

Date of Filing: 04.04.2019

Date of Order: 08.12.2023

**BEFORE THE BANGALORE I ADDITIONAL DISTRICT
CONSUMER DISPUTES REDRESSAL COMMISSION
SHANTHINAGAR BANGALORE - 27.**

CONSUMER COMPLAINT NO.1390/2019

DATED ON THIS THE 08TH DECEMBER 2023

PRESENT

Sri.B. Narayanappa, M.A., LL.B. - PRESIDENT

Smt.Jyothi N, B.A, LL.B. L.L.M. MEMBER

Smt.Sharavathi S.M, B.A, LL.B., MEMBER

COMPLAINANT :


Mr.Bhabani Prasad Behera,
S/o.Raghunath Behera,
Aged 43 Years,
Residing at Flat No.2,
"Sri Gurunarthanam"
9th Cross, H M T Layout,
Mathikere, Bengaluru-560054.

Party in Person

Vs

OPPOSITE PARTY/S:

- 1** Sabka Dentist
Property of
Total Dental Care Private Ltd.,
Represented by its
Authorized Representative
- 2** Dr.Shreyash,
Dentist at Sabka Dentist
- 3** Dr.Radha,
Dentist at Sabka Dentist


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No.1 to 3 are at:

No.58, Ground Floor,
6th Cross, Next to A2B,
Sampige Road, Malleswaram,
Bangalore-560003.

Adv: Sri.Sudheer.K for OP No.1 & 3
OP No.2 Exparte

Nature of complaint	Deficiency in service
Date of filing of complaint	04.09.2019
Date of Issue of Notice	13.09.2019
Date of Order	08.12.2023
Duration of Proceeding	04 Years 05 Months 03 Days

ORDERS PASSED BY SRI B.NARAYANAPPA, PRESIDENT

1. The complainant Mr.Bhabani Prasad Behera, resident of Bangalore has filed this complaint U/s.35 of the Consumer Protection Act, 2019 against the OP No.1 Sabka Dentist, Bangalore Represented by its Authorized Representative, OP No.2 Dr.Shreyash, Sabka Dentist, Bangalore and OP No.3 Dr.Radha, Sabka Dentist, Bangalore praying to direct the OPs to refund Rs.50,000/- paid to Op No.1 with an interest at 2% per month and to pay compensation of Rs.18,00,000/- towards pecuniary loss, damages, compensation, mental agony and harassment and grant such other reliefs as this Commission deems fit


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to grant under the facts and circumstances of this case.

2. The brief facts are that:-


The OP No.1 is a recognized Private Limited Company rendering services in Orthodontic treatment, in the brand name of Sabka Dentist a property of Total Dental Care Private Limited and OP No.2 & 3 are the doctors attached to the OP No.1 dental clinic/hospital. The complainant is a customer of OP No.1 vide visit ID No.OP749038 and having availed the service of treatment from OP since November 2016.

The complainant submits that the complainant after preliminary examination at the clinic of OP No.1 the doctors opined that orthodontic treatment is required and appliances like ceramic braces are to be fixed in order to get correction of front teeth positioned. The OP No.1 clinic doctors stated that the treatment would cost Rs.34,000/- and it take around one year. The complainant has paid Rs.34,000/- to OP No.1 on different dates starting from 26.11.2016. The duty

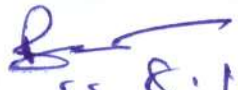

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doctors Mr.Jayashalini Puttachary referred the complainant to OP No.2 doctor for treatment who started treatment after some procedure and fixed ceramic braces to the front teeth and asked the complainant to come for follow up treatment once in a month. Though the doctors attached to OP No.1 clinic assured that the treatment would be completed in one year, but they dragged treatment with an intention to extract more money from the complainant for 2½ years and the OP imposed additional charges as such the complainant has paid totally Rs.50,000/-.

On 23.03.2019 the OP No.2 removed the braces and intentionally caused damaged around 8 teeth by scratching enamel on two teeth i.e. tooth Sl.No.10 from right, on upper jaw and tooth Sl. No.10 from right lower jaw, which are n damaged and they are sensitive, one tooth i.e. Sl.No.8 form the right on upper jaw is trimmed out on the tip, one tooth i.e. Sl No.7 from right on the lower jaw is carved out a piece on the top. OP No.2 also put cut mark on the above to gum tooth Sl. No.5 from right on the upper jaw and


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tooth Sl.No.4 from right lower jaw have cut deeply above to gum with blade as such the complainant could not chew properly. Therefore, tooth Sl No. 12, 13 & 14 suffering severe pain while chewing even soft food items. Further the OP No.1 staff referred the complainant to Dr.Kiran who in turn assigned another doctor Dr.Nikhil Kashyap stating that the problems would be rectified by them, but OP No.3 introduced herself and forcefully filled the affected teeth with dental cement. The cementing done by OP No.3 is still problematic and recently the filling of cement was peeled out and scratch mark is clearly visible. Due to intentional and negligent act of the OPs caused the complainant's teeth damaged and sensitive. Therefore, the complainant consulted St.John Medical College Hospital OPD, the doctors observed that the rough enamel surface composite multiple ceramic abrasion in the complainant's teeth and advised to use de-sensitizing tooth paste and doctors attached to St.John Medical College Hospital opined to rectify the damage to his teeth to undergo several follow up treatments and may cost lot of money. Therefore, the complainant has filed


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complaint before Malleswaram police and requested to take appropriate action against the OPs, but police refused to take the complaint. Left with no alternative complainant got issued legal notice dated 18.07.2019 calling upon OPs to pay compensation. But OP sent evasive reply. Hence, the complainant has come up with present complaint seeking reliefs as prayed in the complaint.

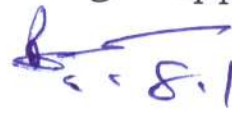
3. After registration of this complaint, notices were ordered to be issued to OPs. In spite of service of notice upon OP No.2, OP No.2 doesn't turn up. Hence, OP No.2 was placed, exparte.

OP No.3 appeared through their counsel and filed version contending that the complaint is not maintainable either in law or on facts and admitted that the complainant is the customer/patient of OP No.1 vide visit ID No.OP749038 and availed the services of OP since November 2016, for correction of his front teeth and ceramic braces are fixed to front teeth of the complainant and collected the cost of Rs.34,000/- from the complainant. Also admitted that OP No.2 started treatment to the complainant


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and fixed ceramic braces to the front teeth of the complainant and asked the complainant to come for follow up treatment once in a month. But denied the averments made in the complaint that the treatment was supposed to be completed in a year, but OP dragged the treatment for more than 2½ years on one or other pretext as false and also denied that the complainant has paid total amount of Rs.50,000/-.

Further denied the allegations made in the complaint that OP damaged around 8 teeth by scratching enamel on two teeth i.e. Sl. No.10 from right upper jaw and tooth Sl.No.10 from right on the lower jaw, now they are damaged and sensitive and one teeth Sl.No.8 from right on the upper jaw is trimmed out and one teeth Sl.No.7 from right on the lower jaw is carved out a piece and also put cut mark on above to gum and thereby committed deficiency in providing proper service as false and baseless and also denied that the OP No.1 staff referred to Dr.Kiran who in turn assigned Dr.Nikhil Kashyap, but OP No.3 herself forcefully filled the affected one teeth with dental cement which recently peeled out and intentionally scratched one more teeth i.e. Sl.No.3 from right upper


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jaw as false and denied the averments made in the complaint that the OPs caused damages to the teeths of the complainant intentionally with negligent act and further denied all other allegations made in the complaint and contended that there is no deficiency in service on the part of OPs. For all these reasons the OP prays to dismiss the complaint.

4. The complainant has filed his affidavit by way of examination in chief, the same was taken as PW-1 and got marked Ex.P-1 to Ex.P-15. On the other hand OP No.1 & 3 also filed affidavit by way of examination in chief, the same was taken as RW-1 and got marked Ex.R-1 to R-6. The complainant and OP No.1 & 3 counsel have filed their respective written arguments. Heard both sides.

5. The point that would arise for our consideration are as under:-

1. Whether the complainant proves that the alleged deficiency in service on the part of the OPs and thereby he is entitled to the reliefs as sought for?

2. What order?


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6. Our finding on the aforesaid points are as follows:

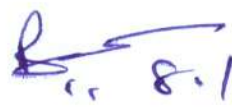
Point No.1: Partly in Affirmative.

***Point No.2: As per final order
for the following***

::REASONS::

7. **Point No.1**:- It is not in dispute that the OP No.1 is a recognized limited company rendering services in Orthodontic treatment in the brand name of Sabka Dentist, a property of Total Dental Care Private Limited and OP No.2 & 3 are the doctors attached to the OP No.1 dental clinic/hospital and the complainant is a customer of OP, as he availed the service of treatment from OP since November 2016, vide visit ID No.OP749038.

8. It is further case of the complainant that the complainant after preliminary examination in the OP clinic the doctors opined that orthodontic treatment is required and appliances like ceramic braces are to be fixed in order to get correction of front teeth positioned and the OP No.1 clinic doctors stated that the treatment would cost Rs.34,000/- and take


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around one year. It is also not in dispute that the complainant has paid Rs.34,000/- to OP on different dates starting from 26.11.2016. The duty doctors Mr.Jayashalini Puttachary referred the complainant for treatment to OP No.2 doctor who started treatment after some procedure and fixed ceramic braces to the front teeth and asked the complainant to come for follow up treatment once in a month. Though the doctors attached to OP No.1 clinic assured that the treatment would be completed in one year, but they dragged treatment with an intention to extract more money from the complainant for 2½ years. It is further stated in the complaint that the OP imposed additional charges as such the complainant has paid totally Rs.50,000/-.

9. On 23.03.2019 the OP No.2 removed the braces and intentionally caused damages to around 8 teethes by scratching enamel on two teeth i.e. tooth Sl.No.10 from right upper jaw and tooth Sl.No.10 from right lower jaw. Now they are sensitive one teeth from the right upper jaw is trimmed out on the tip, one tooth i.e. Sl.No.7 from right on the lower jaw is


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carved out a piece on the top and OP No.2 also put cut mark on the above to gum tooth Sl.No.5 from right on the upper jaw and tooth Sl.No.4 from right lower jaw have cut deeply above to gum with blade as such the complainant do not chew properly therefore, tooth Sl.No.12, 13 & 14 suffering severe pain while chewing even soft food items.

10. It is further contention of the complainant that the OP No.1 staff referred the complainant to Dr.Kiran who in turn assigned another doctor Dr.Nikhil Kashyap stating that the problems would be rectified by them, but OP No.3 introduced herself and forcibly filled the affected teeth with dental cement. The cementing done by OP No.3 is still problematic and it is contended that recently the filling of cement was peeled out and scratch mark is clearly visible. Therefore, it is contended that due to intentional and negligent act of the OPs caused the complainant's teeth damaged and sensitive. Therefore, the complainant consulted St.John Medical College Hospital, OPD the doctors observed that the rough enamel surface composite multiple ceramic abrasion


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in the complainant's teeth and advised to use desensitizing tooth paste and doctors attached to St.John Medical College Hospital opined to rectify the damage to his teeth to undergo several follow up treatments and may cost lot of money.

11. It is further stated that the complainant has filed complaint before Malleswaram police and requested to take appropriate action against the OPs, but police refused to take the complaint. Hence, the complainant has come up with present complaint seeking directions to OPs to refund of Rs.50,000/- paid to OP No.1 with interest and to pay compensation of Rs.18,00,000/- towards loss and damages and got marked Ex.P-1 to Ex.P-15, Ex.P-1 is the final bill copy issued by OP No.1 in the name of complainant for Rs.34,000/-, Ex.P-2 & 3 also final bill copy issued by OP for having received Rs.1,100/- from the complainant, Ex.P-4 is prescriptions, Ex.P-5 & 6 are the X-ray of teeth of the complainant, Ex.P-8 is history and examination issued by St.John Medical College Hospital, Ex.P-9 is out patient prescriptions given by St.John Medical College Hospital, Ex.P-10 is


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the bill of Rs.130/- for having received for consultation by the St.John Medical College Hospital, Ex.P-11 is copy of complaint given by complainant, Ex.P-12 is acknowledgement, Ex.P-13 is legal notice sent to OPs, Ex.P-14 is postal receipts and postal acknowledgements, Ex.P-15 is the reply notice.

12. On the other hand the OP No.3 by filing version has admitted that the complainant is the customer/patient of OP No.1 vide visit ID No.OP749038 and availed the services of OP, since November 2016 for correction of his front teeth and ceramic braces are fixed to front teeth of the complainant and collected the cost of Rs.34,000/- from the complainant as true and correct and also admitted that OP No.2 started treatment to the complainant and fixed ceramic braces to the front teeth of the complainant and asked the complainant to come for follow up treatment once in a month as true and correct. But denied the averments made in the complaint that the treatment was supposed to be completed in a year, but OP dragged the treatment for more than 2½ years on one or other pretext as false

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and also denied that the complainant has paid total amount of Rs.50,000/-.

13. Further denied the allegations made in the complaint that OP damaged around 8 teeth by scratching enamel on two teeths i.e. Sl. No.10 from right upper jaw and tooth Sl.No.10 from right on the lower jaw, now they are damaged and sensitive and one teeth Sl.No.8 from right on the upper jaw is trimmed out and one teeth Sl.No.7 from right on the lower jaw is carved out a piece and also put cut mark on above to gum and thereby committed deficiency in providing proper service as false and baseless and also denied that the OP No.1 staff referred to Dr.Kiran who in turn assigned Dr.Nikhil Kashyap, but OP No.3 herself forcibly filled the affected one teeth with dental cement which recently peeled out and intentionally scratched one more teeth i.e.Sl.No.3 from right upper jaw as false and denied the averments made in the complaint that the OPs caused damages to the teeths of the complainant intentionally with negligent act and further denied all other allegations made in the complaint and contended that there is no deficiency in service on the

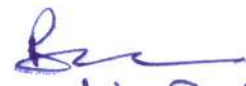

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part of OPs and got marked Ex.R-1 to Ex.R-6, Ex.R-1 is the patient registration, Ex.R-2 is patient card issued by OP No.1 Ex.R-3 is the treatment plan, Ex.R-4 & 5 are consent form issued by OP and also produced final bill for having received Rs.34,000/- and Rs.1,575/- and Rs.1,650/- from the complainant.

14. It is pertinent to mention here that on the application filed by the complainant this matter was referred to Karnataka State Dental Council for their opinion as to the line of treatment given by OPs in accordance to the standard guidelines. The Karnataka State Dental Council after examining the reports of the complainant and treatment given by the OPs, the experts of Karnataka State Dental Council submitted report by forming their opinion. The opinion No.2 of the report reads thus:

OPINION NO.2: There appears to be failure on the part of doctors to inform the progress of the treatment (communication failure)

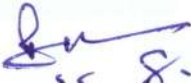
OPINION NO.3: On the clinical examination of Mr.Bhabani Prasad the anterior corss bite still persists and there are multiple abrasion of the enamel surfaces which can


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be attributed to the failure on the part of the Doctors to smoothen the enamel after debonding the appliance.

OPINION NO.5: *of the opinion is that there are no significance damages caused to the alveolar bone or the roots following orthodontic treatment as evidenced in the radiograph of pre and post treatment and opined that the issue of the complainant can be reversed with restorative procedures.*

15. From the report issued by Karnataka State Dental Council dated 10.08.2021, it is crystal clear that due to failure on the part of OP doctors to inform the progress of the treatment and due to act of doctors anterior corss bite still persist and there are multiple abrasion of enamel surfaces which can be attributed to the failure on the part of doctors to smoothen the enamel. The report submitted by the Karnataka State Dental Council supports the allegation made by the complainant that the doctors attached to OP No.1 have caused damages to upper and lower jaw teeth No.10 and teeth No.8 and teeth No.7 and trimmed out the upper jaw teeth No.8 and thereby the tooth No.12 13 & 14 suffering severe pain while chewing even soft food items and at the time of


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removal of ceramic braces fixed to front teeth of the complainant caused damages to around 8 teeth and scratched enamel on 2 teeth. Therefore, it appears that the material documents placed on record by the complainant and report submitted by Karnataka State Dental Council it is crystal clear that the OPs have caused damages to the teethes of the complainant due to their negligent act and thereby the OPs have committed medical negligence on their part. Therefore, we are of the considered view that the complainant has proved alleged medical negligence on the part of OPs, as such OPs are liable to refund the treatment charges of Rs.50,000/- paid by the complainant to the complainant and also OPs are liable to pay damages by way of compensation towards mental agony and harassment caused to the complainant to the tune of Rs.2,00,000/- and cost of litigation of Rs.5,000/- with interest. Hence, we answer ***Point No.1 Partly in Affirmative.***

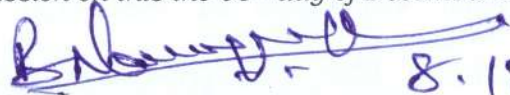
16. Point No.2:- For the aforesaid reasons, we proceed to pass the following:

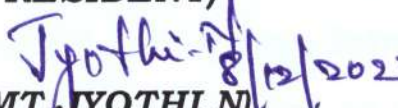
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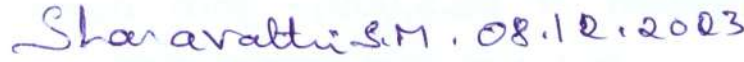
:: ORDER ::

1. The complaint of the complainant is hereby allowed in part.
2. The OPs are liable to refund Rs.50,000/- to the complainant received towards cost of treatment and to pay Rs.2,00,000/- towards damages by way of compensation for the mental agony and harassment caused to the complainant and cost of litigation of Rs.5,000/- with interest @ 10%p.a. within two months from the date of this order till payment.
3. Furnish the copy of order to both parties free of cost.

(Dictated to the Stenographer transcribed, typed by her, corrected by us and then pronounced in Open Commission on this the 08th day of December 2023)


8.12.2023
(SRI.B NARAYANAPPA)
PRESIDENT)


8/12/2023
(SMT.JYOTHI.N)
MEMBER


08.12.2023
(SMT.SHARAVATHI.S.M)
MEMBER