

Date of Filing : 01.11.2021

Date of Order : 28.02.2023

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-III,
HYDERABAD.**

Present

SRI M. RAMGOPAL REDDY, PRESIDENT
SMT. D.SREEDEVI, MEMBER
SMT. J.SHYAMALA, MEMBER

Tuesday, the 28th Day of February' 2023

C.C.No. 642 of 2021

Between:

Mrs. Sushila Ram Varma,
W/o. Mr. Mogili Shrikanth Varma,
Aged 59 years,
Flat No.303, Third Floor,
The Down Town Apartments,
Road No.5, Banjara Hills,
Hyderabad-500 034, Telangana,
Ph 7893087474.

.....Complainant

And:

1. Apple Inc., USA,
Through Chief Executive Officer,
Having office at :
One Apple Park Way,
Cupertino, California -95014,
United States of America (U.S.A.)
Email – tcook@apple.com
2. Apple India Pvt., Ltd.,
Through Managing Director,
Having office at :
19th Floor, Concorde Tower C, UB City,
No.24, Vittal Mallya Road,
Bengaluru, Karnataka - 560001.
Email – bangalore admin@ apple.com ;
ashish.chowdhary@apple.com ;
Contact appleindia@apple.com
3. Apronix @ GVK ONE MALL,
Through Authorized Representative,
Having Office At :
Apronix, Shop No.15, 16, 17,
Ground Floor, GCK ONE, GVK MALL,
Road No.1, Banjara Hills,
Hyderabad -500 034, Telangana,
Email- gvk1@aptronixindia.com
4. Apronix-Banjara Hills,
Through Authorized Representative,
Having Office at :
Inwinex Towers,
Road No.2, Banjara Hills,
Opposite RBS Bank 500032,
Hyderabad-500 032,
Telangana,
Email- service.banjarahills@aptronixindia.com

.....Opposite Parties

Counsel for the Complainant : M/s Daliparthy Harini, Advocates.

Counsel for the Opposite Party No.1, 3 and 4 : Absent

Counsel for the Opposite Party No.2 : M/s T.Shyam Kumar, Advocates.

ORDER:

(PER SMT. D.SREEDEVI, MEMBER, ON BEHALF OF THE BENCH)

1. The Complainant filed this Amended complaint under section 34 and 35 Read with Sections 2(6) (i), (ii), (vii), 2(8), 2(9) (ii), 2(10), 2(11), 2(20), 2(34), 2(37), 2(38), 2(47) (i) (g), (h), and 2(47) (viii) of the Consumer Protection Act, 2019 Read with Amendments thereto along with the Consumer Protection (Consumer Disputes Redressal Commissions) Rules, 2020 as Amended thereof, seeking a direction to the opposite parties to **(a)** Hold and declare that the Opposite Parties jointly and severally guilty of deficiency of services, defect in goods, unfair trade practices and negligence leading to inconvenience to the complainant; **(b)** Direct the opposite parties to replace the iMac Desktop with the MS Office Software or in the alternative, refund the amount of Rs.1,20,704/- (Rupees one lakh twenty thousand seven hundred and four only) that she paid for the iMac Desktop and MS Office Software and with interest at 18% p.a. from the date of purchase till the date of payment; **(c)** Direct the opposite parties jointly and severally to pay to the complainant herein a total sum of Rs.2,70,000/- (Rupees two lakh seventy thousand only) by way of compensation to the complainant towards damages and compensation, with interest at 18% p.a. from the date of filing this complaint till date of payment; **(d)** Award costs of this Complaint for Rs.1,00,000/- (Rupees one lakh only) in favour of the complainant and against the opposite parties; **(e)** Pass such further and other orders as this Commission may deem just and proper to meet the ends of justice.

2. The case of the complainant in brief is that the complainant is a Practicing Advocate of the Hon'ble Supreme Court of India and several High Courts in India, having office at Hyderabad amongst other places. The Opposite Party No.1 i.e. Apple Inc., U.S.A., is a Multi-National Technology Company, is engaged in manufacture, sale and wholesale distribution of premium and high-end iPhones, Mac Book, iMac Desktop, iPad, Watch, TV, iPod and other Apple Products and accessories across the Globe under the brand name of "Apple". "Apple" is a product Seller, as per the terms of Section 2(37) of the Consumer Protection Act, 2019. The Opposite Party No.2, Apple India Pvt., Ltd., is the Indian Wholly Owned Subsidiary Company of Opposite Party No.1 Apple Inc., USA. The opposite party No.2 manufactures, sells and distributes premium and high-end iPhone, MacBook, iMac Desktop, iPad, Watch, TV, iPod and other Apple Products and accessories in India. The opposite party No.2 is Apronix @ GVK One is a Apronix Store based in Hyderabad, which sells premium and expensive iPhones, MacBook, iMac Desktop, iPad, Watch and iPod, Apronix is one of the larges

Apple Premium Resellers in India, which has stores across 14 cities in India. The Opposite Party No.4, Apronix -Banjara Hills is an Authorized Service Provider that set up to provide in-warranty and out-of-warranty repair services for any Apple Product(s) to consumers. The Opposite Party No.4 is a product Service Provider, as per the terms of Section 2(38) of the Consumer Protection Act, 2019. The complainant had purchased an Apple iMac Desktop bearing particulars : 84713010 (MHK23HN/A) 21.5 Inch iMac with Retina 4K display: 3.6 GHz quad core 8th Generation Intel Core i3, processor, 256GB, bearing Serial/IMEI No.SC02F62J807F1 (Product/iMac Desktop) from the Opposite party No.3 on 21.04.2021. The complainant purchased a Microsoft Office (MS) office Software on 21.04.2021 which was installed in the iMax Desktop by opposite party No.3 on 24.04.2021. The iMac came with a warranty for one year as per the Apple Policy. The Opposite Parties have warranted against defects in materials and workmanship in respect of Apple-Branded hardware products and Apple-branded accessories when used during the period of one year from the date of original retail purchase. The Apple one year limited warranty and Apple Repair Terms and Conditions (Agreement) requires Apple to repair/replace/exchange the Apple product in case of any defect and if any claim is submitted during the warranty period. The warranty for iMax Desktop purchased by the complainant on 21.04.2021 from opposite party No.3 is valid for a period of one year i.e. till 21.04.2022. The complainant has been having trouble with the iMax from the very second day i.e. 25.04.2021 when the complainant first used it. The complainant had a virtual court hearing on Cisco Webex Application and when she started the video, she was shocked to see very dark images of Office Background, herself and her Associates. She immediately called the opposite party No.3 and informed them that the video quality was very poor. The opposite party No.3 advised her to call the Apple Support and stated that they would guide her regarding the adjustment. The complainant had purchased the iMac Desktop during the Pandemic and had done so as there was a shift from the real world to the digital world in all aspects of her profession. It is common knowledge that courts, meetings, conference, webinars, etc, were all digital during the period of the Pandemic and continue to be so for an indefinite period. Investment in the iMac was done only to facilitate better and superior quality digital access that was the USP of an Apple Product. The poor quality of the video/camera was uniformly defective across all digital platforms such as Zoom, Google Meet, Face Time, Microsoft Teams, Webex etc. The complainant on the advice of the Opposite Party No.3 called up the Apple Support multiple times and they suggested some changes in the Settings which the complainant did. But the said adjustments did not help. Eventually, Apple Support concluded that there was a hardware issue and advised the complainant that she takes her iMac Desktop to the Service Provider. The complainant took the iMax Desktop to the opposite party No.4, an Apple Authorized Service Provider, in the week beginning on 26.04.2021. The opposite party No.4 claimed that they made some adjustments and the iMax was brought back to her

officer, when the complainant started using the camera on her iMax Desktop, she noticed that the aforesaid issue persisted and the video image of her office background, herself and her Associates continued to appear dark and black on her iMax Desktop. Her Office Associates in other cities also informed her that there was an issue with the Camera and that the video visuals were not clear at all. The complainant made multiple complaints to the Apple Support and the opposite party No.4 since April 2021 with no effective solution. They suggested that she updates the system, after which there was a marginal improvement in the camera appearance, but it still appears dark. The complainant called the Apple Support 3-4 times thereafter, as well but they have not been able to help her to improve the camera visuals/appearance in the iMac Desktop. In fact, the opposite party No.2 Apple Support has acknowledged the fact that the issue regarding poor quality and dark contrast video image in the iMac Desktop persists and needs to be reviewed, vide email dated 30.08.2021. The complainant issued a letter, dated 01.09.2021 to the opposite party No.2 in respect of the poor video quality issue which was not fixed by the opposite party No.2 and/or the opposite party No.4 and she therefore, demanded a replacement of the iMac Desktop, as there was a defect in the product in keeping with the Apple Warranty. To this the opposite party No.2 sent an acknowledgement email dated 01.09.2021. However, no further action was taken by the opposite party No.2 Apple Support to rectify this issue. The complainant again took the iMax Desktop to the opposite party No.4-Service provider on 01.09.2021. The opposite party No.4 issued a Delivery Report dated 06.09.2021 and asked her to take it back, stating that the complainant has reported camera image quality issues, but upon diagnosis they did not find any issues, so they refused to repair the iMax Desktop. Despite the above assurances by opposite party No.4 when the complainant cross-checked the camera functioning the same day that it was delivered, she found that the video image continued to appear dark and black on her iMax Desktop. She immediately called up the Technician and complained about the quality of the camera image. It is highly disappointing that both the opposite party No.2 and 4 have been unable to fix the issue in the past 6(six) months and the complainant being a valued customer of Apple, has been left high and dry to face this issue that has been left high and dry to face this issue that has been persistent since, the day it was installed in April 2021. The complainant has been using Apple MacBook Air since 2015, despite the Apple MacBook Air being 6 years old, the quality of the video and visuals was far superior than that of her brand new iMax Desktop. The image quality in both the systems is completely different. The video visual is bright and clear on her Apple MacBook Air, whereas, the same video image appears dark and black on her iMax Desktop. This is very strange as the MacBook Air was purchased in 2015 and despite being in use for 6 (Six) years, it has a clear image as compared to a brand new iMax Desktop. The technical specifications of MacBook Air and iMac Desktop show a clear difference between the two systems in respect of their display, resolution, camera

quality etc., it would be pertinent to mention that the iMax purchased in 2021 has a far superior camera as compared to the older MacBook. As per the Technical Specifications, the 2014-Model MacBook Air has the following features:- i) A liquid Crystal Display (LCD) uses light to produce a visible image on the screen and enable content to be displayed in the system. It comes with a Resolution of 1440 (Width) by 900 (Height). The Resolution is defined as the number of pixels that a computer is capable of printing or displaying in a digital image. The Resolution is measured as width by height (WxH), where W is the number of horizontal pixels and H is the number of vertical pixels. It implies that the LCD display is capable of displaying 1440 horizontal pixels and 900 vertical pixels on the screen. (ii) MacBook Air Supports up to 2560 (W) by 1600 (H) pixels on an external display, both at millions of colours. It implies that these pixels have the ability to project millions of different colours on the external display. The MacBook Air has a hardware interface that is called by the branch name "Thunderbolt" which connects external peripherals to a computer, MacBook Air supports High Definition Multimedia interface, Digital Visual Interface, Video Graphics array and Display Port that enables connecting Apple computers and laptops to other monitors, television, computers, etc.. As per the Technical Specifications, the 2019 iMax has the following unique features:- i) iMac comes with a Built-In Retina LCD having Resolution of 4096 (W)x 2304 (H) Retina and 500 nits brightness. It implies that the LCD Display in iMac is capable of displaying 4096 horizontal pixels and 2304 vertical pixels on the screen. Further, Retina display refers to a really high resolution and pixel density. iMac also comes with high quality brightness of 500 nits. Brightness is measured in nits, which is the standard unit of luminance used to describe various sources of light. (ii) Also, iMax supports (A) 5120(w) by 2880 (H) pixels on an external display at 60Hz, with support for 1 billion colours (b) 3840 (W) by 2160 (H) pixels on an external display at 60Hz, with support for 1 billion colours (c) 4096 (W) by 2304 (H) Pixels on an external display at 60Hz with support for millions of colours. A 60Hz display implies that the screen is refreshing 60 times per second. These pixels have the ability to project millions/billions of different colours on the external display. (iii) iMac supports Thunderbolt 3 technology that enables high speed transfer of data and files, fastest data and most video bandwidth between two or more devices, video bandwidth refers to the maximum amount of data transmitted over an internet connection in a given amount of time. It comes with a cable to connect devices together and iMax has a distinct port in which the said cable can be inserted for file transfer, etc. Thunderbolt3 is said to be the fastest port in the market today. There are some technical reviews made by experts and specialists in respect of the 2014-Model MacBook Air and the 2019 Model iMax Desktop. If there is a hardware issue in the camera, it is possible that other hardware issues may develop in the near future, leaving the complainant with a defective product. It is pertinent to note that there are other Apple users also who have faced similar issues in respect of

iMac and other Apple products. The complainant has exactly the same problem that has been listed at No.1 in the table given in para 33. This clearly shows that there is a manufacturing defect in this particular model of iMac and that the opposite parties are fully aware of this, but hope to escape liability by saying that they cannot repair the camera/video. The opposite parties have in their warranty stated as follows regarding manufacturing defect. This would mean that Apple has given the warranty that in case of defects in material, they are bound to repair, replace or refund the money to the customer, if the said defect is discovered within one year of purchase. Technical Specifications and Expert Reviews mentioned in Para 28 and 31 respectively, clearly describe iMac as much superior in terms of display resolution etc., Video Screenshot taken by the complainant on 06.09.2021 clearly shows the bright quality of video image taken from her Apple MacBook Air and the dark contrast of video image of his iMac Desktop. The said screenshot dated 06.09.2021 has been sent by the complainant to the opposite party No.2. The Opposite Party No.2 & 4 have suggested to the complainant over phone calls, that she places an order for repair/replacement/refund with the opposite party No.3 from whom she had purchased the iMac desktop in April 2021. The complainant has misgivings about the professional ability of the opposite parties. Hence, the complainant issued a Legal Notice, dated 09.09.2021 to the opposite party No.1, 2 and 3 by email and Speed Post, dated 09.09.2021. The complainant thereby demanded a replacement of Apple iMac Desktop with compatible Microsoft Office Application/Software, as she has already paid for both in April 2021. The Opposite party No.2 generated an Auto Reply by email dated 09.09.2021 in response to the complainant's email enclosing the Legal Notice, dated 09.09.2021. The next day i.e. on 10.09.2021, one Mr.Dinesh from Apronix Service Provider, i.e. the opposite party No.4 tried contacting the complainant and one Ms.Helen Leonard Execution Liaison at Apple Inc. U.S.A., i.e. the opposite party No.1 sent an email to the complainant acknowledging the receipt of the Legal Notice, dated 09.09.2021. As the complainant was travelling that week, she replied to Ms.Helen by email dated 16.09.2021 with a suitable time for the call. The complainant responded to Ms.Helen by email dated 16.09.2021 and attached a screenshot of the poor quality video visuals on her iMax Desktop. She further explained the camera video visual quality issues persisting in her iMac desktop that Apple has not been able to fix in over 6 months. The opposite party No.1 was not able to resolve the complainant's issues and on the other hand the opposite party No.4 was not responding to the complainant's calls. It became highly frustrating and difficult for the complainant to continue working with the faulty iMac Desktop and to keep following up with the opposite parties No.1 & 2. The complainant insisted that Mr.Helen connects her directly to the Chief Execution Officer (CEO) of opposite party No.1 Mr.Tim Cook, so that she may let him know the mental harassment and anxiety caused to her by the incompetence and stubbornness of the opposite party No.1 to 4 in not resolving her iMac issues that she has been experiencing in the part 6 months and in refusing to

replace her iMac Desktop. The Executives of the opposite party No.1 ensured that she was never given an opportunity to connect directly with the CEO of the opposite party No.1. The response of the opposite parties to any grievance raised by the complainant was resistant and unyielding, which is not expected from a Company like Apple. After a passage of four days replied to the complainant by email dated 20.09.2021 and acknowledged that the screenshots shared by the complainant indeed show poor video and camera quality and further requested the complainant to make adjustments in the room. The complainant replied to Ms.Helen, the same day by email dated 20.09.2021 and informed her that she has already made the adjustments in her room as instructed by the opposite party No.1 in the last 5 months, but it has not resolved the issue. Hence, the complainant again asked for replacement of the iMac Desktop. Thereafter, Ms.Helen responded to the complainant by email dated 21.09.2021 and informed her that she is writing to her on behalf of the CEO of Apple, Mr.Tim Cook and other Apple Executives of opposite party No.1 and that Apple cannot replace the iMac Desktop. This is clear proof of refusal by the opposite party No.1 to replace the complainant's iMac Desktop. Thereafter, the complainant responded to Mr.Helen by email, dated 21.09.2021 and expressed her disappointment and frustration at Apple, has not been able to resolve her iMac Desktop issue over a period of 6 months. She further shared screenshots showing poor video and camera quality of iMac Desktop. The complainant attempted to contact the opposite party No.1 several times, on 24.09.2021 and 29.09.2021 but there have not been any further telephonic conversations for resolution of the issue. It is pertinent to note that video calls, webinars, online conferences and virtual court hearings have become the order of the day. The complainant has clients across the Globe and has to frequently attend and/or organize virtual meetings, webinars, interviews, etc., it is increasingly, important that the iMax camera functions properly and lives up to the standards of a premium Apple product. Thus, the complainant purchased the iMax Desktop in need for a superior system. But it is highly shameful and disappointing that the camera of a so-called superior iMax Desktop has worked in a disastrous manner and has not been able to deliver the desired results to the complainant. The complainant has kept the iMac in a room that has nine overhead lights. To prove this, the complainant has taken a picture of the ceiling of the room to show this Hon'ble Commission that there are no lighting issues in the place where she has placed her iMac. The complainant has a client who is an Engineer and who used to work for Apple, when the client visited her office and she was the video quality, she informed the complainant that the camera lens was defective or misaligned because of which the camera was not working properly and that the said problem could be resolved by changing the system. The complainant has filed this Complaint in respect of the unfair trade practices, defective product and dis-satisfactory services rendered by the opposite party No.1 to 4. As per the Act, service providers, i.e. the opposite parties, have to provide such quality of

products and services which can be considered up to good standards as expected by any man of ordinary prudence. The above facts clearly establish that there has been a clear deficiency of services and unfair trade practices committed by the opposite parties by supplying a defective product and thereafter, refusing to repair/replace the said defective product. The standard of products and services provided by the opposite parties cannot per se be termed to be satisfactory by any consumer. The main aim of the Act, is to protect the rights of the customers from such unprofessional and ignorant attitude of the service providers. This part of the legal system is designed to make sure that consumers availing any products and services are protected against issues such as fraud and misrepresentation. It can be observed that the opposite parties have failed to provide standard products and render services and they have fraudulently and dishonestly kept the issue pending and unresolved for over 6 months purely with the intent to cause mental harassment and anxiety to the complainant and to drive their own business and gain profit. On due consideration of the facts and circumstances of the case, the opposite parties have failed to carry out their obligations as a service provider and have clearly caused inconvenience, mental agony and monetary loss to the complainant. It is stated that all and any grievance raised by the complainant were ignorantly replied to a no serious head was paid to them, which is not expected from service providers of such stature and reasonable reputation as that of the opposite parties in the hardware and electronics sector. It is submitted that there has been a clear deficiency in services provided by the opposite party along with unfair trade practice. That the mental turmoil and loss to the complainant necessitates the need to file the present complaint. That the behavior of the opposite parties in the present case, it is a classic example of deficiency of service, defect in goods and unfair/deceptive trade practices and a blatant attempt to fraudulently procure money from the customers. The complainant with a wish to purchase a superior and high-end computer to meet the new age needs for a global virtual presence, had bought the iMac Desktop and availed the services of the opposite parties, but instead the faulty camera of her iMac Desktop and the sub-standard services rendered by the opposite parties, has caused her further agitation and inconvenience. The complainant has relied upon some judgment i.e. The judgment of the Hon'ble Supreme Court in Ravneet Singh Bagga vs. Kim Royal Dutch Airlines And Anr, (2001) 1 SCC 66 ; the judgment of the State Consumer Disputes Redressal Commission (Punjab) has in the matter of Apple India Pvt., Ltd., vs. Tarun Kumar (First Appeal No.954/2016); etc. The present complaint is maintainable under the Act, as the opposite parties have failed to provide services with utmost care while keeping the best interest of the complainant, as a consumer, in mind. It is submitted that the opposite party failed to follow basic obligations of a product seller and product service provider, as imbibed in the Act and known in the ordinary course of business. The deficiency in services by the opposite parties has gravely caused the complainant great inconvenience, monetary loss and

mental agony. The complainant wished to have a superior and premium desktop to meet the current day norms of a virtual presence and to attend National and International meetings, webinars, conferences, court hearings, interviews, etc and thus, had purchased the iMac Desktop from the opposite parties; however, the manner in which the services were provided by the latter is distressing.

3. The Opposite Parties No.1, 3 and 4 were served with Notices, but failed to appear before this Commission and were absent.

4. The Opposite Party No.2 filed their written version stating that the complaint is liable to be dismissed as the same is based entirely on un-substantiated grounds and holds no merit. The instant complaint is nothing but a futile attempt by the complainant to make unlawful gains at the cost of the opposite party. This opposite party denies all the allegations made in the complaint except the statements made hereunder as untrue. At the outset, it is pertinent to mention that Apple Products are sold in India by the opposite party No.2 through their dealers/resellers. The complainant has not submitted true and actual factual matrix of the case. The opposite party No.2 is raising preliminary objections with regard to the maintainability of the complaint. The complaint is not maintainable as the complainant is not a "Consumer" as the Consumer Protection act, 2019. The opposite party No.2 is also raising the Objections with regard to the merits of the complaint. The complaint is not maintainable due to non-joinder of necessary party; Limitation of liability clause in the Apple Terms and Warranty; No cause of action regarding deficiency of service on the part of the opposite party No.2; Unsubstantiated allegations of manufacturing defect/inherent defect with the iMac Desktop sold by the opposite party No.2, unfair trade practice not maintainable without an expert opinion. The Act of Comparison made by the complainant between MacBook Air Laptop and iMac Desktop for proving the alleged issue with the camera is completely maintainable.

It is submitted that one "Shanti Priya" has purchased the iMac desktop and she is the owner/consumer of the said Desktop and the same was admitted by the complainant in the complaint. As per the Delivery Report, it is very much clear that one Shanti Priya has approached the Opposite Party No.4 on 01.09.2021 and not the complainant. The complainant is not a "Consumer" as per the Consumer Protection Act. The said Shanti Priya is the purchaser of the Desktop as per the Tax Invoice and there being no authorization/approval given by one Shanti Priya to the complainant. When the complainant contacted the opposite party No.2 over phone call, they performed all trouble shooting steps that were necessary and since the services that could be given over phone is limited in scope, the opposite party No.2 suggested the complainant to approach nearest AASP for further diagnosis. The document produced by the complainant as annexure C-9 (Colly) cannot be considered as evidence as same

the pertains to reviews/opinions given by some third persons on Mac Book Air and iMac Desktop on various third party websites. The said documents cannot be considered as expert opinions as mentioned by the complainant. The complainant has utterly failed to prove her allegation of manufacturing defect in the said Desktop and other allegations made therein are false. The complainant has not made out any grounds to entertain the present complaint and also the citations relied by the complainant is not applicable to the present case as the complainant has utterly failed to prove the alleged manufacturing defect in the said Desktop by way of producing expert opinion. The complainant is not at all entitled for the reliefs claimed, as the complainant has not made out a prima facie case and has utterly failed to prove allegations made by her beyond reasonable doubt. The instant complaint is of a frivolous and vexatious complaint by the complainant and ought to be dismissed in limine with maximum costs as permitted under the Consumer Protection Act, 2019.

5. During the course of trial, the complainant is examined as PW1 and Sri Emandi Hari Nanda Kishore, is examined as PW2 on behalf of the complainant and marked Ex.A1 to A18. Sri Sandeep Karmakar, Contracts Manager and duly Authorized Representative is examined as DW1 on behalf of the opposite party No.2 and marked Ex.B1 to B3. The complainant filed written arguments. The Opposite Party No.2 filed written arguments along with citations. Heard Both.

6. The Points that arise for consideration are:-

- (1) Whether there is any deficiency of service on the part of the Opposite Parties?
- (2) Whether the complainant is entitled for the reliefs as prayed for?
- (3) To what relief?

7. Point No.1 & 2:-

As per Ex.A1 invoice dated: 21.04.2021 the complainant purchased iMac Desktop and also purchased Microsoft office Software for that said iMac, iMac bearing No."84713010 (MHK23HN/A) 21.5 Inch iMach with Retina 4K display: 3.6 GHz quad core 3 processor, 256GB, bearing Serial/IMEI No.SC02F62J807F1" manufactured by opposite party No.1 vide order No. GVKSO/2021/198 and Invoice No.GVKTI/2122 328 from opposite party No.3 on payment of Rs.1,20,704/-. The complainant is a practicing Advocate and she purchased iMac Desktop for the purpose of virtual use due to Covid, the world shifted from the real world to the virtual world. The contention of the complainant is that since the second day of purchase, the complainant has been facing an issue of defective camera while using iMac for video calls, webinars, virtual court hearings etc. on zoom, Google meet, Face Time, Microsoft Teams, Cisco Webex application etc., when she was shocked to see dark images of her office back ground, herself and her associates. Hence, the complainant was disappointed as the iMac failed to meet her requirements and expectations. The complainant contacted

immediately to the opposite party No.3 and informed them that the video quality was very poor. The opposite party No.3 advised her to contact Apple support and they suggested that some changes in the settings which the complainant did. But problem was not solved. The Apple support concluded that there was hardware issue and advise the complainant that she takes her iMac Desktop to the service provider. But the problem was not solved. In spite of several calls to the opposite parties the problem was not rectified. At last the complainant got issued legal notice to the opposite parties on 09.09.2021 and there by the complainant a replacement of Apple iMac Desktop with compatible Microsoft office Application/Software, and the opposite party No.2 generated an auto reply by email dated: 09.09.2021 in response to the complainant's email enclosing the legal notice dated: 09.09.2021. On 10.09.2021 Mr. Dinesh from Apromix service provider, i.e. the opposite party No.4 tried contacting the complainant and Ms. Helen Leonard Execution Liason at Apple Inc. U.S.A. i.e. the opposite party No.1 sent an email to the complainant acknowledging the receipt of the legal notice. But in spite of receiving the legal notice from the complainant the opposite parties have not solved the issue. The opposite party No.2 contended that the complainant is not a Consumer, the complaint is not maintainable due to non-joinder of necessary party, limitation of liability clause in the Apple Terms and warranty and one "Shanti Priya" has purchased the iMac Desktop and she is the owner/consumer of the said Desktop and the same was admitted by the complainant. As per Delivery Report, it is very clear that one Shanti Priya has approached the opposite party No.4 on 01.09.2021 and not the complainant. The said Shanti Priya is the purchaser of the Desktop as per the Tax Invoice. According to Ex.A1 & Ex.A2 documents i.e. invoices the customer name mentioned as Shanti Priya C/o. Sushila Ram Varma but not mentioned as only Shanti Priya. Ms. Shanti Priya has given an Affidavit in I.A.No.247/2022, in this regard on 14.09.2022 and this Commission has allowed that IA.No.247/2022 vide order dated: 30.09.2022 and that Shanti Priya stated in that affidavit:

- (i) That Ms. Shanti Priya, who used to do secretarial work at the complainant's office:
- (2)** She used to do secretarial work at the complainant's office at Flat No.303, Third Floor, The Down Town, road No.5, Banjara Hills, Hyderabad-500034, Telangana from January' 2020 – May' 2021.
- (3)** That the complainant informed her that she was interested in an iMac as due to Covid, the work was all virtual. As she was out of station around January end and February first week of 2021, she asked her to visit the opposite party No.3's store and book an Apple iMac. She also informed her that the Apple stores in Hyderabad had mentioned that there was shortage in supply due to Covid and as such there would be a waiting period.

(4) Accordingly she and some of the office staff went to opposite party No.3's store to pick up the Apple iMac Desktop bearing No."84713010 (MHK23HN/A) 21.5 Inch iMac with Retina 4K display: 3.6GHz quad 8th Generation Intel Core 13 processor, 256GB" on 21.04.2021. At the time of billing, she did not notice that his name was mentioned in the Bill.

(5) The complainant's brother-in-law, Mr. Praveen Chandra M, also came and made the payment as complainant was not in Hyderabad. Further, the card that was used to make the payment had some discounts at that point of time.

(6) Due to certain personal reasons she had to leave work around May' 2021 and thereafter, she could not return to work as she had gone to his village in Palakollu, Andhra Pradesh.

(7) She most respectfully pray that this Hon'ble Commission may kindly take on record this Affidavit Under Sections 35 and 36 of Consumer Protection Act 2019 read with Section 151 of CPC 1908, as she not the owner of the aforesaid iMac as erroneously pleaded by opposite party No.2 and in interest of Justice.

The opposite party No.2 has stated that the complainant is not a Consumer. Consumer is defined in Section 2(7) of CP Act as follows:

(7) "Consumer" means any person who (ii) buys the goods for a consideration which has been paid on promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not for resale or for any commercial purpose; or

According to the Ex.A3 document the complainant has returned the full amount of Rs.1,20,704/- to Mr. Praveen Chandra who is her brother-in-law of complainant actually who has taken iMac Desktop from opposite party No.3 on payment of Rs.1,20,704/- for complainant. Hence, the complainant is the owner purchaser, user, Beneficiary of that said iMac Desktop. Therefore the complainant is the Consumer. The complainant have purchased the iMac Desktop on 21.04.2021 from opposite party No.3. According to Ex.A4 document Apple one (1) year limited warranty:

What is covered by the Warranty?

Apple Inc. of one Apple pack way, Cupertino, California 95014 U.S.A "(Apple)" warrants the Apple-branded hardware product and Apple-branded accessories contained in the original packaging "(Apple Product)" against defects in materials and workmanship when used normally in accordance with Apple's published guidelines for a

period of one (1) year from the date of original retail purchase by the end – user purchaser “(warranty period)”. Apple’s information contained in technical specifications, users manuals and service communications.

What will apple DO IN the event the Warranty is Breached?

If during the warranty period you submit a claim to apple or an AASP in accordance with this warranty, Apple will, at its option:

- (i) Repair the Apple product using new or previously used parts that are equivalent to new in performance and reliability.
- (ii) Replace the Apple product with the same model (or with your consent a product that has similar functionality) formed from new and/or previously used parts that are equivalent to new in performance and reliability or
- (iii) Exchange the Apple product for a “refund of your purchase price”.

Apple has given the warranty in case of defects in material, they are bound to repair, replace or refund the money to the customer. But the opposite party No.2 has refused to replace the defected iMac, the opposite party No.3 has sold a defective iMac Desktop and opposite party No.4 has failed to provide proper service to the complainant as warranted in the Apple one (1) year limited warranty.

Ex.A5 is a letter from Apple support. In this letter stated that as an advisor from Apple care stated that “i can confirm that while within a call, all trouble shooting steps were taken and the issue still persists. Customer reported that when she taps the camera, the issue disappears. Since the issue does appears to be Hardware based, I kindly request for the device to be reviewed.”

Ex.A8 i.e. a copy of video screen shot taken of complainant’s Apple MAC Book Air and iMac Desktop on 06.09.2021 clearly shows the poor camera quality of said iMac Desktop.

Ex.A11 is correspondence through emails by the complainant to opposite parties regarding the iMac Desktop.

Ex.A12 is complaint about iMac camera quality and order for replacement of iMac by the complainant to the Apple Customer Care Team.

Ex.A13 is legal notice to the opposite parties.

The complainant filed an Affidavit of Mr. Emandi Hari Nanda Kishore dated: 23.08.2022, who is an Expert in the field of camera lenses, before this Commission on 14.09.2022 in IA.No.248/2022, this Commission was allowed vide order dated: 30.09.2022. In that affidavit he stated that:

- (1)** He is the proprietor of M/s. Red Antz Studios, a digital studio, which is engaged in the business of making films and photo shoot editing, and related activities. He have covered several major events as a professional in the last 10 years and his studio has a good reputation and standing in Hyderabad, Visakhapatnam and Bengaluru. He have a full set team and using the best professional equipment of several brands

such as Canon, Nikon, Sony, etc. in my digital studio. He has several satisfied customers due to the professional quality of our work.

(2) He further adds that as a photographer he focuses on the use of both digital and traditional film cameras for his work. He works in a variety of fields ranging from advertising to covering events to portraits, etc., There is regular use of high-end cameras and high-end computers for editing in his studio.

(4) Due to his aforesaid experience and quality of work and expert knowledge in the field of cameras, lenses, etc., he is deemed to be an expert in the line of digital photography. He also owns and uses 10 iMacs purchased from Apple recently for his professional use such as editing, etc., he is therefore familiar with the features of such Apple computers. In fact, the in-built camera in the iMac that he is using in his office are extremely clear and give good results.

(5) He is well-acquainted with Mrs. Sushila Ram Varma, Advocate, who is the complainant in the aforesaid matter. When he visited her office on 19.08.2022 and she informed him about the trouble she was having with her iMac camera, he was really surprised to hear this. He offered to check the iMac camera, which she allowed. She has a “84713010 (MHK23HN/A) 21.5 Inch iMac with Retina 4K display: 3.6GHz quad core 8th Generation Intel Core i3 processor, 256GB” iMac. From an examination of the picture quality on her iMac, he could easily tell that the camera was defective and the lens was not working properly. It is commonly said that “if the camera is the ‘brain’, the camera lens is the ‘eye’, letting us view and capture our environment”. What was most surprising is that Mrs. Varma is using the iMac with an external USB camera that she has purchased from Logitech due to Apple’s failure to give service despite warranty as she has regular virtual meetings, court hearings, etc.

(6) When he asked her why she had not sent it to the Apple Company, she claimed she had already done that and that they had returned the same, stating that her office did not have adequate lighting. This was very surprising as the room in which she uses her iMac had 9 overhead lights plus natural lights from two windows and a door. In fact, the lighting in her office is better than what he has in his studio. When he asked her whether the Apple technicians had visited her office, she said no, but they had claimed inadequate lighting in her office while they were sitting in their office.

(7) When he checked the complainant’s iMac under full and proper lighting, he was shocked to see the poor camera quality and dark contrast video images across all digital platforms such as FaceTime, Zoom, Microsoft Teams, etc, which is not expected from high end systems like iMac. In fact, the camera in the said computer is defective.

(8) He asked the complainant if she has raised a complaint with the Apple company regarding such poor quality and dark contrast video image in the iMac, to which she replied that despite several complaints, the Apple company has denied their liability/responsibility and has in fact alleged that her office has lesser lighting and hence, the dark contrast video, which is completely false.

Basing on the above discussion, facts and circumstances of the case we are of the considered opinion that the opposite parties have failed to perform the liability of the after sales of the product within warranty period. This act of the opposite parties clearly shows the deficiency of the services. Hence, we allow the complaint in part and directing the opposite parties jointly and severally to refund the amount of Rs.1,20,704/- along with interest @ 9% from the date of purchase of iMac Desktop i.e. 21.04.2021 to till its realization, compensation and costs of the complaint to the complainant and take back the defective iMac Desktop from the complainant.

8. Point No. 3:-

IN THE RESULT:

The complaint is allowed in part and directing the opposite parties jointly and severally to pay to the complaint:

- (1) To refund the amount of Rs.1,20,704/- (Rupees One lakh twenty thousand seven hundred and four only) along with interest @ 9% from the date of purchase i.e. 21.04.2021 and to till its realization and take back the defective Desktop from the complainant.
- (2) To pay an amount of Rs.20,000/- (Rupees Twenty thousand only) towards compensation for causing mental agony and trauma.
- (3) To pay an amount of Rs.5,000/- (Rupees Five thousand only) towards costs of the complainant.

Time for compliance is 45 days from the day of complaint.

Dictated to steno transcribed and typed by her pronounced by us on this the 28th Day of February' 2023.

MEMBER

MEMBER

PRESIDENT

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Complainant:-

PW1 : Sushila Ram Varma

PW2 : Emandi Hari Nanda Kishore,

For Opposite Party No.1, 3 and 4:-

Un-contested

For Opposite Party No.2:-

DW1 : Sandeep Karmakar

Documents Marked:-

For Complainant:

Ex.A1 – is the copy of “True Copy of iMax Invoice” dated 21.04.2021

Ex.A2 – is the copy of “True Copy of the MS Office Software Invoice” dated 21.04.2021.

Ex.A3 –is the copy of “True Copy of the Proof of Remittance of amounts to Mr.Praveen Chandra.M.

Ex.A4 – is the photostat copy of View Warranty version.

Ex.A5 – is the photostat copy of gmail, dated 30.08.2021, “regarding thanks of contacting us”.

Ex.A6 – is the photostat copy of “A true copy of the Correspondence exchanged between parties on 01.09.2021.

Ex.A7 –is the gmail, regarding Delivery Report, dated 06.09.2021.

Ex.A8 – is the photostat copy of “A true copy of the Video Screenshot taken of the complainant’s Apple Mac Book Air and iMax Desktop on 06.09.2021.

Ex.A9 – is the photostat copy of “A true copy of the Technical Specifications of MacBook Air and iMac.

Ex.A10 – is the photostat copy of “A true copy of the Technical Reviews of MacBook Air and iMax.

Ex.A11 – is the photostat copy of “A true copy of the other complains by Apple users and the video screenshots showing defect in iMac camera.

Ex.A12 – is the photostat copy of “A true copy of the Email dated 06.09.2021 sent by the complainant to the opposite party No.2-Apple Support as a Second reminder, dated 06.09.2021.

Ex.A13 – is the photostat copy of “A true copy of the complainant’s Legal Notice dated 09.09.2021, Email and Sped Post Receipts dated 09.09.2021.

Ex.A14 – is the photostat copy of Gmail, dated 09.09.2021.

Ex.A15 – is the photostat copy of “A true copy of the Emails dated 16.09.2021 exchanged between the opposite party No.1 and the complainant.

Ex.A16 – is the photostat copy of “A true copy of the Emails and screenshots of the poor-quality video visuals of iMac Desktop exchanged between the opposite party No.1 and the complainant.

Ex.A17 – is the photostat copy of Screenshots of video quality of Apple iMac desktop at Dubai Mall

Ex.A18 – is the photostat copy of Screenshots of video quality of Apple iMac desktop at Dubai Mall of Emirates.

For Opposite Party No.1, 3 and 4:-

Nil

For Opposite Party No.2:-

Ex.B1 – is the photostat copy of View Warranty version.

Ex.B2 – is the photostat copy of letter of Authorization, dated 20.12.2021.

Ex.B3 –is the photostat copy of letter of Authorization.

MEMBER

MEMBER

PRESIDENT

AD

//CERTIFIED FREE TRUE COPY//