

Date of Filing: 25.03.2022

Date of Order: 03.07.2023

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION – I, HYDERABAD

P r e s e n t

HON'BLE MRS. B. UMA VENKATA SUBBA LAKSHMI, PRESIDENT

HON'BLE MRS. C. LAKSHMI PRASANNA, MEMBER

HON'BLE MR. R. NARAYANA REDDY, MEMBER

On this the Monday, the 03rd day of July, 2023

C.C.No. 194/2022

Between:-

Smt. Reddy Siva Swarupa, W/o Late Reddy Sai Sudhakar,
Aged about 37 years, Indian, Occ: Housewife,
R/o: H.No. LIG 377, Road No.3, KPHB,
Hyderabad – 500 085 Mobile No. 9885438509

....Complainant

AND

1. M/s. Kolors Health Care India Pvt Ltd,
Corporate Office : Plot No. 5918,
1st Floor, Above MBS Jewelers,
Karkhana, Secunderabad – 500 009
Rep. by it Managing Director.

2. M/s Kolors Health Care India Pvt Ltd,
Above Ratna Deep Super Market,
Miyapur, Hyderabad – 500 049,
Rep. by its Branch Manager.

....Opposite Parties

Counsel for the Complainant

:M/s.V.Gouri Sankara Rao

Counsel for the Opposite parties

: M/s.P.Yasavi.

O R D E R

(By HON'BLE MRS. B. UMA VENKATA SUBBA LAKSHMI, PRESIDENT on
behalf of the bench)

1. The present complaint is filed U/s 35 of the Consumer Protection Act, 2019, alleging negligence, deficiency of service and unfair trade practice on the part of opposite parties No.1 and 2 with a prayer to
 - i. Refund Rs. 2,30,000/- (Rupees Two Lakh Thirty Thousand Only) along with interest @18% p.a. from 10.12.2021;
 - ii. Pay Rs. 1,00,000/- (Rupees One Lakh Only) for adopting unfair trade practice and deficiency in service;

- iii. Pay compensation of Rs. 50,000/- (Rupees Fifty Thousand Only);
- iv. Pay costs of Rs.25,000/- (Rupees Twenty-Five Thousand Only) and
- v. Pass such other order or orders which the Hon'ble Commission deems fit and proper under the circumstances of the case.

2. Brief facts as averred in the complaint are that, after getting attracted with the colourful brochures and advertisements offering various cosmetic / slim / weight reduction services to the general public that were issued by opposite parties No.1 and 2, the complainant visited opposite party No.2 on 07.12.2021 for the purpose of weight reduction / slimming treatment and skin treatment. The opposite party quoted a sum of Rs. 2,00,000/- (Rupees Two Lakhs Only) towards the package and the complainant, on the same date i.e. on 07.12.2021, transferred the amount in 3 spells through her credit card. When the complainant, through her friends and others, learnt that the procedure adopted by the opposite parties for weight reduction was not a permanent solution, she visited opposite party No.2 and expressed her desire to withdraw from the package. The opposite party No.2 refused to refund the amount with the reason that there was no refund policy in their company. Thereafter, the complainant visited opposite party No.1 (Corporate Office) to complaint about her problems and for requesting the refund of payment made by her. The opposite party No.1 induced the complainant by stating that she would get good services at the Corporate Office and asked her to pay an extra amount of Rs. 30,000/- (Rupees Thirty Thousand Only) for transferring the package services. The complainant, once again, approached the opposite parties for refund of the amount paid by her when the complainant, through scientific literature, learnt that the procedure followed by the opposite parties was not scientific and that there was no permanent solution for weight reduction. When there was no proper response from the opposite parties to the phone calls and e-mails of the complainant, a written complaint was submitted on 18.12.2021 to the National Consumer Help Line. It is averred that the complainant never attended a single session

although she paid an amount of Rs. 2,30,000/- (Rupees Two Lakhs Thirty Thousand Only). It is further averred that refusing to refund the amount even though no service was rendered by the opposite parties amounts to gross negligence on the part of the opposite parties. It is submitted that the husband of the complainant recently expired. It is further submitted that due to the acts of the opposite parties, the complainant and her daughter had been subjected to serious inconvenience, hardship and severe mental agony apart from irreparable financial loss. Hence, alleging negligence, deficiency of service and unfair trade practice on the part of opposite parties No.1 and 2, the complainant filed the present complaint with a prayer to grant the reliefs as stated above.

- 3.** In the written version filed by the opposite parties No. 1 & 2, while denying the averments and allegations made in the complaint except those that are specifically admitted therein, it is contended that the complaint is not maintainable under the Consumer Protection Act, 2019 and is liable to be dismissed in limine. Also, the complaint is liable to be dismissed as the complainant did not make the proper parties as opposite parties. It is averred that the opposite parties are engaged in the business of weight reduction treatment and are providing best services in healthcare and lifestyle. It is further averred that the complainant paid an amount of Rs. 2,00,000/- (Rupees Two Lakhs Only) to the opposite party No. 2 for weight loss, slimming and beauty treatment package. After attending one session, the complainant asked the opposite party No. 2 for another package for her daughter who was 12 years old. When the counsellor refused to join her daughter as she was only 12 years old, the complainant approached opposite party No. 1 for giving treatment to her daughter. An amount of Rs. 30,000/- (Rupees Thirty Thousand Only) was paid by the complainant for weight loss, beauty treatment and slimming treatment package of her daughter and not for transferring the treatment of the complainant to opposite party No.1. It is stated that, normally, before joining the treatment, the counsellor from the opposite parties would explain and counsel the customers about the consequences and repercussions about the treatment procedure and the complainant agreed and accepted the same. It is further stated that the complainant signed the declaration after understanding the terms and conditions. It is

submitted that the results would come only when the person strictly followed the instructions of the counsellor regarding diet, maintenance of weight and also by regularly attending the sessions. It is further submitted that the transaction between the complainant and the opposite parties was made by an agreement which was of civil nature. Hence, denying the allegations of wilful negligence and / or deficiency of service on the part of opposite parties, they prayed the Commission to dismiss the complaint with exemplary costs.

4. During the course of enquiry, the complainant filed evidence affidavit and got marked the documents at Ex.A1 to Ex.A9. Mr. Gollapally Ganneshwara Rao, Marketing Manager, filed evidence affidavit on behalf of opposite parties No. 1 & 2 and got marked their documents at Ex.B1 to Ex.B4. Thereafter, both parties filed written arguments and the learned counsel of both sides advanced oral submissions. The matter was reserved for orders on 15.06.2023.
5. Based on the record and written and oral submissions of both parties, the following points have emerged for consideration:
 - (a) Whether the complainant could prove deficiency of service and unfair trade practice on the part of opposite parties?
 - (b) Whether the complainant is entitled for any reliefs? If so, to what extent?
6. **Point 'a':**

6.1. Admittedly, the complainant paid an amount of Rs. 2,00,000/- (Rupees Two Lakhs Only) to opposite party No. 2 for availing slimming / beauty services (Ex. A1 & Ex.A2). The amounts were paid on 07.12.2021 and 08.12.2021. Also, an amount of Rs. 30,000/- (Rupees Thirty Thousand Only) was paid on 10.12.2021 to the opposite party No. 1 by the complainant (Ex.A3).

6.2. It is evident from Ex.A5 that an e-mail dated 15.12.2021 was sent by the daughter of the complainant to mallikarnuna@kolorshealthcare.co.in seeking refund of the amount of Rs. 2,30,000/- (Rupees Two Lakhs Thirty Thousand Only) that was paid towards the package treatments of her mother. When the opposite parties did not

refund the amount, a complaint was filed by the complainant to NCH (Ex.A4) (complaint No. 3166733 and complaint registration No. 18.12.2021). Thereafter, the daughter of the complainant sent an e-mail reminder to the opposite parties on 06.01.2022 (Ex.A7). Since the opposite parties did not respond to the e-mails, the complainant, through her counsel, sent legal notice dated 10.02.2022 for refund of her money that was paid towards the package (Ex.A8-Ex.B2). The opposite parties replied to the legal notice vide their reply dated 26.02.2022 stating that they would give a facility of exchange of package to the complainant's relatives or friends (Ex.A9).

- 6.3.** It is the case of the complainant that the complainant approached the opposite parties for refund of the amount when she learnt that there was no permanent solution for weight reduction and that the procedure followed by the opposite parties was not scientific. It is also the case of the complainant that when the complainant approached the opposite parties for refund of the money that was paid towards the treatment package, they refused to refund the same.
- 6.4.** It is the version of the opposite parties that the complainant approached opposite party No. 1 when the opposite party No. 2 refused to join her daughter in the beauty treatment as she was just 12 years old. It is also the version of the opposite parties that the complainant signed the declaration form with her own will and free consent and that there was no negligence or deficiency of service on their part.
- 6.5.** The oral submissions of the learned counsel of both sides were in line with their respective pleadings, averments, statements and contentions.
- 6.6.** The learned counsel of the opposite parties relied upon the judgement of Hon'ble Supreme Court in the case of Ravneet Singh Bagga Vs KLM Royal Dutch Airlines (2000) 1 SCC 66. Placing reliance on the said judgement, the learned counsel of the opposite parties argued that the complainant had failed to show any deficiency of service on the part of opposite parties

and in the absence of deficiency of service on the part of opposite parties, the complainant would not be entitled for any reliefs, hence prayed the Commission to dismiss the complaint. It is pertinent to mention here that the facts of the present case are different from the facts of the judgement relied upon by the opposite parties. Therefore, the same is not relevant in the case at hand.

- 6.7.** In the present case, in her reply affidavit to the interrogatories, the complainant stated that she attended one session but denied making any payment for the treatment of her daughter. As per Ex.A1, Ex.A2 (tax invoices of opposite party No. 2) and Ex.A3 (tax invoice of opposite party No. 1), the customer name was shown as Reddy Siva Swarupa, the complainant and the code (9997237999729) was one and the same in all the tax invoices. Moreover, there is nothing on the record to show that an extra amount of Rs. 30,000/- (Rupees Thirty Thousand Only) was paid to opposite party No. 1 for the package of complainant's daughter. As per the reply affidavit to the interrogatories, the opposite party No. 1 had given treatment to the daughter of the complainant for weight reduction as a demo and the statement was not rebutted by the opposite parties. No documentary evidence was submitted by the opposite parties to show that the complainant had approached opposite party No.1 for treatment of her daughter.
- 6.8.** On perusal of the record before us, it is clear that the complainant attended only one session after making payment of an amount of Rs. 2,30,000/- (Rupees Two Lakhs Thirty Thousand Only) towards the package (last page of Ex.B4). It is further clear that the complainant had given details of her medical problems to the opposite parties (printed page No. 3 of Ex.B4).
- 6.9.** It was the contention of the opposite parties that the complainant had taken a decision with her free will and had given consent to join the package before signing the declaration form.

6.10. Per contra, it was the contention of the complainant that she visited the opposite party No. 1 to complaint about her problems and for asking the refund of the amount, but ended up paying Rs. 30,000/- (Rupees Thirty Thousand Only) more to opposite party No. 1. It was also the contention of the complainant that being induced by the representations and sweet words of opposite parties, she paid an amount of Rs. 2,30,000/- (Rupees Two Lakhs Thirty Thousand Only).

6.11. In the present case, the clause relied upon by the opposite parties to resist the refund claim made by the complainant were wholly one sided, unfair and unreasonable and could not be relied upon. The clauses of declaration form dated 07.12.2021 are ex-facie one sided, unfair and unreasonable and the complainant signed on the declaration form framed by the opposite parties.

6.12. No service provider could take consideration of the service which was neither provided nor availed. Further, collecting advance payments from the customers and thereafter not refunding the same by taking shelter under some self-serving clause that fee once paid is not refundable, is nothing but deficiency of service and unfair trade practice on the part of opposite parties. Hence, point 'a' is answered in favour of the complainant.

7. Point 'b':

7.1. The incorporation of one-sided terms amounts to unfair trade practice as per section 2(47) of the Consumer Protection Act, 2019 since it adopts unfair methods or practices for the purpose of marketing the treatments offered by the opposite parties.

7.2. In the present case, retaining the full advance though the complainant attended only one session is nothing but commission of deficiency in service and adoption of unfair trade practice by the part of opposite parties No. 1 & 2. Further, after considering not only the financial loss but also mental agony and inconvenience caused to the complainant,

we are of the considered opinion that she is also entitled for compensation.

7.3. In view of the above discussion and findings, the complaint is allowed in part and the opposite parties are jointly and severally liable to make the below mentioned payments.

7.4. In the result, the complaint is allowed in part and the opposite parties are directed to

- (i) Refund Rs. 2,15,000/- (Rupees Two Lakh Fifteen Thousand Only) along with interest @9% p.a. from 10.12.2021; (since the complainant attended one session);
- (ii) Pay compensation of Rs. 20,000/- (Rupees Twenty Thousand Only) for mental agony and inconvenience caused to the complainant;
- (iii) Pay costs of Rs.15,000/- (Rupees Fifteen Thousand Only).

This order be complied with by the opposite parties No.1 and 2, within 45 days from the date of receipt of the order copy, failing which the amount mentioned in Sl.No (i) above shall carry interest @3% per annum from the date of receipt of this order till actual payment.

Dictated to steno, transcribed and typed by him, pronounced by us on this the 03rd day of July, 2023.

MEMBER

MEMBER

PRESIDENT

APPENDIX OF EVIDENCE

WITNESS EXAMINED FOR THE COMPLAINANT:

(PW1) Smt. Reddy Siva Swarupa, W/o Late Reddy Sai Sudhakar,

WITNESS EXAMINED FOR THE OPPOSITE PARTIES

(DW1) Mr. Gollapally Ganneshwara Rao S/o Veerababu, Occ: Marketing Manager

EXHIBITS FILED ON BEHALF OF THE COMPLAINANT:

Ex.A1 Copy of Kolors Tax invoice dated 07.12.2021 for Rs. 1,80,000/-

- Ex.A2 Copy of Kolors Tax Invoice dated 08.12.2021 for Rs. 20,000/-
- Ex.A3 Copy of Kolors Tax Invoice dated 10.12.2021 for Rs. 30,000/-
- Ex.A4 Copy of Indian Bank statement of account from 06.12.2021 to 15.12.2021.
- Ex.A5 Copy of National Consumer Helpline Complaint dated 18.12.2021 along with conversation.
- Ex.A6 Copy of email dated 15.12.2021.
- Ex.A7 Copy of email dated 06.01.2022.
- Ex.A8 Copy of Legal notice dated 10.02.2022.
- Ex.A9 Copy of reply legal notice dated 26.02.2022.

EXHIBITS FILED ON BEHALF OF THE OPPOSITE PARTY Nos.1 & 2

- Ex.B1 Copy of Authorization letter.
- Ex.B2 Copy of Legal notice dated 10.02.2022.
- Ex.B3 Copy of Postal receipts dated 26.02.2022.
- Ex.B4 Copy of Slimming record book (Kolors Health Care LLP)

MEMBER

MEMBER

PRESIDENT

PSK
Read by:-
Compared by :-