

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
GURGAON-122001.**

Consumer Complaint No.395 of 2020

Date of Institution: 13.10.2020

Date of Decision: 22.11.2023

Vishal Yadav son of Shri Vijay Singh, resident of House No.701, Sector-4,
Gurugram (Haryana).

.....Complainant

Versus

1. Cloud nine Hospital, Plot No.A-2, MSJ House, Vikas Marg, beside SS Plaza, Mayfield Garden, Sector-47, Gurugram-122003 (Hr.) through its CEO Dr.R.Kishore Kumar
2. Dr.Sanjay Wazir
3. Dr.B.S.Yadav
4. Dr.Gopal Aggarwal
5. Dr.Manish Balde
6. Dr.Surinder Kumar
7. Dr.Sarvesh Thakur, all are the Neonatology team of Cloud nine Hospital, Plot No.A-2, MSJ House, Vikas Marg, beside SS Plaza, Mayfield Garden, Sector-47, Gurugram-122003 (Hr.).

..... Opposite parties

Complaint under Section 35 of Consumer Protection Act, 2019.

**BEFORE: SHRI SANJEEV JINDAL, PRESIDENT.
MS. JYOTI SIWACH, MEMBER.
MS. KHUSHWINDER KAUR, MEMBER.**

Present: Shri Naresh Gambhir, Advocate for the complainant.
Shri Vinayak Gupta, Advocate for the OPs No.1 to 7.

ORDER SANJEEV JINDAL, PRESIDENT.

Heard on the complaint in question in the light of the pleadings of the parties coupled with the evidence adduced by them in support thereof. The arguments and the rival contentions raised by the counsel for the parties also stand appraised.

2. Certain facts between the parties are admitted ones i.e. that in the intervening night of 08-09.05.2019, the wife of the complainant namely Dr. Surbhi Ahuja was admitted for delivery in room No.101 of OPs-Cloud nine Hospital, that on 09.05.2019 at about 3.30 PM, when the family members of the complainant were waiting outside for good news, all of a sudden, at about 5.00 P.M. there was an announcement in the hospital that baby of the mother of room No.101 was missing, pursuant to which, high alert coupled with code pink was announced in the hospital which stands for infant abduction, that on hearing this announcement, the family members of the complainant got stunned and started enquiring from the doctors about their new born baby but they could not get any information about new born baby as there was a lot of confusion in the hospital and none of the staff member was aware how to handle this situation, that this high voltage drama continued for 30 minutes with no one to explain to the complainant and his family members even about the fact as to whether the new born was son or daughter, that later-on, the complainant was informed that baby girl had been born to his wife and the announcement aforesaid was just a mock drill in the hospital, that on 12.05.219, at the time of discharge, the hospital handed over to the complainant the Discharge Summary with the intimation that then onwards the said document was most important document, wherein, the blood group of the new born child was mentioned as B-ve (The copy

of Discharge Summary annexed as **Annexure A**), that in the month of August, 2019, at the time of applying for the Aadhar Card of the Baby while searching some documents, the complainant came to know that there was a discrepancy in the blood group of the baby as in the discharge summary, the blood group of the baby had been mentioned as B+ve, whereas, in another report, the blood group stood mentioned as O+ve (O positive) which had been given by the OPs themselves (The copy of Blood report annexed as **Annexure B**), that pursuant to it, the complainant filed a complaint against the OP No.1-Cloud nine Hospital to the Member Secretary, Medical Negligence Board, Gurugram for the medical negligence on the part of the OPs-hospital, and, that in reply thereto received by the complainant on 13-02-2020, the aforesaid board observed that though the Blood group was a vital information in the discharge summary and any error in that regard was showing careless and complacent attitude of the Doctor but no harm had occurred to the baby due to that error (The copy of complaint to the Member Secretary and the reply dated 13-02-2019 annexed as **Annexure C & D**).

Thus, the complainant pleaded that the aforesaid circumstances clearly showed that there was a severe deficiency in service on the part of the OPs which also came within the ambit of unfair trade practice and, further, that if any mock drill had to be conducted, then, the OPs could have taken the complainant and his family members into confidence as nobody had seen the child at that time nor even, they knew that whether it was a boy or girl. Since, the complainant had suffered a lot of mental agony and pain due to the aforesaid

deficiency in service and unfair trade practice on the part of the OPs, so, he was entitled to compensation on this account for a sum of Rs.10,00,000/- (Ten lakhs) for which he sent a legal notice to the OPs but no avail. Hence, this complaint.

In the end, the complainant prayed that due to severe deficiency in service and unfair trade practice on the part of the OPs, they be directed to pay compensation to the amount of Rs.10 lacs coupled with the direction to pay Rs.2 lakh for causing mental agony and harassment to the complainant. Any other relief which deemed fit by this Court has also been prayed for.

3. The OPs No.1 to 7 filed their separate seven written statements respectively. The OPs No 1 to 7 in their aforesaid separate written statements while taking the preliminary objections with respect to maintainability, limitation, the complaint being bad for non-joinder of necessary parties, jurisdiction and cause of action etc. controverted all the material assertions of the complainant and pleaded, inter-alia, that from the pleadings of the complainant no case of medical negligence had been made out.

Though, the OPs No.1 to 7 in their separate written statements aforesaid also took up a number of pleas and defences, but, the crux of the aforesaid pleas is that the mock code pink drill had been done as a part of protocol, and that, such like drills were being conducted to ensure that all the safety norms were met and they were not meant to harass anybody as alleged by the complainant. At the time of announcement of mock drill aforesaid, the wife and baby of the complainant were not present in room No.101, as the patient along-with her husband i.e. the complainant was present in Operation Theater

at the time of delivery i.e. the fact which had been accepted by the complainant himself during the enquiry held on 19.12.2020 at the office of the Member Secretary, Medical Negligence Board, Gurugram. The error regarding blood group had occurred due to pure oversight as a typographical error in the discharge summary of the baby and the same had not caused any damage/injury to the baby. In the end, the OPs prayed in their respective separate written statements that since neither it was a case of medical negligence nor there occurred any negligence on their part, so, the complaint of the complainant be dismissed.

4. It is true as has been contended by the learned counsel for the OPs that no medical negligence whatsoever had occurred in the present case on the part of the OPs-hospital, and, further, that the typographical error relating to the blood group of the baby in her discharge summary had not caused any harm to the baby, but, still, this position in the considered view of this Commission is not going to help the case of the OPs in any manner because it is equally true, beyond any shadow of doubt, on the record of this file, as has been admitted by the OPs themselves in their respective written statements, that the mock code pink drill in question indeed had been conducted in the OPs-hospital at about 5.00 PM on 09.05.2019 which stands for the infant abduction, thereby, mentioning that the baby of the mother of room No.101 had been missing i.e. the room in which the complainant's wife namely Dr.Surbhi Ahuja had been admitted for delivery. Thus, in these circumstances, it becomes crystal clear that this type of announcement was sufficient to cause extreme mental

harassment, pain and agony to anyone including the complainant and his family members, and, that, rather, such type of announcement was sufficient to fill chill in anyone's spine, which was even sufficient to stop the breaths of the affected parents of the missing infant, which, actually happened in the present case to the complainant and his family members.

5. This Court also finds merit in the contentions raised by the learned counsel for the complainant that, if, at all, any such mock drill had to be conducted, the OPs could have very easily taken the complainant and his family members into confidence, but, here, in the instant case not only that the OPs did not take the complainant and his family members into confidence but nobody even knew as to whether the newly born baby was boy or girl as no one had seen the child from the complainant and his family. Therefore, this type of act and conduct on the part of the OPs has to be held not only as severe deficiency in service but also as an extreme type of unfair trade practice.

6. The plea taken by the OPs to the effect that at the time of announcement of the mock drill in question, the complainant along-with his patient-wife was present in the Operation Theatre, cannot held worthy of according any credence as the OPs have miserably failed to substantiate their aforesaid assertion.

On the contrary, it is the specific plea of the complainant that when his wife was taken to Operation Theatre at around 3.30 PM for delivery on 09.05.2019, he and his family members were waiting anxiously outside the Operation Theatre, and, all of a sudden, at about 5.00 PM, there was an

announcement in the hospital that the baby of the mother of the room no.101 had been missing, in respect of which, a high alert in the form of pink code was sounded in the hospital culminating into lot of confusion as none of the staff member knew how to handle the situation. The complainant has further pleaded in a categorical terms that they all were stunned and had been asking the doctors and the staff about their new born baby but they were not informed, till then, even as to whether the new born baby was son or daughter. All the aforesaid averments/submissions of the complainant admittedly go un-rebutted on the record of this file as the OPs have not been able to place on the record of this file even an iota of evidence which may rebut the credibility of the contents of the aforesaid documents or which may prove anything contrary.

In this respect, the plea taken by the OPs that the complainant himself had admitted during the enquiry held on 19.12.2020 (the exact date of enquiry is 19.12.2019) at the office of the Member Secretary, Medical Negligence Board, Gurugram that at the time of delivery he was present with his patient-wife in Operation Theatre, also cannot be held sustainable because the bare perusal of the aforesaid enquiry report clearly shows that it has nowhere been mentioned therein that at the time of announcement of mock drill/code pink drill, the complainant had been in Operation Theatre along-with his patient wife. Rather, as discussed above, it has been clearly mentioned by the complainant in his complaint dated 19.12.2019 **Ex.CW1/C** preferred to the Medical Negligence Board that at the time of announcement of mock drill, he along-with his family members was waiting anxiously outside for good news. At the cost of repetition, it is again mentioned here that no rebuttal to the aforesaid assertions/

submissions made by the complainant has come from the OPs side, which in turn, establishes in clear cut terms that the OPs-hospital in this regard has no legs to stand at all.

7. Thus, in view of our aforesaid discussions, the OPs are hereby held as guilty of severe deficiency in service as well as adopting an unfair trade practice which caused an extreme type of mental harassment, agony and pain to the complainant and his family members. That being so, the present complaint is hereby accepted with costs. Accordingly, we direct the OPs-hospital to pay the amount of Rs,2,00,000/- as compensation to the complainant for causing extreme type of mental harassment, agony and pain to the complainant and his family members along-with Rs.22,000/- as litigation expenses. The remaining reliefs as have been prayed for by the complainant are hereby declined being unnecessary and unwarranted. The OPs are directed to pay the aforesaid amount, jointly and severally, within 45 days from the date of this order, failing which the amount will attract interest @ 12% per annum, for the same period, till actual realization.

8. If the order of this Commission is not complied with, then the complainants shall also be entitled to file the execution petition under Section 71(1) of the Consumer Protection Act, 2019 and in that eventuality, the OPs may also be held liable for prosecution under Section 72 of the said act which envisages punishment with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than Rs.25,000/-, but which may extend to

Rs.1,00,000/-, or with both. The copy of the order be supplied to the parties free of cost as per the rules. The order be promptly uploaded on the website of this Commission. File be consigned to the record room, after due compliance.

Announced.
22.11.2023

(Jyoti Siwach)
Member

(Khushwinder Kaur)
Member

(Sanjeev Jindal)
President,
District Consumer Disputes
Redressal Commission, Gurgaon