

DISTRICT CONSUMER DISPUTES REDRESSAL FORUM, UNA, DISTRICT UNA, HIMACHAL PRADESH.

Consumer Complaint No. : 109/2016
Date of Presentation : 18-06-2016
Date of Decision : 05-01-2018

In the matter of :-

Yashpal Singh Sandhu, Assistant Sub Inspector,
District Police Control Room, Una.

----- Complainant

Versus

1. Aircel, Circle Head Office, Dishnet Wireless Limited, 2nd and 3rd Floor, Keonthal Complex, Upper Khalini, Shimla -171002.
2. Aircel, Registered Office, 5th Floor, Spencer Plaza, 769, Anna Salai, Chennai -600002 (Tamilnadu).

---- Opposite parties

Complaint under Section 12 of the Consumer Protection Act, 1986.

Before: Mr. Davinder Kumar, President.
Mrs. Saroj Modgil, Member.

Present:

Complainant in person.

For opposite parties 1&2 : Shri Amit Sawhney, Adv.

O R D E R :- Per Mr. Davinder Kumar (District Judge) President.

Complainant on the strength of this complaint has claimed that opposite parties be directed to refund all the amount deducted from his account without rendering any service and also to pay compensation of Rupees 20,000/- on account of mental harassment and litigation expenses on the

grounds that complainant was subscriber of Aircel mobile Sim Number 8679427055 for the last 5-6 years. Opposite parties started imposing Value Added Services on the said phone number of complainant without his consent and intimation and deducted money from his talk time credit. Complainant inquired for the same from opposite parties and it was told by the opposite parties that complainant might have clicked some link for the service, which the complainant had not opted. The complainant stopped recharging his number for voice calling and decided to use only internet services of the opposite parties. The last recharge of Rupees 167/- by complainant for internet was on 16-05-2016 with validity of 45 days and of unlimited use. On 21-05-2016 complainant recharged his Aircel Sim for Rupees 110/- for voice calling, but within 5 days the said talk time credit became Zero without making much calls. On 26-05-2016 complainant again recharged his said Sim number for Rupees 55/- and after two days said balance also became 0 (zero) without calling so much. On 28-05-2016 the internet pack of complainant also stopped working only after 12 days of recharge despite having its validity of 45 days. Complainant inquired the matter and it was disclosed that due to zero

balance in the account of complainant, internet pack has stopped working and Customer Care Representative advised the complainant to get recharge for Rupees 10/- and it will start working again. Complainant on 28-06-2015 at 10:15PM got a recharge of worth Rupees 10/-, but after few minutes of recharge, the internet pack again stopped working and on inquiry it was told that due to zero balance it had stopped working. Complainant due to the tactics of opposite parties decided to port his Sim number to another and on 30-06-2016 procured recharge of Rupees 10/-, but after few minutes the balance of SIM became Zero. Such act and conduct of opposite parties amount to unfair trade practice and deficiency in service, due to which complainant has suffered monetary loss, mental tension and harassment.

2. The claim of complainant has been disputed by opposite parties by filing reply, wherein preliminary objections of maintainability, jurisdiction etc., have been taken. On merits, it has been denied that value added tax was activated on mobile number of the complainant without his consent. VAS cannot be activated without double consent. VAS services were activated on the request and consent of complainant. It has been denied that complainant

stopped recharging his account with talk time, rather he got recharged his account for data as well as talk time. His recharge of Rupees 167/- was a data recharge and his recharge of Rupees 10/-, 55/- were for voice. Complainant has pleaded wrong facts. Complainant had used the data regularly before he opted for porting connection and complainant had used 830.03MB data from 16-05-2016 to 30-05-2016. Complainant ported his connection to idea on 04-06-2016 and therefore, there is no question of recharge on 28-06-2016. Rest of contents of complaint have been denied and prayer for dismissal of complaint has been made.

3. Rejoinder controverting the contents of reply and reaffirming and reasserting those of complaint, was also filed.

4. Both the parties adduced evidence.

5. We have heard the complainant and learned Counsel for opposite parties and gone through the complaint, reply, rejoinder and evidence adduced by them.

6. Complainant in support of his claim tendered in evidence documents Annexure C-1 to C-10 including his proof affidavit. Annexure C-1 to C-7 are messages received by the complainant from opposite parties. As per Annexure C-1, complainant

had opted Vedio talkies and Rupees 45/- for 12 days had been charged from the complainant.

7. As per Annexure C-1 complainant had also opted social book app of Rupees 50/- and Rupees 5/- has been charged for 1 day service. From the perusal of Annexure C-2, it is revealed that complainant made last recharge on 16-05-2016 with unlimited calls for 45 days and complainant was using Sim of opposite parties only for internet services. On 21-05-2016 complainant took a recharge of Rupees 110/- for voice calling and within 5 days time credit became zero. Complainant again took talk time recharge of Rupees 55/- on 26-05-2016 and this amount has been consumed within two days despite of the fact that complainant had not used the mobile for calls.

8. Opposite parties also tendered in evidence documents Annexure OPR-1 to OPR-4 including proof affidavit of Davinder Singh.

9. From the perusal of documents placed on record, it is quite clear that complainant had procured recharge of Rupees 167/- with unlimited data for 45 days. As per reply of opposite parties, the mobile data was used by the complainant from 16-05-2016 to 26-05-2016 and thereafter 3MB data was used by the complainant. There is no record to

hold that from 31-05-2016 to 03-06-2016 internet pack was consumed by the complainant. Complainant was consumer of opposite parties, therefore, it was their duty to provide proper services to the complainant. From the perusal of records it appears that complainant had recharged his account with data recharge of Rupees 167/- on 26-05-2016 with unlimited use and on 28-05-2016 the internet pack had stopped working and he had made inquires and he had been informed by the representative of opposite parties that internet stopped working due to zero balance and accordingly he recharged his mobile with data of Rupees 10/- and few minutes internet pack stopped working. Complainant due to non cooperative behaviour of opposite parties, ported his Sim on 04-06-2016. Opposite parties have not provided the services to which the complainant being consumer of opposite parties was entitled. Internet pack of the complainant was wrongly disconnected by the opposite parties which constitutes unfair trade practice and deficiency in service.

10. In view of evidence discussed and findings recorded above, this Forum is bound to conclude that opposite parties have committed unfair trade practice and deficiency in service, due to which

complainant has suffered monetary loss, mental tension and harassment.

RELIEF

11. In view of findings recorded above, the complaint is allowed and opposite parties are directed to pay Rupees 400/- to the complainant (the amount which the complainant had invested on recharges of opposite parties) within 30 days from the receipt of copy of this order, failing which the said amount shall bear interest at the rate of 9% per annum from the date of filing of the complaint i.e. 18-06-2016. The opposite parties are also directed to pay punitive compensation of Rupees 1,000/- and cost of the complaint which we assess at Rupees 3,000/-. Let certified copy of this order be sent to the parties free of cost. The file after its due completion be consigned to the Records.

**Announced and signed in open Forum
on this the 05th day of January, 2018.**

(Davinder Kumar)
President

(Saroj Modgil)
Member