

raised online complaint regarding non-functioning of the tab and despite assurance given by OP for resolution and customer care follow-up by complainant, no resolution was given and instead his complaint was closed by OP. During this period a technician from OP had visited the complainant premises and told him that the subject device is faulty and will be replaced shortly, but it did not happen. Complainant had even sent a legal notice dated 19.10.2020 to OP but OP vide reply dated 11.01.2021 expressed its inability to replace the tab claiming that physical damage was not covered under warranty and advised complainant to take up the issue with authorised service centre of Lenovo for further assistance. Therefore, vide the present complaint, the complainant has prayed for issuance of directions to OP to replace the tab or refund its price and payment of cost.

2. Notice was issued to OP in hearing held on 03.03.2021 for appearance on 01.06.2021. However, court proceedings were disrupted during this period due to second wave of corona virus pandemic. Post service of notice, OP had already filed its WS on 23.04.2022 making preliminary admission of complainant having purchased online a Lenovo Tab M10 (HD) 32 GB 10.1 inch with WI FI on 22.09.2020 which was duly delivered by OP on 27.09.2020 and submitted in defence that the subject Tab was purchased from a third party seller (Health and Happiness Pvt. Ltd.) through a Logistic service provider. When the complainant raised his grievance with OP, it was duly accelerated to the seller and OP in its intermediary capacity sent an expert technician to inspect the Tab who found that the defect was customer induced physical damage which is not covered under seller replacement warranty and therefore complainant's request for return was rejected as item delivered was correct. OP took the shelter of it being an online market place and e-commerce entity as defined under Consumer Protection Act (CPA) 2019 and Consumer Protection (E-Commerce) Rules 2020 and is an intermediary defined under section 2 (1) (w) of Information Technology Act 2000 and is protected under Section 79 of the Act which excludes and "Intermediary from Liability" for any third party information, data or communication link made available or hosted by him and Section 5(1) of Consumer Protection (E-Commerce) Rules 2020 which also provides

the exemption to Market place E-Com entity. OP also took defence of Department of Industrial Policy and promotion, Ministry of Commerce and Industry, Government of India Press Note no. 3 (2016 series) in clause 2.3 (VI) (VII) which has clarified that post sale services and customer satisfaction is solely the responsibility of seller and this clarification is also reaffirmed under clause 5.2.15.2.4 in Consolidated FDI Policy of 2020 as released by Department for Promotion of Industry and Internal Trade. Further, OP cited its "Terms of Use) which binds its Use vide which it is clearly laid down that contract of sale is a bipartite contract between buyer and seller only and OP has no privity to it. Further, there is a Disclaimer therein that Flipkart is not responsible for any non-performance or breach of any contract enter into between buyers and sellers. For all the above reasons OP had no contractual or legal liability to refund. For defence so taken OP prayed for dismissal of complaint with cost. OP has attached Government notification and Press note on E-Com and Flipkart Terms of Use.

3. Complainant did not wish to file rejoinder and filed his evidence by way of affidavit.
4. Evidence by way of affidavit was filed by OP sworn by its AR.
5. Written arguments was filed by complainant in reassertion/reiteration of his grievance.
6. On completion of pleadings m matter was posted for oral arguments and arguments were addressed by both parties. Offer of settlements for Rs. 15,000/- given by OP was declined by Complainant.
7. Admittedly, Lenovo Tab was purchased by complainant from OP online Shopping Portal on 22.09.2020 for Rs. 10999/- and delivered by it to complainant on 27.09.2020. We have observed that despite complaint raised for return the same day for broken display screen, OP did not get done any reverse pick up opposed and contrary its own 30 days replacement guarantee policy at page no. 25 " Terms of Use" of its written statement which was not adhered to by OP.
8. We are of the considered view that it is a sheer deficiency of service on the part of OP. We, therefore, allow the present complaint and direct the OP to refund the value of the Tab i.e. Rs. 10999/- with compensation of Rs. 5000/- to the complainant and Rs. 4,000/- towards cost of

litigation. Let the order be complied with by the OPs within 30 days of receipt of copy of this Order.

9. Let the copy of this order be made available to both parties on application for free certified copy under the name of President of this Commission as per guidelines of Hon'ble SCDRC.

10. File be consigned to record room after date of pronouncement.

11. Announced on 12.03.2026.

(Richa Jindal)
Member

(Anil Kumar Koushal)
Member

(Sonica Mehrotra)
President