

**BEFORE THE BENGALURU RURAL AND URBAN I ADDITIONAL
DISTRICT CONSUMER DISPUTES REDRESSAL FORUM, I FLOOR, BMTc, B BLOCK,
TTMC BUILDING, K.H.ROAD, SHANTHI NAGAR, BENGALURU-27**

Complaint Case No. CC/835/2019

(Date of Filing : 22 May 2019)

1. Dr.S.Nagalatha

W/o. Dr.N.K. Chidananda Aged about 39 years Residing
at No.287, 7th Main, Byrasandra, 1st Block, Jayanagar
East, Bengaluru-560011.

.....Complainant(s)

Versus

1. Vibes Healthcare Limited

No.3, Southern Avenue, Near Kali Ghat Metro Station,
Kolkata-700029. Also Having an office at: No.93/12,
Shreyas Point, South end Road, Near Surana College,
Bengaiuru-560004.Represented bu its Managing Director.

2. Dr. Ummul

Age not Known, Major Therapist Vibes Healthcare Limited
Therapist, No.93/12, Shreyas Point, South end Road, Near
Surana College, Bengaiuru-560004.

3. Mrs.Barnali

Age not Known, Major Therapist Vibes Healthcare
Limited Therapist, No.93/12, Shreyas Point, South end
Road, Near Surana College, Bengaluru-560004

.....Opp.Party(s)

BEFORE:

HON'BLE MR. H.R.SRINIVAS, B.Sc. LL.B., PRESIDENT

HON'BLE MRS. Sharavathi S.M., B.A. L.L.B MEMBER

PRESENT:

Dated : 18 Dec 2021

Final Order / Judgement

Date of Filing:22/05/2019

Date of Order:18/12/2021

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

Dated:18th DAY OF DECEMBER 2021

PRESENT

SRI. H.R. SRINIVAS, B.Sc., LL.B. Retd. Prl. District & Sessions Judge And PRESIDENT

SMT.SHARAVATHI S.M., B.A., LL.B., MEMBER

COMPLAINT NO.835/2019

COMPLAINANT :

DR.S NAGALATHA

W/o Dr.N.K.Chidananda

Aged about 39 years

Residing at No.287,

7th Main, Byrasandar

1st Block, Jayanagar East,

Bengaluru 560 011

(Sri BM Mohan Kumar Adv

For complainant)

Vs

OPPOSITE PARTY:

VIBES HEALTHCARE LIMITED

No.3, Southern Avenue,

Near kali Ghat Metro Station,

Kolkatta- 700 029.

Also having an office at:

No.93/12, Shreyas Point,

Southend Road, Near Surana College

Bengaluru 560 004.

Represented by its

Managing Director.

(Sri Rohan Kothari Adv. for OP)

ORDER

SRI. H.R. SRINIVAS . PRESIDENT

1. This is the Complaint filed by the Complainant against the Opposite Party (herein referred to as OP) under section 12 of the Consumer Protection Act 1986 for the deficiency in service in not providing effective treatment in getting her body weight reduced and for refund of the amount of Rs.43,700/- paid towards the same along with interest at 12% per annum till payment of entire amount, and for Rs.5,00,000/- as compensation for causing mental harassment, torture and for such other reliefs as the Hon'ble District Commission deems fit.
2. The brief facts of the complaint are that; complainant is a pediatrician practicing in Bangalore in a reputed hospital. OP is in the business of providing health care facility such as slimming, skin therapy, hair treatment other related services. OP-2 to 4 assisting OP-1 as therapist and misrepresented the complainant regarding the quality of services they provide. They are the employees of OP-1. It is contended that, the complainant was suffering anterior cruciate ligament tear which occurred in the accident on 08.11.2017 on account of this, she was unable to do any physical activity such as running etc.
3. Her brother's wedding was scheduled to be held on 04.05.2018. She wanted to reduce her weight by seeking the alternate health methods. While she was looking for weight reduction method on the internet, she came across the advertisement in OP-1's website. It was mentioned in the said web site that it is a leader in introducing latest world class technology and advanced treatment in its state of arts center and has two decades of experience of organizing slimming solution. Complainant was impressed on the representation made in the website.
4. She filled her details on the web site of the OP-1 to make enquires regarding the services provided by the OP and the prices for the same. This is on 16.11.2017. Next day one Mrs. Reena on behalf of OP-1 called her, explained her regarding the various schemes of OP for weight loss

and slimming and assured that if the said services are availed, she would be definitely loose 3 to 4 inches per session and weight loss to the extent of 5 kgs during the course of treatment and that there are hundreds of patients benefited from such treatment. On 22.11.2017 she along with her husband met OP and Mrs.Reena who requested the complainant to undergo body composition analysis. While doing so, she informed the staff that she was wearing sarees which weighs more than the usual sarree weights and to suggest alternate that she would undergo test on the next day. She was intimated that the weight of the sarree or dress would not have any effect while calculating body composition analysis. Her weight on that day as documented by OP was 66.04 kgs.

5. After the BCA test she was advised to undergo a treatment called “nonsurgical lipo suction” wherein ultra sonic waves in a range of 20-70 KHz., given that are able to cause ‘cavitation’ effect wherein the focus of high energy waves creates micro bubbles of wafer inside. The adiposities and in the interstitial liquids of the cellulite which will effective for body shaping and reduction in the circumstances and simultaneous collagen renewal and skin tightening. The consideration for the said treatment was Rs.17,000/-. She was assured that by taking the said therapy, the abdominal waist of 2 to 3 inches would get reduced and she would have a minimum weight loss of 5 kgs by the end of said treatment. Believing the words of OP, she paid Rs.17,700/- for the said treatment which includes the taxes.

6. On 23.11.2017 she underwent various machine sessions such as body firm toning, tightening, cello session. The first NSLS Session was conducted on 01.12.2017. One Mrs. Ashwini was the therapist who took the measurement. Even after second session of NSLS, there was no weight, loss or reduction in waistline as promised. When enquired, she was informed that NSLS therapy is only for loss of inches of waist line and not for weight loss which was quite contrary to the assurance given by Mrs.Reena.

7. After 2 sessions of NSLS, there was a marginal difference in the waist line to which Dr. Ummal a therapist suggested to have “five tummy tuck session” which would do miracle even though the earlier treatment did not work. So she took the said “tummy tuck session” with one therapist Mrs.Nagu and she was also informed that since that was an anti-obesity week she would get a special discount in the price. Believing the same she agreed and paid Rs.6,000/- and got the said therapy which is called “Tekar Therapy” to reduce the weight. Even after going through the said therapy, there was no much significant reduction in the weight loss or in the loss of waistline.

8. Dr. Ummul and Mrs Reena advised her to go for 5 more sessions of NSLS along with cello rap with tummy tuck session. She was promised by them that once she completed the above sessions, she would get 100% results. Believing their words, she paid Rs.20,000/- for the said treatment. She insisted that the measurement be taken with her tape and documented for which Ops staff declined to do the same. Dr.Ummul when confronted said that the therapy would not work to everyone. When she questioned again, they gave vague and evasive reply. She met the head of the center Mrs. Barnali who informed to upgrade the services with “slim trum therapy”.

9. Dr.Ummul informed her that the said therapy would not help her in any way and if she takes the same they will not refund any amounts. At the end of all the sessions and after making the payment her weight remained 64.5 kgs in additional to the measuring and BCA done with no changes. In spite of paying all the money as desired and requested by OP and having undergone multiple treatment and therapies, there was no reduction in the weight and as well as the waistlines. Hence she issued a legal notice to the OP for refunding the amount as their therapy did not given any result. There is deficiency in service on the part of OP and also false publication and false advertisement and thereby have deceived and her misrepresented her through the advertisement. Further providing false assurances in order to get the money which amounts to unfair trade practice. Hence the complaint.

10. Upon the service of notice OP-1 appeared and filed the version. Complainant by making application got deleted OP No.2 to 6. In the version filed by OP, it is contended that, the complaint is not maintainable either in law or on facts and it is false, frivolous, vexatious. They provided the best quality treatment to the complainant. There was no misrepresentation or mis-advertisement. It has admitted that it is providing in beauty treatment slimming clinics, to its customers. Complainant contacted OP-1 over telephone and sought details. One Mrs.Reena explained the required information regarding weight management procedure and cost and also wrote the same in the weight management and beauty record. She was also told by Dr. Ummal that there will be negligible weight loss due to her medication for ligament tear. In spite of it, the complainant agreed voluntarily to undergo for the treatment. It was also made clear that, there is strict no refund policy. Complainant chose to undergo 3 NSLS sessions and 10 body firming session at Jayanagar Branch which was billed for Rs.17,701/- The amount paid by her has been invoiced.

11. The complainant has executed a declaration that on “my own free will due consent to join the program the effect and nature and outcome of the program has been explained to me. I have also been explained that the result of each program may vary from person to person depending upon the individual body composition, health status metabolism and other factors including diet and lifestyle and as such results of the program cannot be guaranteed lack of results will not be construed as deficiency of service.”

12. In the first session itself, complainant informed that she can see the differences in the inches. Complainant lost 3 inches at the end of 3rd session. She informed OP-1 that she wanted to reduce her abdomen area and wanted a tightening in of her abdomen. Therefore a concave therapy along with advanced “tekar therapy” was given without charging and this facility was availed by the complainant on her own choice and willingness after seeing the concave therapy session. She wanted the quicker result of reduction due to the upcoming wedding in the family. She chose 5 additional session of NSLS along with G5 therapy by paying Rs.20,000/-. By the completion of the above sessions, along with additional session of Slim Traum therapy, complainant lost her abdominal girth. The weight of the complainant was also recorded and she had lost weight after all the sessions, which is an indications of OP-1’s superior effective treatment. The spot measurement

of therapy shown reduction in the abdominal regions and complainant did not raise any concern in that respect. In the beginning of the course the complainant was asked to take diet counseling with a dietitian for which she refused stating that she has already consented by another place.

13. After each session of the NSLS, the complainant lost significant weight. Whereas she would come with more weight for the next sessions, despite giving instructions to maintain her weight and follow strict exercise and diet routine. The complainant has affixed her signature to the declaration form and terms and conditions form which is binding on her. It is a contract between them. The jurisdiction of this complaint is at Delhi as agreed by the complainant and not before this Forum. As per the terms and conditions in the contract, the liability of the OP shall be limited to the amount paid by the complainant after adjusting for administrative service charges and tax dues. Absolutely there is no ground for the complainant to seek exorbitant amount of Rs.5,00,000/- which is in contravention of the contract between them. There is no deficiency of service or unfair trade practice by the OP. The claim of the complaint is nothing but a mala fide attempt to get the advantage of the Ops goodwill and long standing reputation. In the light of the above by denying all the allegations made in each and every para of the complaint prayed the forum to dismiss the same.

14. In order to prove the case, complainant has filed her affidavit evidence and produced documents. Arguments Heard. The following points arise for our consideration:-

1) Whether the complainant has proved deficiency in service on the part of the Opposite Party?

2) Whether the complainant is entitled to the relief prayed for in the complaint?

15. **Our answers to the above points are :-**

POINT NO.1 : IN THE AFFIRMATIVE.

POINT NO.2 : PARTLY IN THE AFFIRMATIVE.

For the following.

REASONS

POINT No.1 :-

16. On perusing the complaint version documents, evidence filed by the complainant, it becomes clear that, it is not in dispute that the complainant sought the treatment from OP-1 for reduction of weight and also for reduction of her waistline in order become slim. It is also not in dispute that the complainant underwent various therapies offered by OP-1 which is also admitted by OP-1 and also the receipt of the amount prescribed for such a treatment. It is to be noted that, the specific case of the complainant is that none of the therapies resulted in her weightloss and reduction in the waistline.

17. On the other hand, it is the specific case of the OP that there was reduction in the weight loss whereas due to food habits and not taking strict diet and exercise, her weight did not reduce.

18. The body composition analysis, the measurement of weight from the day one till the end of the sessions are produced. Upon perusing the same it becomes clear that on the day of the commencement of the session/therapy the weight of the complainant was 66.03 kgs. On the last of the session it was 65.2 kgs it was just 1 kg loss of the weight.

19. In respect of the waistline, her measurement was recorded in respect of 5 cms above navel, at navel point, and illiate trust. There is no significant decrease in the waistline and it almost remained the same. When this is taken into consideration, though OP claims in the advertisement that there will be significant weight loss after obtaining the session of therapy, there is no change at all in the body weight of the complainant.

20. The brochure of the OP is produced wherein, it is advertised that one Balaji was weighing 85 kgs and lost 22 kgs in four months. When this newsletter is taken in to consideration it is a clear from the advertisement that substantial weight reduction has to take place.

21. On the other hand, the documents produced clearly go to show that there was not even reduction of 1 kg and more. It is also mentioned in the advertisement Ex.P7 slim down two sizes from your waist in just 14 days, VIBES size zero program 2000+ successful clients, 100% money back guaranteed, book now for free consultation. It is also mentioned there the coolest way to lose fat Cryolipolysis - A Non-invasive fat freezing technology, get rid of fat, no surgical, FDA approved.

22. In another advertisement. Look-Good Feel Good slimming beauty and laser treatment. The offers provided the treatment and services mentioned is weight loss, body firming, body toning,

body composition analysis more, spot reduction, aroma veda therapy, slim zone therapy, slim from therapy, lipo laser program, Cryolipolysis, Ultra Cavitation, size zero, Bust enhancement, bust reduction, bust firming. These are all the treatments that are available with OP.

23. When all these fact and circumstances, are taken into consideration, it becomes clear that though OP advertised to provide all these facilities to get the weight reduction and the waistlines reduction within a time span, the same has not worked out to the complainant though she had undergone the therapy's as prescribed by the OP. There is no evidence by OP that complainant has not followed the diet and has over eaten. When this is taken into consideration we are of the opinion there is deficiency in service on the part of OP in not providing proper treatment for the weight loss and also the reduction in the waistline. Though advertised in the web site which amounts to misrepresenting the facts, misleading the public and also false advertisement and publications. OP has contended that this commission has no jurisdiction to decide this complaint as complainant has agreed that she will be subject the jurisdiction of Delhi. As per number of decisions rendered by the *Hon'ble Supreme Court of India* parties cannot deciding their jurisdiction. Further as per the provisions of Consumer Protection Act the Commission within jurisdiction of which cause of action as arising his empower to receive the complaint record evidence and decide the case. In view of this contention raised by OP that this Commission has no jurisdiction and the commission and courts at Delhi alone has jurisdiction to try the complaint cannot be accepted.

23. Further complainant has relied on decision decided in *District Consumer Forum Warangal in Complaint No.10/2015 decided on 13.03.2017*, wherein the complaint was filed believing assurances given in the advisement in respect of its product by OP holding that this type of advertisement are most dangerous and they can also have a severe repercussion on the health of the consumer. This kind of misleading advertisements are highly objectionable, deplorable and also patently illegal. The false and misleading advertisements continue to exploit the vulnerability of consumers. Advertisements should not mislead and should give a clear picture of the quality of the goods sold. Services to be provided from the point of young consumers whose mind is easily impressed by this false and misleading advertisements which is highly objectionable. For which the complainant has to be compensated. In this case also as discussed already the advertisement made by OP is misleading and amounts to false advertisement making valuable consumers be exploited. In the 2nd decision also decided by the *Hon'ble NCDRC decided in (2006) NCDRC 76, in Revision petition No.3467/2006 in Appeal No.103/2006*, it is also held that in respect of advertisement given by the 'The Body Care' in the Times of India that without dieting, weight would be reduced. In view of this, it also amounts to deficiency in service and hence we answer **POINT NO.1 IN THE AFFIRMATIVE**.

POINT NO.2 :

24. When such being the case this complaint deserves to be allowed. And the complainant is to be refunded with the amount she has paid to the OP i.e. Rs.34,960/- (i.e. less 20% of the amount paid by the complainant i.e Rs.43,700/-, to meet the office expenses and other incidental office expenses by OP) along with interest at 12% per annum from the date of admission i.e. 22.11.2017 till the date payment of amount. Further complainant has undergone mental trauma physical strain and has spent time to get the treatment at the cost of her professional time which has to be compensated.

Complainant has suffered mentally, physically and also financially for which we direct OP to pay a sum of Rs.25,000/- towards damages and Rs.10,000/- towards litigation and incidental expenses. Hence we answer **POINT NO.2 PARTLY IN THE AFFIRMATIVE** and pass the following:

ORDER

1. The complaint is allowed in part with cost.
2. OP i.e. Vibes Healthcare Limited Represented by its Managing Director/Authorized signatory is hereby directed to pay a sum of Rs.34,960/- (i.e. less 20% of the amount paid by the complainant i.e Rs.43,700/-, to meet the office expenses and other incidental office expenses by OP) along with interest at 12% per annum from the date of admission i.e. 22.11.2017 till the date payment of the entire amount.
3. Further OP is directed to pay a sum of Rs.25,000/- towards damages as compensation and Rs.10,000/- towards cost of the litigation expenses.
4. OP is hereby directed to comply the above order within 30 days from the date of receipt of this order and submit the compliance report to this commission within 15 days thereafter.
5. Send a copy of this order to both parties free of cost.

Note: You are hereby directed to take back the extra copies of the Complaints/version, documents and records filed by you within one month from the date of receipt of this order .

(Dictated to the Stenographer over the computer, typed by him, corrected and then pronounced by us in the Open Commission on this day the 18th day of December 2021)

MEMBER

PRESIDENT

ANNEXURES

1. **Witness examined on behalf of the Complainant/s by way of affidavit:**

Dr.S Nagalatha – Complainant

CW-1

Copies of Documents produced on behalf of Complainant/s:

Ex P1: Copy of the booking estimate (3 in Ns.).

Ex P2: Copy of the Invoice/payment receipt.

Ex. P3: Copy of the Sessions execution record.

Ex P4: Copy of the Spot measurement.

Ex P5: Copy of the legal notice.

Ex P6: Copy of the Courier receipts.

Ex P7: Copy of the Broachers.

2. Witness examined on behalf of the Opposite party/s by way of affidavit:

RW-1: -Nil-

Copies of Documents produced on behalf of Opposite Party/s

-Nil-

MEMBER

PRESIDENT

RAK*

**[HON'BLE MR. H.R.SRINIVAS, B.Sc. LL.B.,]
PRESIDENT**

**[HON'BLE MRS. Sharavathi S.M.,B.A. L.L.B]
MEMBER**