

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-I,
U.T. CHANDIGARH**

Consumer Complaint No.	:	CC/1077/2019
Date of Institution	:	21/11/2019
Date of Decision	:	22/12/2020

Meenakshi Gupta w/o Sh. Bhupesh Gupta r/o House No.1140, Sector 43-B, Chandigarh.

... Complainant

V E R S U S

Dietician Shreya, having its office at House No.2284, Sector 35-C, Chandigarh.

... Opposite Party

CORAM : **SHRI RATTAN SINGH THAKUR** **PRESIDENT**

MRS. SURJEET KAUR **MEMBER**

ARGUED BY : Sh. Anirudh Gupta, Counsel for complainant

 : Sh. Varun Bhardwaj, Counsel for OP

Per Rattan Singh Thakur, President

1. The long and short of the allegations are, complainant (a housewife) alongwith her husband on 9.9.2019 had visited the OP for diabetes treatment. The OP got filled the enrolment form and terms and conditions were usually one sided and the complainant was left with no option except to sign the form and pay 1,000/- as enrollment fee. Per averments, OP had told it would take at least 9 months for treatment for which the package was of 75,000/- in one go and consultancy was to start upon payment. In view of some financial constraints of the complainant, OP agreed to accept 25,000/- and remaining two installments of 25,000/- each were to be paid later on. To this effect, receipt was issued. It is further the case, complainant had informed the OP she and her husband had to go abroad after three days to attend family function and they were to return after two months and then she would start the consultation process. However, after coming from abroad sugar level and BP of the complainant increased and her health deteriorated and she did not want to follow the process of OP and prayed for refund of the amount. However, the OP did not refund the deposited amount. Alleged, since the complainant had not availed the services of the OP, therefore, she (OP) was bound to refund the amount and non refund of the same speaks of deficiency in service and unfair trade practice on her part. Hence, the complainant filed the instant consumer complaint for directing the OP to refund 25,000/- alongwith interest; pay compensation of 50,000/- and 15,000/- as litigation expenses.
2. OP contested the consumer complaint, filed her written reply and raised preliminary objections complainant has not come to the Forum (now Commission) with clean hands; consumer complaint being not maintainable and bad for mis-joinder and non-joinder of parties and having no jurisdiction. On merits, claimed complainant took the package of 75,000/- and had paid 25,000/- only and remaining amount was agreed to be paid in two installments i.e. of 25,000/- each. The complainant was a patient of blood pressure, diabetes and cholesterol, was insulin dependent and under the treatment of Dr. Murlidharan of Fortis Hospital. After making initial payment, the complainant did not visit the clinic of the OP as she had taken weekly diet for about six weeks on her mobile phone. Subsequent thereto, OP sent an email to the complainant on 20.9.2019 claiming the balance amount. Afterwards on 30.9.2019, phone of the complainant went out of service. Thereafter, a call was received stating complainant had gone abroad for about two months. The OP regularly sent diets to the complainant on her mobile phone. Maintained, OP is still ready to undertake remaining part of the treatment in case remaining amount of 50,000/- was paid. Hence, claimed there was no unfair trade practice or deficiency in service on the part of the OP. On these lines, the cause is sought to be defended.
3. Replication was filed by the complainant and averments made in the consumer complaint were reiterated.
4. Parties led evidence by way of affidavits and documents.
5. We have heard the learned counsel for the parties and gone through the record of the case, including written arguments of the complainant. After scanning of record, our findings are as under:-
6. At the very outset, the facts emerging from the pleadings of the parties are, OP had received 25,000/- + 1,000/- as enrollment fee and the case of the OP is remaining amount was to be paid by the complainant in two installments of 25,000/- each. It is the own case of the OP/ Dietician, complainant was suffering from high blood pressure, diabetes and cholesterol and was insulin dependent and was under the treatment of Dr. Murlidharan of

Fortis Hospital. We may refer here, OP is simply a Dietician and not a Physician to treat blood pressure, diabetes and cholesterol. Of course the OP is a healthcare provider on point to plan diet, subject to prescription of the Physician.

7. It is not the case of the OP before the package was offered, which was allegedly accepted by the complainant, she (OP) had consulted Dr. Murlidharan of Fortis Hospital who was treating the multiple diseases of the complainant. The OP herself assumed the role of a Physician to make the diagnosis and then to prescribe diet plan. It was nowhere suggested by Dr. Murlidharan, aforesaid to take a diet plan package from the OP for the treatment of high blood pressure, diabetes and cholesterol. It seems OP had over exercised her arena of Dietician without consultancy from the treating doctor. Had it been the case complainant had not been receiving treatment from Dr. Murlidharan, then for the purpose of prevention and healthcare, she (OP) could have prescribed the diet plan package for the fitness of the complainant. But, the matter was *sub judice* with Dr. Murlidharan who was never consulted by the OP, though the complainant had disclosed as such to the OP.
8. We shall refer here to Ex.OP-2 i.e. the receipt issued by the OP which shows the particulars referred were B.A. Diet Plan Package (8+1 months) and the amount charged was 26,000/-. In the receipt it was nowhere referred the diet plan was prepared for the treatment of the diseases which the complainant was suffering from viz. high blood pressure, diabetes and cholesterol. Though in her written statement, OP had pretended and claimed she was treating the disease of diabetes and simultaneously in the same breath made an inconsistent reference of complainant being under the treatment of Dr. Murlidharan of Fortis Hospital and the said doctor was never consulted. This also tantamounts to unfair trade practice on the part of the OP for the purpose to gain money.
9. It is also the stand of the OP, the cost of the diet package was non refundable per the enrollment form (Ex.OP-3) whereas the stand of the complainant is terms and conditions of the enrollment form are usually one sided and she was left with no other option except to sign the same. We have gone through the disclaimer/terms and conditions underneath the Enrollment Form and clearly the same appear to be heavily one sided in favour of the OP. Here we are fortified by the judgment of the Hon'ble Apex Court in ***Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan***, Civil Appeal No.12238 of 2018 decided on 2.4.2019, wherein it has been held, where the terms and conditions of the agreement are one sided, the consumer is not bound with the same.
10. Now we shall examine the truthfulness of the claim of the complainant. It is the case, OP was visited on 9.9.2019 and she (complainant) had told the OP she will follow the process after return from abroad as she was scheduled to leave the country on 13.9.2019. With the consumer complaint, the complainant has annexed the ticket (Annexure C-2) which shows complainant and Sh. Bhupesh Gupta (her husband) had booked their flight on 15.7.2019 till Melbourne (Australia). They were to start the journey from Chandigarh on 13.9.2019. The return journey was to commence from Sydney (Australia) on 15.10.2019 and they were to reach Chandigarh on 31.10.2019. This fortifies the claim of the complainant, she had asked the OP to take the treatment after her return in October from Australia and this seems to be believable as the booking was done on 15.7.2019, as is made out from Annexure C-2. This shows, complainant had never asked the OP to send the diet plan weekly on her mobile. Per the pleadings of the OP it appears, forcefully she claimed to have sent it via WhatsApp, contra the instructions of the complainant, just to utilize the amount which she had already received from the complainant. Again it is a case of unfair trade practice and exploitation of an innocent consumer at the hands of the service provider i.e. the OP.
11. The OP in her written statement had claimed, dietary plans were sent on the WhatsApp of the complainant, but, later on her mobile phone was found switched off and many attempts

were made. This also gives support to the version of the complainant, she had gone abroad and, therefore, the mobile phone was switched off and had she wanted the services of the OP, she ought to have put her phone on or contacted the OP to send the same. But, a story has been concocted by the OP just to grab the amount of 25,000/- which was received and no service was availed by the complainant.

12. The complainant with her consumer complaint had annexed a copy of the email dated 7.11.2019 (Annexure C-3) as received from the email account of the OP which was sent by the OP in response to the refund prayer made by the complainant. The operative part of the said email is reproduced below :-

“As you have not followed the diets, so this amount of yours, are safe with us for unlimited period. Whenever you want to start the diets you are welcome in our clinic. Or if you want to avail some other services in this amount of money like complete panchkarma therapies, or 3 months diet (1+1), then you can also avail them.”

The genuineness of this email has not been disputed as no rebuttal to this document was produced on record by the OP. Therefore, its recitals are undisputed one and unequivocally the OP in her email had claimed since the complainant had not followed the diet, so the amounts deposited by her with the OP are safe for unlimited period and whenever she wants to start the diet, she was welcome in the clinic of the OP and it was also averred she can also avail other services in this amount. This shatters and put cracks on the contents of the reply that dietary plans were supplied as the OP had admitted services were not availed by the complainant and she was at liberty to avail the same. This email shows the reply furnished by the OP is vexatious and just to deprive the complainant of refund of the amount. Clearly, it is a case of unfair trade practice on the part of the OP.

1. In view of this evidence on record, other consumers can also be exploited by the OP by furnishing such incorrect reply which was contrary to own email sent by the OP to the complainant. Therefore, it is a case where exemplary cost is required to be imposed upon the OP.
2. In view of the above discussion, the present consumer complaint succeeds and the same is accordingly partly allowed. OP is directed as under :-
 - i. to refund the amount of 25,000/- to the complainant alongwith interest @8% per annum from the date of payment i.e. 9.9.2019 till realization.
 - ii. pay 15,000/- to the complainant as compensation for causing mental agony and harassment to her;
 - iii. to pay 10,000/- to the complainant as costs of litigation.
 - iv. OP is further burdened with exemplary costs of 1,00,000/- which shall be deposited by her in the Consumer Legal Aid Fund account head being maintained in the name of Secretary, State Consumer Disputes Redressal Commission, UT, Chandigarh which may be utilized under the orders of the competent authority for the purpose of providing legal aid to economically poor persons and weaker sections of society as well as making consumer awareness by holding appropriate programmes etc.

1. This order be complied with by the OP within thirty days from the date of receipt of its certified copy, failing which, she shall make the payment of the amounts mentioned at Sr.No.(i)&(ii) above, with interest @ 12% per annum from the date of this order, till realization, apart from compliance of remaining directions.
2. Certified copies of this order be sent to the parties free of charge. A certified copy of this order be also sent to the Secretary, Hon'ble State Commission, UT, Chandigarh for filing execution application, if need be, as and when the order becomes final for recovery of the amount of 1,00,000/-, as mentioned hereinbefore. The file after compliance be consigned.

Sd/-

Sd/-

22/12/2020

[Surjeet Kaur]

[Rattan Singh Thakur]

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Member

President