

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAMDated this the 13th day of August 2026

Filed on: 29/03/2023

PRESENT

Shri. D.B. Binu

Hon'ble President

Shri. V. Ramachandran

Hon'ble Member

Smt. Sreevidhia T.N

Hon'ble Member

C.C.No.217/2023**Complainants**

- 1) Justice (Retd.) T.R.Ramachandran Nair, Thekkedath House, Diwan's Road, Cochin, Pin-682 016
- 2) Mrs.Suja Ramachandran, W/o. Justice (Retd.) T.R.Ramachandran Nair, Thekkedath House, Diwan's Road, Cochin, Pin-682 016

(Adv.Sharan Shahier, Adv.Arjun Raghavan, MTS Legal, Door No.41/4262, D7, 2nd Floor, Metro Plaza, Market Road, Ernakulam)

Vs.

Opposite parties

- 1) Nibav Lifts Private Ltd., represented by its Managing Director, KR Building, Mezzanine Floor, No11 (New No.23) LB Road, Adyar, Chennai, Pin-600 020 Tamil Nadu.
- 2) Business Development Manager (Cochin/Keral), Nibav Lifts Private Ltd., K B Jacob Road, Njaliparambu Junction, Opposite Queens Kitchen, Fort Kochi, Pin-682 001

(Rep. by Adv. Ops rep. by Adv.Ajay N.S., SMJ Building, N.Paravur)

FINAL ORDER**V.Ramachandran, Member****1) A brief statement of facts of the complaint is as stated below:**

This consumer complaint is filed by Justice (Retd.) T.R.Ramachandran Nair, Thekkedath House, Diwan's Road, Cochin and Mrs.Sjua Ramachandran, alleging deficiency in service and unfair trade practice on the part of the opposite parties. The complainants state that they have made a partial payment of Rs.2,69,865/- to the 1st opposite party for the installation of an elevator at their residence.

- 2) Later due to want of feasibility and other reasons, the complainants cancelled the proposal after due intimation to the opposite parties. The 1st opposite party has refused to pay back the said amount on unreasonable grounds. The action of the opposite parties amounts to unfair trade practice.
- 3) The 1st opposite party is a manufacturer of home elevators (lifts), which they install as per proposals made by consumers. The complainants came across their advertisement about the product and its features in YouTube. The requirement arose as the 2nd complainant is affected by knee pain and is medically advised to avoid climbing stairs. The residence does not have a bedroom on the ground floor.
- 4) So as to get the details of the system the complainants contacted the local office of the 1st opposite party situated at KB Jacob road, Njaliparambu Junction, Opposite Queens Kitchen, Fort Kochi Kerala - 682001. They contacted the 2nd opposite party, the Business Development Manager over phone, who furnished certain details. Later they visited the local office for a detailed discussion and to view the demonstration of the elevator. The brochure and other details were furnished by the 2nd opposite party and they were shown a demonstration of the functioning of the lift which is installed in the office.
- 5) Within few days, the 2nd opposite party reached at the residence of the complainants to verify and identify a suitable location to install the lift. After verifying different spots inside the house, it was suggested by the 2nd opposite party that the suitable spot in the ground floor will be the North-Eastern corner of the drawing cum dining room. They took measurements and it was agreed that the ground floor could be connected to the first floor by a 2-

stage elevator. Corresponding to it, in the first floor the North-Eastern corner of the bedroom was the identified spot. According to them, these were the only spots available and no other suitable spot was available to install the lift. It was further assured that it would not affect the present arrangement of furniture in the drawing cum dining room and in the upper floor bed room and they will not be displaced to any extent. It may be mentioned herein that in the drawing room within the available space, two settees, diwan cot and table had been placed and the remaining part is separated to be used as dining room. None of them can be removed, as it will reduce the available facilities. The complainants were assured by the 2nd opposite party that for installation space available in the corners in the upper floor will be sufficient and the arrangement of furniture need not be changed. On this assurance alone the parties proceeded with the matter.

6) Subsequently Mr.Atul, the 2nd opposite party informed the complainants that the final price of the Elevator and accessories were at the tune of Rs.10,79,456/, which included 12% GST. The 2nd opposite party informed the complainants that 25% of the price will have to be paid by cheque to the 1st opposite party, for them to proceed with the matter and some of the terms will be documented in the form of an offer and thereafter they would send a technical team to take final measurements in the spots already located by the 2nd opposite party as to fix other formalities concerning the Elevator. It was assured by the 2nd opposite party that if the technical team found any hitch or difficulty for proceeding with the project and its feasibility, the said amount will definitely be refunded by the 1st opposite party. On the basis of the said

assurance given by the opposite party, the complainants agreed to make the payment.

7) On 14.07.2022, a cheque bearing number 059599, of Union Bank of India, Marine Drive Branch, for Rs.2,69,865/-(Rupees Two lakhs sixty nine thousand eight hundred and sixty five only) was handed over to the 2nd opposite party towards first installment of the total price of the Elevator and a document containing printed terms was exchanged. The 1st complainant and the 2nd opposite party had signed it also, wherein it was stated as '*Articles of Agreement*'. Further an amount of Rs.22,500/-was paid to one Sri.Nikhil as instructed by the 2nd opposite party, for a stabilizer. It was assured by the 2nd opposite party that the amount will be paid in full if the work cannot be proceeded with. The amount covered by the cheque was drawn by the 1st opposite party within a couple of days through its Bank.

8) No immediate information was passed on to the complainants about the further action by the opposite parties, especially in regard to date of visit of the technical team. The complainants, in the circumstances were contacting the 2nd opposite party over phone many times as they were apprehensive about the delay.

9) One Smt Sree Nila, the CRM (Custarner Relationship Manager) of the 1st opposite party by e-mail dated 2nd August 2022 conveyed certain details of the lift like its colour, type, total amount of value, amount paid, amount to be paid after production, time of delivery and warranty for confirmation. The reply by mail was forwarded by the complainants confirming the colour on the same day. By another e-mail sent on the same day, the CRM informed that the

technical team will conduct a visit and inspect the site at 10 A.M. on 03.08.2022.

10) On the said day, the technical team of two persons took measurements in the very same spots already identified by the 2nd opposite party and marked circles having 1 meter diameter for locating the elevator, on the ground floor and first floor. But they found on measurement that, the front door of the residence and that of the drawing cum dining room lacked 1 meter width and therefore the lift cannot be brought inside the drawing room for installation. No other way was available. Even though they suggested that the grills of the window on the Northern wall of the room could be cut open as an alternate way, it was not agreed to by the complainants as they were apprehensive about the damage that may be caused as well as the additional work which will be involved. Further, already the repair of the building was undertaken extensively. Hence, the complainants by e-mail dated 08.08.2022 cancelled the order for the lift due to the negative factors pointed out by the technical team. The refund of the amount paid as the first installment was also requested to be made at the earliest. The amount paid for the stabilizer was also requested to be refunded by another e-mail.

11) Later on the CRM and another officer of 1st opposite party by phone suggested a varied option for delivering the lift and all details of which were conveyed by e-mail dated 03.09.2022. For installing the lift, the cylinders will be taken in parts packed in within 750 mm so that materials can be shifted inside without removing door or window. The technicians will assemble the parts at the time of installation.

12) Notice

Upon notice from this Commission the opposite parties entered into appearance and the 1st opposite party filed their written version. The 2nd opposite party is set as ex-parte for non-filing of version.

13) Version of the 1st opposite party

The 1st opposite party in their version stated that the complainants expressed an interest in installing a world-class home elevator at their residence and for the same, contacted the opposite party's company and representatives, after conducting research and inquiries and gave assent to purchase the lift for his property. The opposite party's technical team then visited the complainants' house for the feasibility check and to take initial measurements for the lift installation. Following the visits, the company provided details about the price, the mode of operation of the lift, and the space available for the installation of the lift in the house. The complainants were satisfied with the same, and then the technical team visited the site for a final inspection of the property. The complainants were then satisfied with the terms and conditions, and the first complainant agreed to install the lift after learning that there was available space in the house as per his wish and convenience. And finally, both the complainant and the opposite party entered into the agreement after satisfying the terms and conditions. The agreement clearly mentioned the refund policy, cancellation policy, and returns. And the initial payment of rupees 2,69,863/- (two Lakh sixty nine thousand eight hundred sixty three only) was transferred to the first opposite party's bank account.

14) A day later the complainants contacted the opposite party's employee and discussed his doubts and confusion about the lift, its door opening space, and civil works. A team of engineers and NIBAV's technical team visited the site again. All his doubts were cleared. After a few days, the complainant sent an e-mail to the opposite party to cancel his order without any cogent reason. After carrying out the due process of measurements, and procuring all the details it was found that the door of the room where the lift is supposed to be installed is lacking 1 Meter width, which was creating problems for the lift to bring inside. The technical team was trying to find out ways to sort the problems and even gave several other options for a smooth installation, but in response, the first complainant was continuously trying to cancel the order even though, he is well aware of the fact that the order once booked cannot be cancelled, unless and until feasibility issue is there. All the alternative solutions are described by the technical team to the first complainant, without compromising the quality of the lift as well as the house aesthetics. Despite this act of professionalism by the opposite party and good gesture towards their client taking all possible ways to sort out his doubts and problems, the complainant wanted to cancel the order. On 06.09.2022 the complainants reconfirms the new proposals and gave a green signal to move forward with the measurement. After that, the technical team starts their work for the final measurement of the site for the installation of the lift. As a minimum 10 cm gap is required for future maintenance and cleaning of the lift. And being the structure of the house lacks plumb space of 10cm on the first floor thus technicians marked 20 cm away from the wall on the first floor to get a 10 cm difference in the ground floor between the wall and lift.

15) But the first complainant with the intention to create a turmoil situation, is repeatedly trying to cancel the order, even though he knows, he executed an agreement with the opposite party where it is explicitly mentioned that there will be no cancelation once the order is confirmed. Even after repeated demands and conveying the difficulty to cancel the order, the first complainant is not ready to compromise and adjust the position of the few pieces of furniture. The adamant stand of the first complainant comes to an end of the lift projects without the fault or failure of service from the side of the opposite party.

16) Evidence

The complainants produced 12 documents which were marked as Exbt.A1 to A12. The opposite parties had not produced any documentary evidence from their side. The complainants' evidence reopened and the report of the Expert Commissioner is marked as 'C1'.

Exbt.A1	A copy of the document/quotation along with 'Articles of Agreement' dated nil.
Exbt.A2	A copy of mail communication dated 02-08-2022 sent by the CRM of 1 st opposite party to the 1 st complainant.
Exbt.A3	A copy of reply mail dated 02-08-2022, issued by the 1 st complainant.
Exbt.A4	A copy of mail communication dated 02-08-2022 sent by CRM of 1 st respondent to 1 st complainant.
Exbt.A5	copy of mail communications dated 08.08.2022 sent by 1 st complainant to 1 st opposite party.
Exbt.A6	A copy of mail communication dated 03-09-2022 sent by CRM of 1 st opposite party to the 1 st complainant.
Exbt.A7	copy of mail communication dated 06-09-2022 sent by 1 st complainant to CRM of the 1 st opposite party
Exbt.A8	A copy of mail communication dated 29-09-2022 sent by 1 st complainant to CRM of the 1 st opposite party

- Exbt.A9 copy of e-mail communication dated 02-11-2022 sent by CRM of 1st opposite party to the 1st complainant.
- Exbt.A10 copy of e-mail communication dated 05-11-2022 issued by the 1st complainant to the 1st opposite party.
- Exbt.A11 A copy of lawyer notice sent on behalf of complainants to the 1st opposite party dated 17-01-2023 along with acknowledgement card
- Exbt.A12 A copy of reply dated 31-01-2023 issued on behalf of the 1st opposite party

17) The following are the points to be analysed to come into a fair inference of the case.

- i) Whether the complainants have sustained to any unfair trade practice from the side of the opposite parties?
- ii) Whether the complainants are eligible to get any relief from the opposite parties?
- iii) Cost of the proceedings if any?

18) Point No.(i)

The Commission made a thorough perusal into overall aspects of the case and also examined the evidence from the side of the complainants and version of the 1st opposite party, it can be seen that the complainants had approached the opposite party for the purpose of installation of elevator at their residence.

19) The total price of the elevator, including GST, was fixed at Rs.10,79,456/-. It was informed by the 2nd opposite party to the complainants and the complainants were paid ₹2,69,865/- ie., 25% of the price of the total cost of the elevator via Cheque No. 059599, through Union Bank of India on 14.07.2022.

20) The Commission examined the matter in detail with all available records and on the strength of the Expert Commissioner's report and that of the deposition of the 2nd complainant in this regard. The opposite party admits

that they have received an amount of Rs.2,69,865/- from the complainants as initial payment towards installation of an elevator and the complainants contacted and discussed his doubts and confusion about the installation of lift and its civil works. Infact, it is admitted by the opposite party that the team of Engineers and technical team visited the site and cleared the doubts of the complainant. After a few days, the complainants sent an email to the opposite party to cancel his order without any reason. The complainants are of the opinion that the installation the elevator of the lift would adversely affected the ambience, space etc of rooms of the home of the complainants. The argument of the opposite party is that they are not liable to refund the full amount in the event of cancellation which had submitted at the time of hearing also. Answer to a question of the Commission, the opposite party's learned counsel stated that their policy is that 25% of the total amount will be deducted from the advance amount if the project is cancelled. The Commission verified the report of the Expert Commissioner and found that it is very clearly reported by him while answer in repositioning o the installation of the lift will affect the present furniture arrangements in the following way.

“No any position for relocation of that sofa cum bed (diwan coat) has to be shifted from the building. 3 seat straight sofa has to be pushed into the dining area for a distance of 70 cm. 3 seat sofa will have to be used as a single seat sofa. It is impossible to use it like a single seat sofa.

21) Such many difficulties that may cause due to repositioning of the lift is detailed in the report of the Expert commissioner appointed by this Commission.

22) The 2nd complainant Smt. Suja Ramachandran deposed as 'PW1' and her deposition reveals the following facts:

Q. Lift install ചെയ്യുന്നതിന് മുമ്പ് അതുമായി ബന്ധപ്പെട്ട സാമ്പത്തിക കാര്യങ്ങൾ പറഞ്ഞു തന്നിരുന്നില്ലേ?

Ans. തന്നിരുന്നു. 25% തന്നാൽ മാത്രമാണ് ടെക്നിക്കൽ team വന്നു measurement എടുക്കുകയുള്ളുവെന്നും അതിന് ശേഷം proceed ചെയ്യാം എന്ന് പറഞ്ഞു. Witness adds : "അപ്പോൾ ഞാൻ അവരോട് ചോദിച്ചു , advance pay ചെയ്താൽ എന്തെങ്കിലും position മാറ്റം വരുമോ , discomfort ഉണ്ടായാൽ refund ചെയ്യുമോ എന്ന് ചോദിച്ചു. അപ്പോൾ അവർ refund ചെയ്യുമെന്ന് പറഞ്ഞു. അതുകൊണ്ടാണ് ഞാൻ pay ചെയ്തത്.

Q. ഇതുമായി ബന്ധപ്പെട്ട് അതായത് 25% full refund താരമെന്നാണോ പറഞ്ഞത്

Ans. അതെ

Further, it is stated by the 2nd complainant against the question:-

Q. Technical Team പറഞ്ഞ problem എന്തായിരുന്നു?

Ans. Front Door - ന് 2 meter width കൂടുതൽ ഉണ്ടെങ്കിലേ കയറുകയുള്ളൂ..... ഇത്രയും expense ചെയ്തിട്ട് പിന്നെയും അത് പൊളിക്കുക എന്ന് പറയുന്നത് എനിക്ക് ബുദ്ധിമുട്ട് ആണെന്ന് പറഞ്ഞു.

23) From the foregoing discussion, it is evident that the opposite parties had not exercised proper attention; care etc. while entering into the agreement of installation of the lift at the house of the complainants or they ought not have made proper and adequate assessment of the feasibility of installing the lift in the house of the complainant. The complainants need not be technically skill enough to evaluate the consequences of installing the machine even before it is being installed. But the opposite parties in this case, must obviously be aware of the consequence and aftereffect of such an installation. Hence here

in this case, the complainant is not technically skilled enough had paid an advance amount is fully qualified technical personnel who had come forward to install lift in the house of the complainant and had accept to advance without informing the complainant consequence of such installation had committed unfair trade practice and deficiency in service for which the opposite parties are solely responsible and therefore the complainants have established the case on merits and hence point No. (i) is answered in favour of the complainant. Accordingly, point Nos. (ii) and (iii) are answered in favour of the complainant. Therefore, the following orders are passed.

ORDER

- 1) The 1st and 2nd opposite parties shall jointly and severally return an amount of Rs.2,69,865/- (Rupees Two lakhs Sixty Nine Thousand Eight Hundred and Sixty Five only) to the complainants along with interest @7.25% from the date of filing the complaint till the date of realization.
- 2) The 1st and 2nd opposite parties shall also pay an amount of Rs.25,000/-(Rupees Twenty Five Thousand only) towards the cost of the proceedings to the complainants.

The opposite parties 1 and 2 shall jointly and severally pay the aforesaid amount to the complainants within 45 days from the date of receipt of a copy of this order. Failing which amount ordered (1) above shall attract interest @ 7.25% from the date of filing the complaint till the date of realization.

Pronounced in the Open Commission this 13th day of August 2026.

Sd/-
V.Ramachandran
Member

Sd/-
D.B.Binu
President

Sd/-
Sreevidhia.T.N
Member

Forwarded by Order

Assistant Registrar

APPENDIX

Complainant's evidence

Exbt.A1	copy of the Identity card to prove the address of the complainant
Exbt.A2	copy of the legal notice dated 2.05.2025 issued to the Opposite Parties.
Exbt.A3	copy of the postal receipt dated 2.05.2025.
Exbt.A4	Original envelopes returned as "unclaimed" and "door locked".
Exbt.A5	copy of the quotation dated 14.08.2024 of the 1st Opposite party.
Exbt.A6	copy of the Tax invoice dated 20.8.2024. for Rs.. 24,202/-
Exbt.A7	Google pay receipt of Rs.10,000 dated 16.08.2024 sent to the 2 nd Opposite party.
Exbt.A8	Copy of google pay receipt of rs.13,000/- dated 20.08.2024 sent to the 2 nd opposite party
Exbt.A9	Gpay receipt of Rs. 7500 dated 12.02.2025 sent to the 2nd Opposite party.
Exbt.A10	Receipt for supply of cable including pvc and labour charges for RS. 8750/- dated 11.02.2025 issued by the 1st Opposite Party
Exbt.A11	Copy of the Police complaint dated 15.04.2025.

Date of dispatch

By Hand ::

By Post

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