

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, PANCHKULA.

Consumer Complaint No	:	618 of 2019
Date of Institution	:	21.11.2019
Date of Decision	:	21.09.2023

Anju Ahlawat W/o Sh. Ravinder Singh, R/o H.No.293, Sector-11, Panchkula. Sh. Rajesh Sharma s/o Sh. Satpal Sharma

.....Complainant

Versus

1. Nik Bakers, SCO No.182, Sector-5, Panchkula, Haryana 134108 through its Manager.
2. M/s MG Bakers Pvt. Ltd. through its Manager, Registered office at Plot No.136-140/82, Phase 1, Industrial Area, Chandigarh- 160002.

.....Opposite Parties

COMPLAINT UNDER SECTION 35 OF THE CONSUMER PROTECTION ACT, 2019

Before: Sh. Satpal, President.

Dr. Sushma Garg, Member.

Dr. Barhm Parkash Yadav, Member.

For the Parties: Sh.Ravinder Singh, Authorised representative of the complainant.

Sh. Jatin Sehrawat, Advocate for OPs No.1 & 2.

ORDER

(Satpal, President)

1. Briefly stated, the facts, as alleged in the present complaint, are that the complainant is working with PGI as a Scientist. It is stated that on 29.06.2019, the complainant had ordered a cake from Opposite parties(hereinafter referred to as OPs), for the celebration of her son's (Advik) birthday to be celebrated; on

3rd of July. On 03.07.2019, the complainant went to the shop of the OP No.1 and took the cake for above-mentioned celebration. Some members of their family gathered at their residence to celebrate the birthday. At the time of cake cutting ceremony, the complainant, her husband and guests realized that the cake contained colour, which had left red marks on their hands, while feeding the cake to their child, which was non edible and unhygienic and thus, the cake was not eaten by all the guests including the complainant. It is stated that on the same night, the dye or some other part of the cake showed its real colour and her son started vomiting and crying with pain and had loose motions feeling pain in the stomach also. The next morning, they went to the doctor and the doctor confirmed that this has happened due to unhygienic food. It is averred that an email was sent to Ops in the night of 03.07.2019 itself informing them about the unhealthy dye cake. Another email was sent on 05.07.2019 followed by email dated 09.07.2019 and 20.07.2019 about the sub-standard quality of the cake but no heed was paid by Ops to the genuine request of the complainant. Due to the act and conduct of OPs, the complainant has suffered a great deal of financial loss and mental agony, harassment; hence, the present complaint.

2. Upon notice, the OPs appeared through counsel and filed written statement by raising preliminary objections qua maintainability of the complaint. It is submitted that no laboratory report in support of the contentions of the complainant has been placed on record; that complicated facts are involved, which cannot be decided in the present complaint; the complainant has concealed the true facts. It is submitted that OP company is using premium quality ingredients, raw material and other ancillary material, which are food grade certified. The OP company is following best food industry practices, in which every food recipe goes through multiple quality processes, controls and checks by an exclusively and the highly qualified food technologist, with the aid of well equipped machinery, to ensure safe and best quality healthy food. The OP company is using "VIZYON" sugar paste of one of the best quality in the world manufactured by M/s Pollen Endustriyel Gida San. Ve Tic Turkey and marketed by M/s Bakers Ville India Private Limited, which are available in eight colours, namely, Red, Yellow, Black, Green, Pink, White, Blue and Brown. The OP company is using "Meta Glo" edible colours marketed by M/s Bakers Ville India Private Limited, which are available in 8 colours, namely, Green, Orange, Pink, Blue, Purple, Golden, Copper and Silver and approved by "fssai" and "SUN" Brand synthetic food colours i.e. edible colours manufactured by M/s Arun Colour Chem. Private Limited, duly approved by "Fssai", which are available in 6 colours, namely, Red, Orange, Yellow, Green, Pink and Blue. The OP company is not using any other colour except the above detailed sugar paste and colours, which are one of the best quality colours available in India; thus, there is no question of using sub-standard food raw material or colours by OPs company. It is submitted that the complainant might not have kept the cake in the required minimum temperature under refrigeration after taking its delivery from the outlet of OP company for a long time and due to which, the icing on the cake might have melted and the melted sugar paste or colours in liquid form used to give stains on clothes and hands. It is stated that the OP company in daily routine is selling about 150-200 cakes in the Tricity and not even a single complaint regarding such allegations has been received during the last about 12 years. It is stated that OP's are renowned and most reputed bakery in entire Tricity and neighboring cities and is having its customers all North India. There are about 15 retail outlets in North India including National Capital and OP's are having repute for selling high quality bakery products. The OP's are having dedicated Quality Assurance & Quality Control Department only with the determination to provide best quality products to its customers. Even otherwise, each and every product is being physically verified by the technical staff and the packaging team before it is being dispatched for domestic use. The staff of Op's is having proper uniforms and hand gloves, which is mandatory for every staff member to wear the same. The question of any contamination does not arise at all and there is no question of using any sub-standard colours and the colours, which are being used by OP company, are fit for human consumption and there is no question of any contamination, as alleged by the complainant. It is stated that there were around more than 12 persons, which included 3-4 children and none of the other children or any adult member, had any ailment after eating the cake, which clearly proves that the product manufactured by OP company was not of any degrade quality and the same was of best quality product. It is submitted that from the perusal of medical prescription, it is clearly made out that on 04.07.2019, the child was having sore throat and chest congestion, which cannot be caused within 12-15 hours after having the consumption of the cake. Again on 27.07.2019, the child was having viral fever, which is clear from the prescription. It may be possible that the child was having fever and throat infection on occasional change of season and is having regular history of such infections. The complainant has failed to take any medical expert opinion regarding the same and has failed to place on record any opinion from the medical experts that the child had fallen ill due to consumption of cake manufactured by OP company.

On merits, pleas and assertions made in the preliminary objections have been reiterated and it has been prayed that there is no deficiency in service on the part of the OPs and as such, the complaint of the complainant is liable to be dismissed.

3. The complainant has tendered affidavit as Annexure C-A along with documents Annexure C-1 to C-5 in evidence and closed the evidence by making a separate statement. On the other hand, the learned counsel for the OPs has tendered affidavit as Annexure R-A along with documents as Annexure R-1 to R-5 and closed the evidence.

4. We have heard the authorized representative of the complainant as well as the learned counsel for OPs and gone through the entire record available on the file including written arguments filed on behalf of the complainant as well as OPs, minutely and carefully.

5. The authorized representative of the complainant, during arguments, reiterated the averments as made in the complaint as also in the affidavit Annexure C-A and contended that the OPs had sold the sub-standard, contaminated and unhealthy quality of the cake to the complainant on 03.07.2019, which was booked on 29.09.2016 in advance. It is contended that the complainant's son, namely, Advik had fallen ill due to the consumption of sub-standard and contaminated cake by him and thus, the complaint is liable to be accepted by granting the relief as claimed for in the complaint. Reliance has been placed on the order dated 05.02.2020 passed by the Hon'ble NCDRC in Revision Petition No.156 of 2020 titled as Yum Restaurants (India) Private Limited & Anr. Vs. Kishan Hegdes.

6. On the other hand, the learned counsel for the OPs has strongly refuted the allegations, as leveled in the complaint, qua the quality of the cake, on several grounds. The submissions of the learned counsel are summarized as under:-

- i. That the allegation of the complainant qua the quality of the cake in question are not supported and corroborated by any report of the authorized laboratory as required vide Section 38(1)(c) of the Consumer Protection Act. It is vehemently contended that the complaint is liable to be dismissed in the absence of the mandatory laboratory report.
- ii. That 10/12 persons had gathered, as per version of the complainant, on 03.07.2019 on the occasion of celebration of birthday of complainant's son but none had fallen ill except the complainant's son, namely, Advik.
- iii. That the several eatable items and cold drinks etc. were consumed by all the persons, who had gathered on the said occasion. It is contended that the complainant's son had suffered illness because of consumption of certain cold drinks along with some oily eatable items etc. and not due to the consumption of cake in question. The learned counsel argued that in case, cake had been of sub-standard and contaminated quality, in that event, all the persons would have fallen ill.
- iv. That the treatment given by Dr.O.N.Bhakoo vide prescription slip (Annexure C-4) nowhere substantiates the version of the complainant that her son had fallen ill only due to the consumption of cake in question.
- v. That the raw materials i.e. the sugar paste, edible colours etc., which were used in the preparation of the cake, were of the best quality as the same were procured from M/s Pollen Endustriyel Gida San. Ve Tic Turkey and marketed by M/s Bakers Ville India Private Limited and M/s Arun Colour Chem. Private Limited, duly approved by "Fssai", which are best manufacturing companies and thus, there arises no question of the cake being of sub-standard and low quality.

Concluding the arguments, the learned counsel has prayed for the dismissal of the complaint being based on frivolous and baseless facts.

7. The aforementioned submissions made by the learned counsel on behalf of the OPs are not tenable. As per email dated 03.07.2019 sent at 10:41P.M., the OPs were duly apprised on the same day i.e. 03.07.2019 by the complainant qua the sub-standard and inferior quality of dye/colours used in the preparation of the cake. Since the complainant had leveled the very serious allegations qua the quality of the cake, on the same day, a heavy duty was cast upon the OPs, who claimed themselves to be equipped with appropriate laboratory facility, manned by qualified and experienced Food Technologist, to get the sample of the cake tested from their laboratory. It is not the case of the OPs that sample of the same batch was not available with them. Pertinently, the OPs, instead of getting the samples tested in their laboratory, had opted to deny the allegations leveled by the complainant vide email dated 05.07.2019 mentioning as under:-

We would like to inform you that we use the premium quality ingredients (food grade certified) in all our product range. We follow the best food industry practices in which every food recipe goes through multiple quality processes, controls and checks, through an exclusively the highly developed techno-managed and production approach. Such highly managed practices with quality checks are followed throughout the chain, to ensure the safe and healthy food.

8. In response to the above email, the complainant sent another email to OPs on 07.07.2019, specifically mentioning therein that her son had become a victim of food poisoning because of the consumption of the sub-standard and contaminated cake. The said email was followed by 09.07.2019, 20.07.2019 and 17.10.2019 but no positive response was received from the OPs. Infact, the OPs had slept over the matter and failed to get the samples tested from their laboratory, which are, allegedly manned by qualified Food Scientist etc.

9. Since the complainant had booked the cake on 29.06.2019 in advance for its delivery on 03.07.2019, in connection with the celebration of birthday of her son, namely, Advik, who had fallen ill as per prescription slip (Annexure C-4) issued by Dr. O.N. Bhakoo, it was her legitimate and valid expectation to have a clear and true report from Ops qua the alleged sub-standard and inferior quality of cake but the OPs had preferred not to send the sample of the same to any of its authorized laboratory. However, the Ops, in order to rebut the contentions of the complainant qua the sub-standard quality of dye/colours, which was used in the preparation of the cake, have adduced on record the purchase bill (Annexure R-4 & R-4(colly)) pertaining to raw materials i.e. colours/ dye etc. but the same are of no help to them as the said bills are of later date i.e. 21.11.2019, 08.02.2020 & 11.02.2020 whereas the cake was purchased on 03.07.2019.

10. It is not the case of the OPs that the complainant had any ill will or prejudice against them or she was actuated by any ulterior motive. Rather, it has been found that the complainant was the regular customer of OPs.

11. Further, as per photos (Annexure C-3), which are available on the file, the colour/dye is clearly visible on the lips of the child as well as the palm and tips of the thumbs of the other persons, who were present on the said occasion on 03.07.2019.

12. As per prescription slip (Annexure C-4) issued by Dr. O.N. Bhakoo, while treating the complainant's son, it is found that the complainant's son, namely, Advik was found suffering from fever as well as loose motions; as such, the illness of the complainant's son is well proved beyond any doubt. The plea of the OPs that no other person, who were present on the occasion, had fallen ill except the complainant's son is also not tenable as the cake allegedly was not consumed by the other persons after they noticed the colours of the cake on their fingers as well as palms.

13. In the light of above discussion, we have reached at the irresistible conclusion that Ops were deficient, while rendering services to the complainant, for which they are liable, jointly and severally, to compensate the complainant.

14. Adverting to relief, we have found that the complainant has claimed Rs.3,186/- i.e. purchase price of the cake along with compensation of Rs.4,00,000/- and Rs.50,000/- on account of mental agony, physical harassment and litigation charges cum medical expenses respectively .

15. As per the aforesaid factual position, the Ops No.1 & 2 have been found deficient, while selling the sub-standard and contaminated quality of the cake, to its consumer i.e. the complainant and thus, it would be just, fair and reasonable to burden the OPs with the compensation of Rs.30,000/- on account of their indulgence into unfair trade practice and Rs.10,000/- on account of mental agony, harassment and litigation charges.

16. As a sequel to above discussion, we partly allow the present complaint with the following directions:-

- i. The OPs are directed to refund a sum of Rs.3,186/- i.e. the cost of the product (cake) to the complainant along with interest @ 9% per annum (simple interest) w.e.f. the date of filing of the present complaint till its actual realization.
- ii. The Ops are burdened with the cost amounting to Rs.30,000/- (Rs. Thirty thousand) on account of their indulgence into unfair trade practice, out of which Rs.10,000/- shall be paid to the complainant and the remaining amount i.e. Rs.20,000/- (Rs. Twenty thousand) shall be deposited by OPs in the account of

the Poor Patient Welfare Fund(PPWF) through the Director, Post Graduate Institute of Medical Education & Research, Chandigarh by way of DD/pay order and accordingly, the OPs are directed to send the DD/Pay order amounting to Rs.20,000/- in favour of the Director, Post Graduate Institute of Medical Education & Research, Chandigarh for deposit of the same in the account of Poor Patient Welfare Fund(PPWF).

iii. The OPs are further directed to pay a sum of Rs.10,000/- to the complainant on account of mental agony, harassment and litigation charges.

17.The OPs No.1 & 2 are directed to refrain from adoption of such unfair trade practice, in future.

18. The OPs No.1 & 2 shall comply with the directions/orders within a period of 45 days from the date of communication of copy of this order failing which the complainant shall be at liberty to approach this Commission for initiation of proceedings under Section 71/72 of CP Act, against the OPs No.1 & 2. A copy of this order shall be forwarded, free of cost, to the parties to the complaint and file be consigned to record room after due compliance.

Announced on: 21.09.2023

Dr.Barhm Parkash Yadav

Member

Dr.Sushma Garg

Member

Satpal

President

Note: Each and every page of this order has been duly signed by me.

Satpal

President