

Date of filing: 22.01.2021
Date of Disposal: 07.05.2022

**BEFORE THE BANGALORE URBAN II ADDITIONAL
DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
SHANTHINAGAR, BANGALORE – 560027**

DATED THIS THE 07TH DAY OF MAY 2022

CONSUMER COMPLAINT NO.111/2021

PRESENT:

SMT.M.SHOBHA, B.Sc., L.L.B.,	... PRESIDENT
SRI B.DEVARAJU, B.A.L., L.L.B.	... MEMBER
SMT.V.ANURADHA, B.A., LL.B.,	... MEMBER

COMPLAINANT:

Prakash.R
S/o Late Ramanna Shetty
Aged 43 Years,
R/a: house no.25/B
MLA Layout, RMV 2nd Stage,
Bengaluru-560094.

(Complainant is Inperson)

V/s

OPPOSITE PARTY:

IGRAFT GLOBAL HAIR SERVICE
By its authorized representative,
7 AVS compound, 4th block,
Kormanagala Sony Signal,
Lane Opp.Kalyan Jewelers,
Bengaluru-560034.

(OP is Rep by.Adv.Sri.Ragavendra Apte)

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Author **SMT.V.ANURADHA, MEMBER**

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// JUDGEMENT //

- 1.** This complaint is filed by the complainant under Section 35 of the Consumer Protection Act 2019 (herein after referred as an Act) against the opposite parties seeking the following reliefs;
 - a. Direct the opposite party to refund the amount of Rs.35,000/- to the complainant with interest @ 12% thereon from the date of the complaint till actual realization.
 - b. Award damages in a sum of Rs.65,000/- towards the miscellaneous expenses, medical tests, travel etc., and towards mental agony, stress, physical suffering etc.
 - c. Costs of proceedings.
 - d. Award such relief/s that this Hon'ble Forum deems fit in the facts and circumstances of the case in the interest of justice and equity.

- 2.** The case of the complainant in brief is as under;

The complainant being a diabetic patient since 2014, he got partially hair loss which is genetically hereditary induced by the opposite party advertisement of hair transplantation service and claimed fanciful amount of Rs.1,20,000/- for the treatment but the complainant considering the huge expense involved hence he has not proceeded further.

- 3.** The opposite party telecallers repeatedly made calls to complainant mobile inducing the complainant with discount for treatment and persuaded him to visit their clinic for consultation with their doctors. Thereafter, the complainant visited the opposite party clinic in the last

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week of December 2020 and met Dr.Juana who briefed about the procedure and constantly negotiated and reduced the price for treatment from Rs.1,20,000/- if booking was made on the same day. Further complainant informed regarding his diabetic and also filled up the form given by the opposite party containing information of his diabetic condition. And the Dr.Juana explained his 100% success rate of the treatment and as to how the treatment would change the looks of the complainant and thereby positively impact his confidence generally in the society and particularly at his work place. By pushing the emotional triggers and motivating the complainant for the treatment although expensive price tag deterred the complainant from proceeding ahead and the complainant also paid Rs.300/- as consultation.

4. After two days the opposite party telecaller called a complainant for a feed back of doctor and enquired about the reasons for refusing the treatment. The complainant also explained he is married and has a child and already passed the age and that the treatment is not priority to him. Again on 30/12/2020 Dr.Juana conveyed an offer of 50% discount for treatment i.e., Rs.59,990/- to the complainant via whats app chat. And they said doctor pressurized the complainant to pay the booking amount of Rs.10,000/- to avail the discount for the treatment before 31/12/2020. By believing the words of the doctor the complainant has paid sum of Rs.10,000/- to the opposite party by online. Thereafter the complainant was advised by the opposite party staff that complainant to undergo tests from the lab for the procedure. Thereafter the complainant submitted the medical test report to

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Dr.Juana on 03/01/2020, and all the test were normal except blood sugar levels. Dr.Juana instructed the complainant to bring his blood sugar level under control and submit the fresh report. Accordingly, the complainant consulted his dietician consequently after an intake dosage increased of sugar tablets and blood sugar was under control and the complainant submitted the report to Dr.Saloni of opposite party on 07/01/2021. The blood sugar level of the complainant read 143 mg before food and 169 mg after food. After that Dr.Suyesh intimated the complainant to be present in their clinic with balance amount of Rs.50,000/- for the procedure to be performed on 09/01/2021 at 8.30 am and the staff of the opposite party insisted the complainant to pay amount as condition to proceed with treatment.

5. The complainant paid Rs.50,000/- through Google pay. Due to technical error Rs.25,000/- could not transferred to the opposite party, however Rs.25,000/- was successfully transferred. Again the operating surgeon of the opposite party asked for two blood sugar test in their clinic and refused to the carry out the procedure for the reason that, the blood sugar level of the complainant was not under the control. Subsequently, the complainant requested the opposite party to refund his money. But the opposite party staff made him to wait till evening and thereafter refused to refund citing the company policy. Thereby the complainant suffered mentally by the unethical conduct of the opposite party and opposite party is not entitle to retain the hard earned money of the complainant without providing any service and the complainant has spent for several medical test of

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Rs.6,000/- and he had to modified his diet and he was compelled to intake increased dosage of sugar tablets and all of it turned out to be exercise in futility. Thereby the complainant has suffered mentally, physically and financially hence there is no other alternative the complainant approached this Hon'ble commission. Hence this complaint.

6. After service of notice, the opposite party appeared through their counsel and filed their version stating that the complainant was suffering from hair loss due to diabetic and opposite party services to be best and trust worthy as opposite party is well reputed company having presence across the major cities in India and as a prominent name in the arena of hair transplant, skin care, hair reduction and cosmetic techniques in India.
7. The opposite party contented that the complainant in his first visit to opposite party clinic that Dr. Juana explained the complainant regarding hair transplantation procedure, since the complainant is diabetic to successful in hair transplant procedure the blood sugar level should be between the range 120-130mg/dL before food 160 mg/dL after food. Unless and until his blood sugars are not in that range, it was not medically conducive to perform the hair transplant surgery as the opposite party believed that the safety of the complainant is prime importance and even a since neglect could cause serious medical implications.
8. The opposite party accepted that the complainant had paid Rs.10,000/- has booking advance only and due to un control of the blood sugar level of the complainant the

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opposite party has not done hair transplantation surgery to the complainant. As a goodwill gesture the opposite party provided the complainant with and open validity to perform his hair transplant surgery when ever his blood sugar levels are normal. The opposite party denied all averments and allegations made by the complainant are totally false and baseless and prays for dismissal of the complaint.

9. The complainant has filed is affidavit and relies on 2 documents and marked as Ex.P1 and Ex.P2. The opposite party also filed their affidavit evidence and relies on 3 documents and marked as Ex.P1 to Ex.P3. Complainant and opposite parties have filed their written arguments, heard the arguments of complainant. We perused the records.

10. The following points arise for our consideration;

- 1. Whether complainant proves the deficiency of service on the part of the opposite party?**
- 2. Whether complainant is entitled to the reliefs mentioned in the complaint?**
- 3. What order?**

11. Our findings on the above points are as under;

- POINTS NO.1** : In the Affirmative,
- POINTS NO.2** : Affirmative in Part,
- POINT NO.3** : As per final order for the following;

REASONS

12. POINTS NO.1 & 2: The complainant and opposite party has reiterated their facts pleaded in the complaint and their affidavit evidence. Basically the opposite party



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has fixed the price of hair transplantation of Rs.1,20,000/- and their after they reduced 50% and forced the complainant to paid Rs.10,000/- as per Ex.P1 and amount of Rs.50,000/- before starting the procedure of hair transplantation procedure the opposite party one of the staff insisted the complainant for payment of Rs.50,000 through Google pay, due to technique error the complainant has transferred only Rs.25,000/- on 09/01/2021 as a advance amount as per Ex.P2. Thereafter the operating surgeon of the opposite party again insisted the complainant to conduct the blood sugar test in their clinic. It shows the unfair trade practice of the opposite party that before starting the procedure of hair transplantation the opposite party have collected total amount of Rs.35,000/- by the complainant, thereafter the treating surgeon have insisted the complainant for blood sugar test in their clinic only. In that blood sugar test as per opposite party the report of the blood sugar was high due to that reason the opposite party has not conducted the hair transplantation and they postponed. This act of the opposite party the complainant has lost faith on opposite party, he asked for refund of the amount. But opposite party has rejected to refund the amount.

13. The opposite party took contention that the complainant has paid only Rs.10,000/- as a advance and the complainant has not controlled his sugar levels, the control sugar level in between the range of 120-130mg/dL before food and 160mg/dL after food.

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14. On 09/01/2021 the complainant schedule for surgery by opposite party based on the certificate and the petitioner arrived on morning for the hair transplant surgery. The opposite party did not want to take any chances as a final confirmatory test, the opposite party performed a blood sugar level test, unfortunately the complainant blood sugar level came to very high, and hence that is the reason the hair transplant surgery has been cancelled. And opposite party as goodwill gesture provided the complainant with an open validity to perform his hair transplant surgery when even his blood sugar levels are normal.

15. It is the case of the complainant that if the opposite party is well reputed company having presence across majority cities in India and he is a prominent name in the arena of hair transplant, skin care, hair reduction and cosmetic techniques in India. The opposite party is well aware that if the person who wants hair transplantation surgery if he is diabetic first he has to control his blood sugar level normal then only he is eligible for hair transplantation surgery. This being the fact the complainant has not given any blood sugar level normal report to the opposite party before that only the opposite party has collected the amount by inducing the complainant that if he is giving the advance amount on or before 31/12/2020 then he may get 50% discount on Rs.1,20,000/-.

16. It is a case of complainant that the opposite party has intentionally collected the amount of Rs.35,000/- by the complainant before providing any services, by this act

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the complainant lost his faith on opposite party hence he asked for refund, but opposite party has took contention that the amount of the complainant will not be refunded as per their terms and conditions. But the opposite party has not produced any terms and conditions to prove his statement.

17. The complainant has proved the deficiency service of the opposite party without providing any service the opposite party has withhold the complainant amount and has not refunded after many request by the complainant. Thereby, the opposite party has committed unfair trade practice and deficiency in service.

18. The claim of the complainant is Rs.35,000/- with interest at 12% from the date of complaint till realization. The complainant is entitled for the refund of Rs.35,000/- with interest at 10% from the date of compliant till the date of realization and prayer for damages of Rs.65,000/- is exorbitant, it is just and fair to grant Rs.20,000/- as compensation and Rs.10,000/- as a litigation expenses. Hence we answer the above point no.1 in the affirmative and point no.2 partly affirmative.

19. **POINT NO.3:** In view of the discussion referred above, the complaint requires to be allowed in part. The Complainant is entitle for refund of Rs.35,000/- with 10% interest p.a from the date of complaint till realization, Rs.20,000/- as compensation and Rs.10,000/- as cost of litigation expenses. We proceed to pass the following.

ORDER

 The complaint is allowed in part.

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The opposite party is directed to refund a sum of Rs.35,000/- (Rupees Thirty Five Thousand Only) along with interest at 10% p.a from the date of complaint till realization to the complainant.

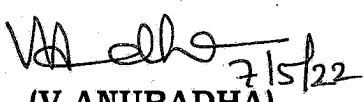
The opposite party is also directed to pay a sum of Rs.20,000/- (Rupees Twenty Thousand Only) towards compensation and Rs.10,000/- (Rupees Ten Thousand Only) towards cost of litigation expenses to the complainant.

The opposite party shall comply this order within 45 days from the date of this order.

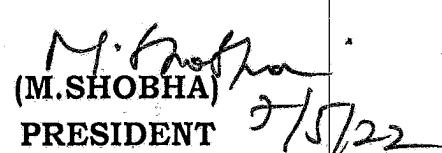
Supply free copy of this order to both the parties.

Return spare copies of the pleading and evidence to the parties.

(Dictated to the Steno, typed by her, transcript corrected, revised and then pronounced by the open Commission on **07TH DAY OF MAY 2022**).


 2/5/22
 (V. ANURADHA)
 MEMBER


 2/5/22
 (B. DEVARAJU)
 MEMBER


 2/5/22
 (M. SHOBHA)
 PRESIDENT

//ANNEXURE//

Witness examined for the complainant's side:

Sri.Prakash.R, who being the complainant has filed his affidavit.

List of documents filed by the complainant:

1. Ex.P1& P2: Copies of two payment receipts.

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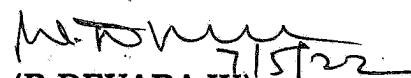
Witness examined on behalf of the Opposite Party:

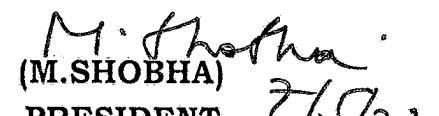
Sri.Srinivas, who being the Manager in the opposite party company has filed his affidavit.

List of documents filed by the Opposite Party:

1. Ex.R1: Copy of the Medical report of the complainant dated 03/01/2021,
2. Ex.R2: Copy of the Medical report of the complainant dated 07/01/2021,
3. Ex.R3: Copy of the fitness certificate of the complainant.


(V.ANURADHA) 7/5/2022
MEMBER


(B.DEVARAJU) 7/5/22
MEMBER


(M.SHOBHA) 7/5/22
PRESIDENT

