

Date of registration: 29.12.2022
Date of order : 29.05.2023

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION NO.I, VISAKHAPATNAM : AP

PRESENT: Smt.Gudla Tanuja, B.Com., M.A.(HRSA), LL.M., Ph.D., President
Sri Varri Krishna Murthy, M.A., M.B.A., A.I.I.I., Member
(Associateship in Insurance Institute of India)
Ms.Rahimunnisa Begum, M.Com., LL.M., M.HRM(Ph.D) Woman Member

Monday, the 29th May, 2023

Consumer Complaint No: 437/2022

Between:

1. Illibilli Ugandhar, S/o Shanmukha Rao, aged 42 years, R/at D.No.15-9-15, Maharanipeta, Visakhapatnam.
2. Illibilli Ekta, W/o Illibilli Ugandhar, aged 40 years, R/at D.No.15-9-15, Maharanipeta, Visakhapatnam.

.... Complainants

And

1. Dr.Patchipala Namratha, Chief Fertility Specialist, Universal Srushti Fertility and Research Center, Krishna Nagar, Near Zilla parishad, Maharanipeta, Visakhapatnam-2.
2. Dr.Tirumala, Universal Srushti Fertility and Research Center, Krishna Nagar, Near Zilla parishad, Maharanipeta, Visakhapatnam-2.
3. Bindu, Co-ordinator, Universal Srushti Fertility and Research Center, Krishna Nagar, Near Zilla parishad, Maharanipeta, Visakhapatnam-2.

... Opposite Parties

Date of final hearing : 19.05.2023
Advocate for Complainant : Sri Mohammed Habeebulla
Advocate for Opposite Parties : absent

: O R D E R :

(Per Smt.Rahimunnisa Begum, Woman Member on behalf of the Bench)

Brief facts of the case :-

1. The Complainants got married 12 years ago and could not conceive a child, on seeing the advertisement of the Opposite Parties with respect to their fertility treatment and services of Surrogacy visited the center of the Opposite Parties in the month of July 2019. Dr.Namratha and Dr.Tirumala tested the Complainants and concluded that there is no chance of having children naturally, therefore, advised to opt for Surrogacy. The Opposite Parties assured that they will render service of surrogacy procedure. The Opposite Parties obtained signatures on some forms, and did not return to the

Rahimunnisa Begum

Complainant. As per the procedure suggested by the Opposite Parties that surrogate mother will be provided the details of the surrogate mother will be kept confidential and a total amount of Rs.15,00,000/- need to be paid by the Complainants at the 5th month of pregnancy of the surrogate mother and Rs.1,00,000/- extra is to be paid for the Caesarian operation which shall be taken at the time of delivery. The Complainants paid sum of Rs.2,00,000/- in cash on 19.09.2019 on the instance of the Opposite Parties a receipt to that effect was passed by the Opposite Parties. On 7.10.2019 an amount of Rs.5,00,000/- was paid by the Complainants to the Opposite Parties. The Opposite Parties started a procedure of collection of samples, injections given daily through the medical assistance who visited the Complainants. The 2nd Complainant was made to visit the Hospital on many occasions for scans and tests required for surrogacy. The 2nd Complainant was assured of generating healthy eggs. The 2nd Complainant was subjected to a small surgery at the clinic of the Opposite Parties which was described as Egg Sucking surgery, the surgery went for 2 hours after anesthesia was administered. Post surgery the 2nd complainant faced health issues and lot of blood loss. The Complainants paid the entire amount of Rs.15,00,000/- by 20.05.2020 and a receipt to that effect was also passed. The surrogate mother was not shown to the Complainants inspite of the promise. The copies of clinical tests of the surrogate mother were given with an assurance that the surrogate mother was carrying baby, both the baby and the surrogate mother are keeping well without any complications. The scan reports of the growth of the baby were handedover to the Complainants. Copy of the TIFFA test has been conducted on surrogate mother and the last payment was made on 24.05.2020 as per the agreement. The Opposite Parties kept the Complainant under belief that services have been rendered as per the agreement. The patient will be delivered either by 4/5 August 2020. Thereafter immediately the Complainants can take custody of the child. Shockingly on 26.07.2020 news broke just a week prior to the expected date of delivery that the Opposite Parties are arrested by police for alleged cheating the public and that the entire centre is a big scam. The Complainants were shocked and surprised with the outbreak of the news and enquired police. The police authorities confirmed that the arrest was made against Opposite Parties. The Complainants lodged a complaint against the Opposite Parties on 5.08.2020 as the child was not delivered as per the agreement. The Opposite Parties were arrested and kept in police custody. The Complaint was registered under FIR No.345/2020. Subsequently, the Complainants approached the Opposite

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Parties when they came out of jail, the Opposite Parties avoided the Complainants and proclaimed that the amount will be refunded only on the withdrawal of the police complaint. The Complainants dreams of having baby were shattered and dreams devastated. The 2nd complainant suffered lot of mental stress and fell depressed. The Complainant got affected with Covid 19 and subject to several complications. The Complainant got issued a legal notice on 15.08.2022.

Contentions of the Complainants:

2. Aggrieved by the conduct of the Opposite Parties mentioned in detail in brief facts of the case. The Complainant filed this complaint for non-delivery of baby as was promised by the Opposite Parties through surrogacy treatment.

Prayer of the Complainants:

3. To direct the Opposite Parties - to pay Rs.15,00,000/- collected by the Opposite Parties with damages of Rs.5,00,000/- for mental agony suffered with costs to the Complainant and any other relief or reliefs the Commission deems fit.

Contentions of the Opposite Parties:

4. In spite of receiving the notice from this Commission and paper publications by the Complainant, the Opposite Parties remained absent and failed to avail the opportunity to defend their case and contest the matter.

Records before this Commission:

- The Complainant filed Evidence Affidavit, Exs.A1 to A7 marked by the Complainants.
- Written arguments filed by the Complainants.
- Heard the Complainants.

Record observation:

(As per Exs.A1 to A17 marked by the Complainants)

- Receipt of Rs.2,00,000/- issued by the Opposite Parties to the Complainants dt. 19.9.2019 as per Ex.A2.
- Receipt of Rs.5,00,000/- issued by the Opposite Parties to the Complainants dt. 07.10.2019 as per Ex.A3.
- Receipt of Rs.3,00,000/- issued by the Opposite Parties to the Complainants dt. 07.12.2019 as per Ex.A4.

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- Receipt of Rs.2,00,000/- issued by the Opposite Parties to the Complainants dt. 01.02.2020 as per Ex.A5.
- Receipt of Rs.1,00,000/- issued by the Opposite Parties to the Complainants dt. 18.5.2020 as per Ex.A6.
- Receipt of Rs.2,00,000/- issued by the Opposite Parties to the Complainants dt. 24.05.2020 as per Ex.A7.
- Exs.A8 and A9 are the lab reports of 2nd Complainant Mrs.Ekta and the 1st Complainant Mr.I.Yugandhar dt 8.8.19 respectively issued by the Opposite Parties.
- Ex.A10 is the receipt for medicine dt. 19.10.2019.
- Ex.A11 is the image of scan report of Surrogate mother dt. 22.1.2020.
- Ex.A12 dt.11.4.2020 is the Ultrasound TIFA of Surrogate mother as was issued by Vijetha Medical Center dt 11.4.2020.
- Ex.A13 is the FIR copy u/s 420, 417, 468 r/w Sec.34 IPC i.e. 5.8.2020. Ex.A14 are leaflets of news coverage of various paper clippings against the Opposite Parties of this case in hand.
- Ex.A15 dt. 5.8.2020 is the Complaint lodged by the Complainant against Universal Srushti Fertility and Research Center, Maharanipeta, Visakhapatnam.
- Ex.A16 & A17 are the legal notices served by the Complainant on the Opposite parties dt.15.08.2022 with acknowledgements.

Crux of the case:

- Non-delivery of the baby by the Opposite Parties to the Complainants as was promised out of surrogacy contractual treatment.

Issues involved:

- The Opposite Parties resorted to unfair trade practice by resorting to illegal trafficking and unethical practices by luring prospective patients (as was reported in Ex.A14).
- The Opposite Parties obtained huge amount of money towards the treatment and promised to deliver a child after putting the Complainants to lot of physical, emotional, biological and financial hardship.
- The Opposite Parties played foul was busted out by the concerned authorities of the city of Visakhapatnam (Ex.A14).

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- The Opposite Parties cannot escape from the promises made out of their professional conduct in terms of delivery and handing over the baby to the Complainants.

Summary findings:

- The record observation supra is evident that the Complainants followed the advise of the Opposite parties accordingly made all the payments, underwent treatment, purchased medicines and eagerly waiting to take custody of the baby to be delivered to them on the due date (Exs.A1 to A4).
- Before the due date itself the concerned officials and authorities of the city of Visakhapatnam took cognizance of the Opposite Parties Fertility Centre on various grounds on cheating, illegal trafficking etc., as was evident as per the leaflets of the marked Ex.A14 via various newspaper clippings.

Points for determination:

- 1) Whether there is alleged deficiency of service against the Opposite Parties?
- 2) Whether the Complainant succeeds in this case?
- 3) Whether the Complainants prayer be allowed?
- 4) If so, to what extent?

Point No.1:

5. The case of the Complainants is that that they have underwent treatment as specified by the Opposite parties and paid an amount of Rs.15,00,000/- towards the said treatment. The Opposite Parties promised to deliver a child out of surrogacy procedure on either 4/5 of August as per their agreement. The Opposite Parties time to time collected the entire amount at various instances as per the marked exhibits by the Complainants from Ex.A1 to A7. The Opposite Parties issued an image of the child in womb as per A11 to the Complainants as part of their promise to make believe that the child is in the womb and all set for the delivery of the child. The Opposite Parties conduct became questionable, doubtful and shocking to the Complainants as the matter was busted out by the concerned authorities of the city of Visakhapatnam as was reported in various newspapers before the due date of delivery of the child itself by the concerned officials and authorities of the city of Visakhapatnam who took cognizance of the Opposite Parties on various grounds of cheating, illegal trafficking etc., which was evident as per the leaflets supplied, emphasized and placed as evidence before this Commission by way of marked Ex.A14 by the Complainants. Thus, there is no doubt of

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whatsoever to prove negligent conduct of the Opposite Parties who resorted to unfair trade practices and were deficit in extending services as was laid down under Sec.42 of the Consumer Protection Act 2019.

“Service” means - service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other.

Point No.2:

6. Owing to the record observation, discussions in issues involved, summary findings and Point No.1, it is crystal clear with sufficient documentary evidence that the Opposite Parties were deficit in extending their promise professional services to the Complainants in specific and resorted to unfair trade practices as was evidential as per the leaflets of Ex.A14 emphasised by the Complainants. Moreover, the Complainant issued a legal notice for which there is no response, the Opposite parties did not choose to contest the matter inspite of the opportunity given as per principles of natural justice. Hence the Complainants succeeds in this case in hand against the Opposite Parties.

Point Nos.3 & 4:

7. The Complainants succeeds in this case in hand the liability of the Opposite Party arises undoubtedly. The Commission is of the considered view that the Opposite Parties collected huge sum of amount i.e. to the tune of Rs.15,00,000/- from the Complainants with a promise to deliver the child out of surrogacy procedure hence liable to pay back that amount collected at various instances, the receipts being issued by the Opposite Parties themselves are testimony to the fact as per Exs.A1 to A7. That the Complainants done what all they are told to in anticipation of taking charge of the child to enjoy the bliss of parenthood is reflected in Exs.A8 to A17.

8. The agony of the Complainants can be understood without any saying and it is suffice to say that the opposite parties being the highly qualified medical professionals whose fundamental duty is to serve the human beings are in turn playing with the emotional state of couples who are in desperate search of medical support to get a child out of surrogacy procedure. No amount of money can substantiate the loss suffered by the victims of these circumstances but the compensation awarded can truly give sense of relief and a warning signal for the wrongdoers that they need to repay what they

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have craved for in an unethical manner. The Commission unanimously allows the prayer of the Complainants in part with a direction to the opposite parties not to resort to unfair trade practices play foul with the sentiments and emotions of married couple and to refund an amount of Rs.15,00,000/- along with Rs.1,00,000/- towards compensation for being deficient in extending services and resorted to unfair trade practices with an additional amount of Rs.10,000/- towards litigation expenses.

We answered the points accordingly.

9. In the result the Complaint is allowed in part, directing the Opposite parties to refund an amount of Rs.15,00,000/- (Rupees Fifteen lakhs) along with Rs.1,00,000/- (Rupees One lakh) towards compensation for being deficient in extending services and to unfair trade practice with an additional amount of Rs.10,000/- towards litigation expenses to the Complainants.

Time for compliance is one month from the date of receipt of this Order.

Dictated to the Shorthand Writer, transcribed by him, corrected and pronounced by us in the open Commission on this the 29th day of May, 2023.


Member
29/05/23


President 29.05.23


Woman Member
29/05/23

APPENDIX OF EVIDENCE

Exhibits Marked for the Complainant:

Doc.No.	Date	Description	Remarks
Ex.A1	17.07.2019	Registration Receipt	Photostat copy
Ex.A2	19.09.2019	Receipt for Rs.2,00,000/-	Photostat copy
Ex.A3	07.10.2019	Receipt for Rs.5,00,000/-	Photostat copy
Ex.A4	07.12.2019	Receipt for Rs.3,00,000/-	Photostat copy
Ex.A5	01.02.2020	Receipt for Rs.2,00,000/-	Photostat copy
Ex.A6	18.05.2020	Receipt for Rs.1,00,000/-	Photostat copy
Ex.A7	24.05.2020	Receipt for Rs.2,00,000/-	Photostat copy
Ex.A8	08.08.2019	Lab Report of 2 nd Complainant	Photostat copy
Ex.A9	08.08.2019	Lab Report of 1 st Complainant	Photostat copy
Ex.A10	19.10.2019	Receipt for Medicines	Photostat copy
Ex.A11	22.01.2020	Image of Scan report of Surrogate Mother	Photostat copy
Ex.A12	11.04.2020	Ultra Sound (TIFFA) of Surrogate mother	Photostat copy
Ex.A13	05.08.2020	Photocopy of F.I.R. No.345/2020	Photostat copy

Ex.A14	26.07.2020	Downloaded copies of news items showing arrest of Opposite parties	Photostat copy
Ex.A15	05.08.2020	Letter addressed by 1 st Complainant to Maharanieta Police Station, Visakhapatnam.	Photostat copy
Ex.A16	15.08.2020	Legal Notice along with 3 postal receipts	Photostat copy
Ex.A17	17.08.2022	Returned postal covers of Opposite Parties 2 and 3	Photostat copy

Exhibits Marked for the Opposite Parties: -NIL-

Member
29/05/23

President 29.05.23

Woman Member
29/05/23

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