The stand taken by the opposite parties that there is no warranty coverage for the panel amounts to deficiency in service. Hence the complainant approached this Commission seeking orders directing the opposite parties to refund the price of JVC smart TV (Model No. LT-55N7105C) together with 12% future interest from the date of complaint till the date of realization, Rs.10,000/- as compensation for the loss and damages suffered by the complainant.

**2. Notice.**

Notice was issued to the opposite parties from this Commission on 21/12/2019 and the case was posted for the return of notice to 07/01/2020.

On 07/01/2020, when the case was taken it is seen that notice sent to 3<sup>rd</sup> opposite party served. Nobody appeared for 3<sup>rd</sup> opposite party and no version filed. Hence 3<sup>rd</sup> opposite party called absent and set ex-parte.

Notice sent to 1<sup>st</sup> opposite party returned as 'closed'. Hence on 01/02/2020 notice was issued through e-mail id of 1<sup>st</sup> opposite party [support@veiagroup.com](mailto:support@veiagroup.com). Nobody appeared for 1<sup>st</sup> opposite party and hence on the next posting date of the case, 1<sup>st</sup> opposite party also called absent and set ex-parte (1<sup>st</sup> opposite party also not filed version.)

Upon notice 2<sup>nd</sup> opposite party appeared and vakalatha and version filed.

### **3. Version of 2<sup>nd</sup> opposite party.**

The present complaint is not maintainable and hence liable to be dismissed. The present complaint pertains to alleged manufacturing defects in the product purchased ie., JVC smart TV. 2<sup>nd</sup> opposite is neither the manufacturer nor the authorized service centre of the product therefore not liable for any defect in the product. In the present complaint the complainant himself has admitted the fact that the product had confirmed physical damage and it is globally known fact that physical damages are not covered under manufacturers' standard warranty. 2<sup>nd</sup> opposite party states that the complainant is evidently trying to extort money illegally from the 2<sup>nd</sup> opposite party out of the complainant's own negligence.

The 2<sup>nd</sup> opposite party is carrying on the business of the sale of goods manufactured/produced by others. The 2<sup>nd</sup> opposite party is a registered seller on the website 'flipkart.com' and sells products manufactured by other parties through the website. 2<sup>nd</sup> opposite party is not engaged in sale of any goods manufactured or produced by its own. The 2<sup>nd</sup> opposite party is engaged in selling of goods manufactured and produced by independent third party manufacturer and thus 2<sup>nd</sup> opposite party has separate and distinct entity from the manufacturer of the product.

The complainant does not show any cause of action against the 2<sup>nd</sup> opposite party. The products sold by 2<sup>nd</sup> opposite party carries manufacturers' warranty. As a reseller involvement of 2<sup>nd</sup> opposite party in the entire transaction is limited only to selling the products of various manufacturers. The responsibility of 2<sup>nd</sup> opposite party ends as soon as the sealed and packaged product has been delivered to the end buyer within the stipulated time. In this particular case, the complainant has not alleged any kind of tampering with the packaging of the product. The complainant has failed to produce even single documentary evidence in support of his averments. The present complaint is only against the manufacturer and the manufacturer's authorized service centre for not providing adequate after sale services against the grievances raised by the complainant. Since there is no dispute contemplated under the Consumer Protection Act between the complainant and the 2<sup>nd</sup> opposite party as the 2<sup>nd</sup> opposite party is not the manufacturer of the product sold to the complainant and has no facility or knowledge to ascertain the condition or quality of sealed packed product which is delivered to the end buyer as it is received from the manufacturer. The 2<sup>nd</sup> opposite party has no facility to ascertain whether the product in the packet was already damaged or developed the same due to complainant's own mishandling.

In addition to the manufacturer's warranty 2<sup>nd</sup> opposite party provide '10 days replacement policy' to the complainant. However the complainant has used the product in issue for over 3 months before the complaint has raised the alleged grievances. Evidently the present case is no regard to delivery of the alleged defective product. The complainant has failed to avail 10 days replacement policy provided by the 2<sup>nd</sup> opposite party. The complainant has not approached the 2<sup>nd</sup> opposite party for any alleged grievances at any point of time.

In Hindustan Motor Ltd. and another Vs. N. Sivakumar (2000) 10 SCC654 and in Abhinandam Vs. Ajith Kumar Verma and Ors. (2008) CPJ 336 (NC) held that the dealer or retailer cannot be held liable for defect in the good/products. The complaint filed by the complainant is liable to be dismissed.

#### 4. **Evidence**

The evidence in this case consists of the proof affidavit filed by the complainant and the documentary evidence which are marked as Exbt. A1 to A5.

2<sup>nd</sup> opposite party has not filed any documentary evidence even though ample chances given to them. Hence evidence was closed and heard both parties.

Exbt. A1: The specifications made by the 1<sup>st</sup> opposite party about JVC smart TV

Exbt. A2: Copy of the carton cover and the specifications of the Smart TV at the time of delivery

Exbt. A3: Purchase invoice dated 08/04/2019 for Rs.39,999/-

Exbt. A4: Warranty card issued by 1<sup>st</sup> opposite party

Exbt. A5: Copy of the intimation dated 15/07/2019 made by the opposite parties that the panel has no warranty.

#### 5. **Points taken for consideration in this case are**

1. Whether any deficiency in service or unfair trade practice is proved from the side of the opposite party towards the complainant?
2. If so, reliefs and costs?

For the sake of convenience we have considered issue No. (1) and (2) together.

We have verified the facts of the case, version filed by the opposite party and documents filed in this case. As per Exbt. A1 specifications JVC 140 cm (55inch) Ultra HD (4K) has a Ram capacity 2GB and storage memory 16 GB. As per Exbt. A2, the copy of carton box covering the Smart TV had the specification that 1GB RAM & 8GB ROM. The complainant has produced 5 documents from his side to prove his case. 2<sup>nd</sup> opposite party has not filed any documents.

The 1<sup>st</sup> and 3<sup>rd</sup> opposite parties conscious failure to filed 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. The Hon'ble National Commission held a similar stance in its order cited 2017 (4) CPR Page 590 (NC).

The case of the complainant is that he had purchased a JVC 55 Smart TV, model No. LT 55M 7105C) from the 2<sup>nd</sup> opposite party, which is manufactured by the 1<sup>st</sup> opposite party. The complainant states that the carton box covering the Smart TV had the specifications that 1 GB RAM and 8GB memory. This was against the notified 2GB RAM, 16 GB Memory. The complainant also states that opposite party have provided one year warranty to the product. On 06/07/2019 within three months from the date of purchase the TV became defective. The complainant states that on 15/07/2019 the complainant received a message tha the smart TV panel have no warranty.

As per Exbt. A3, tax invoice the complainant had purchased the product on 08/04/2019 for Rs.39,999/-. Normally one year guarantee was provided to the TV worth Rs.40,000/-. As per Exbt. A5 dated 15/07/2019 the opposite party informed that the panel damage is not covered under warranty. From Exbt. A5 it is very clear that the TV became defective within 3 months from the date of purchase. As per Exbt. A2 the alleged TV is only having 1GB RAM and 8GB ROM. As per the specifications provided the product will be of 2 GB RAM and storage memory 16 GB.

From the available documents and evidence in this case it is found that the opposite parties have inadequately performed the service as contracted with the complainant and hence there is deficiency in service, negligence on the part of the opposite parties.

Opposite parties No. 2 in their version states that “the complaint pertains to alleged manufacturing defects in the product ie. JVC Smart TV. 2<sup>nd</sup> opposite party is neither the manufacturer nor the authorized service centre of the product and therefore 2<sup>nd</sup> opposite party has separate and distinct entity from the manufacturer of the product. The 2<sup>nd</sup> opposite party also states in their version that the complainant himself had admitted the fact that the product had confirmed physical damage and it is globally known fact that physical damage are not covered under manufacturers’ standard warranty. The 2<sup>nd</sup> opposite party is a registered seller on the website “flipkart.com” and sells products manufactured by other parties through the website. It is further submitted that the 2<sup>nd</sup> opposite party is merely a registered online reseller on the online platform provided by the 2<sup>nd</sup> opposite party where the buyers purchases the products out of their free will and choice”. The 2<sup>nd</sup> opposite party’s above contentions are not tenable.

As per the Consumer Protection Act, e-commerce Rules 2020, Rules 5(2), Every market e-commerce entity shall requires sellers through an undertaking to ensure that descriptions, images and other content pertaining to goods or services on their platform is accurate and corresponds directly with the appearance, nature, quality, purpose and other general features of such goods or service.

Rule 7(3) of the e-commerce Rules are as follows: Every inventory e-commerce entity shall ensure that the advertisements for marketing of goods or services are consistent with the actual characteristics, access and usage conditions and such goods or services.

Hence the contentions taken by the 2<sup>nd</sup> opposite party can’t be taken into consideration.

From the available documents the complainant was supplied with a lower specification TV than the one shown in the carton box. The TV became defective within a short span of life. A TV with such a low specification was supplied to the complainant and it became defective within a short span of its purchase it is very clear that unfair trade practice and deficiency in service is proved

from the side of opposite parties towards the complainant. The complainant had to suffer huge mental agony, pain and other hardships due to the deficient act of the opposite parties. In the result, Point No. (1) and (2) are found in favour of the complainant and the following orders are passed.

1. The opposite parties shall refund the price of the JVC Smart TV (Model No. LT55N7105C) to the complainant.
2. The opposite parties shall pay a compensation of Rs.5,000/- (Rupees five thousand only) to the complainant for the deficiency in service from their part.
3. The opposite parties shall pay cost of proceedings Rs.4,000/- (Rupees four thousand only) to the complainant.
4. The liability of the opposite parties shall be jointly and severally.

The above order shall be complied within 30 days from the date of receipt of a copy of this order.

Pronounced in the Open Commission this the 29<sup>th</sup> day of July, 2023.

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Sreevidhia.T.N, Member

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D.B.Binu, President

Sd/-

V.Ramachandran, Member  
Forwarded/by Order

Assistant Registrar

## **APPENDIX**

### **Complainant's evidence:**

Exbt. A1: The specifications made by the 1<sup>st</sup> opposite party about JVC smart TV

Exbt. A2: Copy of the carton cover and the specifications of the Smart TV at the time of delivery

Exbt. A3: Purchase invoice dated 08/04/2019 for Rs.39,999/-

Exbt. A4: Warranty card issued by 1<sup>st</sup> opposite party

Exbt. A5: Copy of the intimation dated 15/07/2019 made by the opposite parties that the panel has no warranty.

### **Opposite parties' evidence**

Nil

Despatch date:

By hand: By post

kp/

**CC No. 297/2019**

**Order Date: 29/07/2023**

**[HON'BLE MR. D.B BINU]  
PRESIDENT**

**[HON'BLE MR. RAMACHANDRAN .V]  
MEMBER**

**[HON'BLE MRS. SREEVIDHIA T.N]  
MEMBER**