

**SILIGURI CIRCUIT BENCH**  
**of**  
**WEST BENGAL STATE CONSUMER DISPUTES REDRESSAL COMMISSION**  
**2nd MILE, SEVOKE ROAD, SILIGURI**  
**JALPAIGURI - 734001**

**Complaint Case No. CC/3/2021**  
**( Date of Filing : 20 Sep 2021 )**

1. JAMAL HAIDER

C/O-DIAMOND TYRE, BEHIND JAMA MASJID, CHAPPAL  
PATTI, SILIGURI, PIN-734001

DARJEELING

WEST BENGAL

.....Complainant(s)

Versus

1. FLIPKART INTERNET PRIVATE LIMITED

BUILDING ALYSSA, BEGONIA & CLOVER, EMBASSY  
TECH VILLAGE, OUTER RING ROAD,  
DEVARABEESANAHALLI VILLAGE, BENGALURU,  
BENGALORE, PIN-560103

KARNATAKA

2. N.H TRADERS

M-265 SECTOR, 12 PRATAP VIHAR, GHAZIABAD-201009

3. SHRI. BALAJI OVERSEAS

1, ROHTAK RD, RATAN BAGH, NANGLOI, DELHI-110041 .....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. KUNDAN KUMAR KUMAI PRESIDING MEMBER**

**HON'BLE MR. SWAPAN KUMAR DAS MEMBER**

**PRESENT:**

**Dated : 22 Apr 2024**

**Final Order / Judgement**

**KUNDAN KUMAR KUMAI**

This is a complaint u/s 47 of the Consumer Protection Act, 2019.

The Complainant's case in brief is that, the Complainant had ordered on Flipkart one, 'Muscletech Performance Series Nitrotech Whey Protin Milk Chocolate' on 06/08/2021 vide order Id. OD222511870828083000, against an Invoice bearing no. FAH7ZY2200000049 dated 06/08/2021, for personal consumption, as a nutritional supplement. On receiving the said product, the Complainant had checked for the scratch code, which could not be detected and had raised the issue before the OP no.1, who in turn suggested, verifying the finding of the Complainant, with the OP no.3. The Complainant in order to know the actual fact had sent the picture of the product through e-mail to the OP no.3 [shribalaji015@gmail.com](mailto:shribalaji015@gmail.com) on 12/08/2021 and sought for clarification, as to the authenticity of the product, bought from OP no.1. On 13/08/2021, the OP no.3 sent an e-mail to the Complainant, stating that the product was found to be counterfeit and requested him to contact the seller. The Complaint complied with the direction suggested by the OPs, but did not get a refund for the counterfeit product.

The Complainant had purchased the product from the OP no.1 and the OP no.1 had allowed the OP no.2, to provide the said product. But, even after the product was found to be counterfeit, by the OP no.3., no refund had been made. The Complainant being a resident within the jurisdiction of this Commission had then lodged this complaint, with necessary prayers for compensation. Hence this case.

The OP no.1 appeared to contest this claim by filing written version wherein it has denied the claims made by the Complainant. It is the case of the OP no.1 that it is only an on-line marketplace e-commerce entity as defined under the Consumer Protection Act, 2019 and Consumer Protection (E-Commerce) Rules, 2020 and the Complainant had purchased the product from the OP no.2, as established by the Tax Invoice. Thus, the role of the OP no.1 was merely to facilitate the sale of the product between the Complainant and the OP no.2, the role of the OP no.1 was merely as an 'intermediary' as defined under the section 2(1)(w) of the Information Technology Act, 2000 and was protected u/s 79 of the above Act. Moreover, the OP no.1 had immediately taken protective measures by black-listing the OP no.2's account, for further transactions. That apart the usage of the OP no.1's platform was bound by the Terms of Use wherein inter alia "All contractual/commercial terms are offered by and the seller alone. The contractual/commercial terms include without limitation price, shipping cost, payment method, payment terms, date period and mode of delivery, warranties related to products and services and after sale services related to products and services. Flipkart does not have any control or does not determine or advise or in any way involve itself in the offering or acceptance of such contractual/commercial terms between the buyer and the seller." It is further mentioned that the OP no.1 had neither listed/displayed/specified any product on the marketplace platform nor accepted any offer for sale from them. Moreover, the OP no.1 had strictly prohibited the sellers inter alia from the sale of counterfeit products. The OP no.1 therefore prayed for dismissing the case.

The other Ops did not appear and therefore the case had been taken up for ex-parte hearing, against them.

The Complainant had examined himself as witness and after cross-examination had been discharged and furnished certain documents which had been marked at Annexures I, II & III. On the other hand, witness had been examined on behalf of the OP no.1 and she had been cross-examined and discharged.

### **Decisions with Reasons**

Ld. Advocate for the Complainant, at the time of final hearing, had submitted that the Complainant had been supplied from the marketplace platform of the OP no.1 with the counterfeit edible protein milk chocolate, even though the same had been sold by the OP no.2, a seller in the said marketplace platform of the OP no.1. He had relied in the judgement passed by the Hon'ble High Court at Delhi in Christian Louboutin Vs. Nakul Bajaj and Amway India Enterprises Pvt. Ltd. Vs. IMG Technologies Pvt. Ltd.

Ld. Advocate for the OP no.1 on the other hand, had countered the above argument, by submitting that the OP no.1 had no role to play save and except, facilitating the transaction between the Complainant and the OP no.2. It was further argued that the OP no.1 was protected by the provision of the section 79 of the IT Act, 2000. That apart the OP no.2 was bound by the Terms of Use wherein the OP no.2, had been strictly prohibited inter alia from the sale of counterfeit products. He had relied in the judgement passed by the Hon'ble Delhi High Court in

Kent R.O. System & Anr. Vs. Amit Kotak & Ors. and Myspace Inc. Vs. Super Cassettes Industries Ltd.

None appeared on behalf of the OP nos. 3 & 4 and as such the case was taken up for ex-parte hearing against them.

The facts of the sale and transaction between the Complainant and the Parties is not disputed. The involvement of the OP no.1 in the transaction between the Complainant and the OP no.2 is merely to facilitate the sale and purchase of the

‘Muscletech Performance Series Nitrotech Whey Protein Milk Chocolate’ between the Complainant and the OP no.2, by providing an electronic network for such transaction. That apart, the OP no.2 was bound to the Terms of Use, indicating the relationship of the OP no.2 with the OP no.1 and whereby the OP no.2 was strictly prohibited inter alia from selling such counterfeit products. Hence the relationship between the OP no.1 and the Complainant as well as the OP no.2 being established, the OP no.1 could only have been held liable for the violations of the liabilities enumerated u/s 5 of the Consumer Protection (E-commerce) Rules, 2020. But as there is nothing to show that the OP no.1 had violated the provisions of Section 5 of the Consumer Protection (E-commerce) Rules, 2020, the claims made against the OP no.1 cannot be said to have been proved against the OP no.1. However, the OP no.1 ought to have taken the strict view for the sale of the counterfeit edible product, which could have resulted in serious health complications if not fatalities, for breach of the Terms of Use, but there is no evidence forthcoming from the OP no.1’s side which indicates of any action being taken against the OP no.2 by the OP no.1. On the other hand, the OP no.2 had not appeared to contest the claim and the Annexures C 1,2&3 apart from the uncontroverted testimony of the Complainant clearly points to the fact that the OP no.2 had not only sold that product, but the same was also found to be a counterfeit one. Under the circumstance, the OP no.2 was liable to not only refund the price of the product, but also compensate the Complainant for such mental and physical agony, especially when there is no evidence that the Complainant had resorted to criminal proceedings against the OP no.2. However, no case appears to have been made against the OP no.3 following which the case against the OP no.3 is liable to be dismissed.

In view of the above findings and observations made therein, no case of liability against the OP nos. 1 & 3 appears to have been made out and consequently the case stands dismissed against the OP nos. 1 & 3. On the other hand, the OP no.2 is liable to refund Rs.6524/- (Rupees six thousand five hundred twenty-four) only being the amount paid for the counterfeit protein, along with Rs.20000/- (Rupees twenty thousand) only, as compensation for mental and physical agony and Rs. 10000/- (Rupees ten thousand) only as litigation cost.

It is therefore,

### **ORDERED**

That the Consumer Complaint be and the same is dismissed on contest against the OP no.1 and allowed ex-parte against the OP no.2 and dismissed ex-parte against the OP no.3, but without cost.

The OP no.2 is directed to refund Rs.6524/- (Rupees six thousand five hundred twenty-four) only being the amount paid for the counterfeit protein along with Rs.20000/- (Rupees twenty thousand) only, as compensation for mental and physical agony and Rs. 10000/- (Rupees ten thousand) only as litigation cost, within 45 days from the date of receipt of this order.

Copy of the order be sent to the Parties free of cost.

**[HON'BLE MR. KUNDAN KUMAR KUMAI]  
PRESIDING MEMBER**

**[HON'BLE MR. SWAPAN KUMAR DAS]  
MEMBER**