

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
8TH FLOOR, B.W.S.S.B BUILDING, K.G.ROAD,BANGALORE-09**

**Complaint Case No. CC/180/2023
(Date of Filing : 29 May 2023)**

1. Krishnappa. N

.....Complainant(s)

Versus

1. Owner, Hotel Prasanth

.....Opp.Party(s)

BEFORE:

**HON'BLE MRS. M. SHOBHA PRESIDENT
HON'BLE MRS. K Anita Shivakumar MEMBER
HON'BLE MRS. SUMA ANIL KUMAR MEMBER**

PRESENT:

Dated : 05 Oct 2023

Final Order / Judgement

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION AT
BANGALORE (URBAN)**

DATED 5th DAY OF OCTOBER 2023

PRESENT:-

SMT.M.SHOBHA

: PRESIDENT

BSC., LLB

SMT.K.ANITA SHIVAKUMAR

MEMBER

:

M.S.W, LL.B., PGDCLP

SMT.SUMA ANIL KUMAR

:

MEMBER

BA., LL.B., IWIL-IIMB

COMPLAINT No.180/2023

Krishnappa. N,

COMPLAINANT

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(In-person)

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Owner, Hotel Prasanth

OPPOSITE PARTY

(Ex-parte)

ORDER

SMT. K. ANITA SHIVAKUMAR, MEMBER

Complainant filed this complaint U/S 35 of consumer protection 2019, complainant seeking direction of OP to refund the amount of Rs.150/- paid towards Chicken Biryani and to pay sum of Rs.30,000/- towards the deficiency of service caused mental agony to the complainant and such other reliefs.

2. Brief facts of this case are as follows:-

Complainant stated that he went to OP hotel on 02.04.2023 at 8:45pm with his wife to get parcel for his dinner, since there was no gas cylinder at home. He paid Rs.150/- to get Chicken Biryani and taken the receipt from the counter of hotel. He brought the packed parcel of Chicken Biryani to home and opened the parcel. Complainant further stated that he found biryani rice without any pieces of Chicken in the Biryani, as he ordered to eat and paid for it. He was shocked by seeing the content of the parcel immediately he brought the same to the notice of OP by calling to the phone number which is mentioned in the receipt. There was no response for the first time later a person picked the call and the same has been intimated to him. As per his response he admitted that the said Chicken Biryani will be sent to their

location within 30min if they send their location. Agreed by the complainant, sent the location to the OP hotel and waited for the Chicken Biryani. But the OP hotel did not send Chicken Biryani till 10pm. With no other option at the late hours, complainant and his wife had the available biryani rice.

3. Complainant in this case alleged that though he paid Rs.150/- for Chicken Biryani he did not get the item he ordered. Even after the intimation given to the OP, OP did not send, which caused deficiency on the part of OP and also mental agony to the complainant. Complainant sent notice to OP by RPAD dated 28.04.2023 but OP did not reply to the notice sent by the complainant. Hence he approached this commission seeking direction to OP to refund an amount of Rs.150/- paid for Chicken Biryani, a sum of Rs.150/-, Rs.30,000/- towards compensation for the deficiency caused by OP.

4. Notice sent to OP through RPAD for its appearance but OP did not appear on the date of appearance. Hence OP placed Ex-parte.

5. The case is set down to adduce evidence of complaint, accordingly complainant filed his affidavit evidence along with 5 documents which are marked as Ex.P.1 to Ex.P.5. Heard arguments and perused the materials of record.

6. On the basis of above pleadings for our consideration are as follows:-

- i) Whether the complainant proves the deficiency of service on the part of OP?
- ii) Whether complainant is entitled for the relief?
- iii) What order?

7. Our answers to the above points are as follows:-

Point No.1:- In the affirmative.

Point No.2:- Partly affirmative.

Point No.3:- As per the final order.

REASONS

8. Point No.1&2:- These points are inter-connected to each other and for the sake of convenience, to avoid repetition of facts, these points are taken up together for common discussion.

9. After perusing the pleadings, documents and evidence placed by complainant there is no dispute with regard to, complainant has ordered Chicken Biryani on 02.04.2023 by paying Rs.150/- from OP, for which OP issue bill, which is at Ex.P.2. As he stated in the complaint, complainant was shocked when he opened the parcel and found that there is no chicken pieces in the biryani though he ordered for chicken biryani. He alleges that content was only biryani rice which costs less than Chicken Biryani, moreso it was not required by complainant and his

wife. OP has confirmed that the Chicken Biryani parcel is still lying in the counter and the same will be sent to the address of complainant within 30min. Even after the location is forwarded to OP, OP did not send the left out parcel to the complainant's place. Complainant waited for more than 2 hours, with no option he had dinner with available biryani rice. Moreover, there was no gas cylinder at home that day, so they brought their dinner from OP hotel.

10. Complainant has produced picture with regard to the biryani rice received from OP, which is at Ex.P.3. Its evidencing that the OP knowingly or unknowingly committed mistake and sent wrong parcel to complainant but received the amount for Rs.150/- towards Chicken Biryani, but sent normal rice, is unjust and unfair. If the OP is genuine in his attitude OP could send the Chicken Biryani after it came to his notice but OP did not do so. By aggrieving from the attitude of OP, complainant sent notice on 28.04.2023 through RPAD, OP neither replied to the notice nor refunded his amount back. Complainant also produced the telephone conversation between them along with certificate U/S 65B of Indian Evidence Act. OP did not come forward to defend his case before this commission. Therefore the evidence placed by complainant are unchallenged and complainant has proved the deficiency in service of OP.

11. It is important to note that the act of OP in the situation of inconvenience to prepare food at home without gas cylinder, definitely caused mental agony to the complainant and his wife. Hence OP is liable to refund Rs.150/- collected towards the biryani and OP is also liable to compensate Rs.1,000/- towards mental agony. On the above reasons we answer Point No.1 in affirmative and Point No.2 in partly affirmative.

12. Point No.3:- In view of the discussion referred above, we proceed to pass the following:-

ORDER

- i. Complaint filed U/S 35 of Consumer Protection Act is hereby, partly allowed.
- ii. OP is directed to refund Rs.150/- towards the amount collected towards Chicken Biryani and Rs.1,000/- towards compensation within 30 days from this order, failing which OP shall pay interest on above Award amount at the rate of 6% per annum from the date of order till realization.
- iii. Furnish the copy to both the parties, no cost.

(Dictated to the Stenographer, got it transcribed and corrected, pronounced in the Open Commission on this 5th day of OCTOBER, 2023)

(SUMA ANIL KUMAR)

MEMBER

(K.ANITA SHIVAKUMAR)

MEMBER

(M.SHOBHA)

PRESIDENT

Documents produced by the Complainant-P.W.1 are as follows:

1.	Ex.P.1	Copy of legal notice.
2.	Ex.P.2	Copy of payment receipt.
3.	Ex.P.3	Copy of call and text conversation and picture of the order.
4.	Ex.P.4	CD.
5.	Ex.P.5	Copy of certificate U/S 65B of Indian Evidence Act.

Documents produced by the representative of opposite party – R.W.1;

NIL

(SUMA ANIL KUMAR)

MEMBER

(K.ANITA SHIVAKUMAR)

MEMBER

(M.SHOBHA)

PRESIDENT

**[HON'BLE MRS. M. SHOBHA]
PRESIDENT**

**[HON'BLE MRS. K Anita Shivakumar]
MEMBER**

**[HON'BLE MRS. SUMA ANIL KUMAR]
MEMBER**

