

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
BHIWANI.

Consumer Complaint No.:142 of 2023

Date of Institution : 28.06.2023

Date of order : 30.11.2023

1. Rajeev Kaushik son of Sh. D.L. Kaushik R/o 222/1 Shri Kaladhari Mandir, Mal Godam Road, Bhiwani.
2. Smt. Dimple Sharma wife of Rajeev Kaushik R/o 222/1 Mal Godam Road, Bhiwani.
...Complainants.

Versus

1. Shanta IVF Centre A9/20 Vasant Vihar, New Delhi-57, through its authorized signatory and Directors:
(A) Dr. Anubha Singh
(B) Sh. Vakil Singh.
2. Dr. Anubha Singh D/o Vakil Singh son of Shiv Dhan Singh, Consultant Fertility R/o Flat No.507, DJA Apartments, near Reddison Hotel, Sector-13, Dwarka, New Delhi.
3. Sh. Vakil Singh S/o Sh. Shiv Dhan Singh R/o Flat No.507, DJA Apartments, near Reddison Hotel, Sector-13, Dwarka, New Delhi.
...Opposite Parties

COMPLAINT U/S 35 OF CONSUMER PROECTION ACT, 2019.

BEFORE: Mrs. Saroj Bala Bohra, Presiding Member.
Ms. Shashi Kiran Panwar, Member.

Present:- Complainants in person.
OPs are exparte vide order dated 22.09.2023.

ORDER:

Ms. Shashi Kiran Panwar, Member.

1. Brief facts of present complaint are that in May-June 2020, complainant No.2 undergone a surgical treatment of complete Hystectomy in Aadhar Hospital, Hisar due to ovarian cancer. In June 2020, Miss Divyangi Srivastav, Marketing Executive of OPs, telephonically contacted with the complainant No.1 and introduce surrogacy programme run by the OPs. So, complainants visited the clinic of OPs in July 2021. On this day, Mrs. Arti Joshi, a Relation Officer and the OPs explained about surrogacy programme and introduced Dr. Anubha Singh as a Member of Fertility Society in London visits India for this programme, is one of the best doctor, and manage the OP hospital. Complainant has alleged that OPs agreed to provide surrogacy programme package to complainants in Rs.9.00 lacs and assured that child will be delivered after 38 weeks. Accordingly, complainant no.1 made initial payment of Rs.5.00 lacs in the account of OP No.2 from the bank account of complainant at Equitas Bank, Hansi Gate, Bhiwani. As per complainant, thereafter, OPs has taken no line of management to procure the surrogacy programme despite of several requests by complainants and demanded more money saying that surrogates are very few in Delhi if complainant wants to get child early then complainant will have to pay more money. In this way, Ops charged Rs.1,50,000/- extra and thus a total amount of Rs.6,50,000/-. Despite that, the Ops did not start the programme and avoided the phone calls of complainants. Complainant has submitted that the OPs have committed forgery and fraud upon poor surrogates ladies from Bihar who delivers the new born baby to the intended parents and the Ops did not pay them single penny and the Ops are also involves in child trafficking. Complainants sent a letter dated 28.07.2022 to the OPs via Gmail requesting the Ops to procure the active line of treatment or to return the fee charged

from the complainant but the Ops did not give any reply. On 05.08.2022, complainants visited the office of Ops and demanded return of their amount or to start the treatment then OPs No.2 & 3 issued three cheques worth Rs.6,50,000/- and on presentation of the said cheques in bank account of complainant no.1, it were dishonoured. So, complainant filed a complaint in the Court of Sh. Avinash Yadav, JMIC, Bhiwani, in which OP No.3 is avoiding the arrest warrants. Thereafter, complainants made a complaint to President, State Medical Council, Delhi for such act & conduct of OPs but of no avail. Complainant has submitted that due to the negligent behavior & deficiency in service of OPs, complainants has suffered mental harassment and monetary loss. Hence, the present complaint has been preferred by complainants seeking directions to the OPs to pay Rs.6,50,000/- alongwith compensation of Rs.50.00 lacs besides cost of litigation.

2. OPs did not appear despite issuing processes of notice and publication in newspaper, as such, OPs were proceeded against ex parte vide order dated 22.09.2023.

3. In evidence of complainants, a joint affidavit of complainants Ex.CW1/A and affidavit of Ms.Aarti Joshi as Ex. CW2/A alongwith documents Annexure C-1 to Annexure C-20 were tendered and closed the evidence on 10.11.2023.

4. We have heard the complainant and perused the record carefully.

5. Complainant in order to prove that he has paid Rs. 5,00,000/- to the OPs has placed on record payment receipt (Annexure C-7) whereby it emerges that OP Hospital has received the said amount from complainant on 13.07.2021 for treatment of Surrogacy Programme. Allegedly, the OP hospital had taken Rs.6,50,000/- from the complainants for the said treatment but neither the treatment was provided nor the amount was refunded.

However, complainant has placed on record a copy of order dated 17.05.2023 passed by the learned court of JMIC, Bhiwani in case No. NACT-1564-2022 Rajeev Vs. Dr. Anubha (Annexure C-14) alongwith it, copies of there cheques amounting to Rs.6,50,000/- favouring complainant Rajeev have been annexed whereby it is proved that complainant had paid Rs.6,50,000/- to the OPs. A copy of order dated 05.08.2023 of that Court has also been annexed as (Annexure C-20) whereby it is proved that Dr. Anubha Singh of OP hospital has been declared as proclaimed offender in the the said case. Complainant in order to strengthen his case has placed on record duly sworn in affidavit of Ms. Aarti Joshi dated 07.08.2023 (Ex.CW2/A) whereby it has been stated that she was working in the OP hospital for the relevant period and the hospital had taken Rs.5,00,000/- and then Rs.1,50,000/- by Sh. Vakil Singh OP No.3 from the complainant. She has also witnessed that the agreement for treatment (Annexure C-6) between complainants and OP hospital which was done in her presence. Further this affidavit also speaks about the factm of this complaint.

6. In view the above discussion and after going through the entire mateiral on record, we are of the view that the OP hospital is negligent and deficient in providing proper services to the complainants which has cuased them monetary loss as well as huge mental and physical harassment. The intent of complainats is very clear that they were ready to get treatment from the OP hospital rather to get back their money but the OPs despite that did not pay any service to complainats rather cheat them which amount to unfair trade practice on their part. Ops did not defend their case as they remained exparte from the proceedings despite issuance of notices/publication. This conduct of Ops goes against

them. In totality of the facts & circumstances of this case, the complaint is allowed and OPs, jointly and severally, are directed to comply with the following directions within 40 days from the date of order:-

- (i) To pay a sum of Rs.6,50,000/- (Rs. Six lacs fifty thousand) to the complainant No.1 so paid by him by him for the treatment; alongwith simple interest @ 9% per annum from the date of filing of complaint till actual realization.
- (ii) To pay Rs.50,000/- (Rs. Fifty thousand) as compensation on account of mental agony and physical harassment.
- (iii) To pay Rs.5500/- (Rs. Five thousand five hundred) as cost of litigation including Advocate's fee.

In case of default, the OPs shall liable to pay simple interest @ 12% per annum on the aforementioned all the amounts for the period of default. Certified copies of the order be sent to parties free of costs. File be consigned to the record room, after due compliance.

Announced.
Dated:30.11.2023.