

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, LUDHIANA.

Complaint No:192 dated 05.04.2021.

Date of decision: 11.08.2023.

Rajinder Singh aged 32 years son of Shri Sobat Singh, resident of House No.119, Street No.5, Mahavir Jain Colony, Haibowal Kalan, Ludhiana.Complainant

Versus

Jatin Sood, Owner M/s. Nova Bakery, Main Road, UCO Bank, Haibowal Kalan, Ludhiana, Mobile No.97795-49990.Opposite party

Complaint Under section 35 of the Consumer Protection Act, 2019.**QUORUM:****SH. SANJEEV BATRA, PRESIDENT****SH. JASWINDER SINGH, MEMBER****MS. MONIKA BHAGAT, MEMBER****COUNSEL FOR THE PARTIES:**

For complainant : Sh. Rajinder Singh in person with Sh. Sukhvir Singh,
Advocate.

For OP : None. (Evidence of OP closed by order vide
order dated 25.05.2023)

ORDER**PER SANJEEV BATRA, PRESIDENT**

1. Briefly put, the facts of the case are that the complainant is an Advocate by profession. On 13.02.2021, the complainant booked one cake from bakery of the opposite party for celebration of birthday of his son Kartik on 15.02.2021. The complainant was accompanied by his brother Sanjay Bhandari at the time of booking of the cake with the opposite party. However, the opposite party did not issue any receipt. Even earlier the complainant used to purchase cake from the opposite party for which the opposite party never issued any registered but maintains a register for the orders. The complainant further stated that in the birthday function, after cutting the cake, the same was consumed by some of the guests including children but in a piece cake of one guests namely Gurpreet Singh, there was one insect i.e. ant. Said Gurpreet Singh complaint the matter about the insect in the cake and insulted the complainant in presence of guests about the insect in the cake and he annoyed with the complainant. Even the remaining guests who consumed the cake started vomiting due to spoiled and adulterated cake which was harmful to the guests and small children. The son of the complainant who consumed the cake, also fell ill and suffered from vomiting and fever. The complainant also remained ill for four days and was taken to Pabby Women & Children Hospital, Haibowal Kalan, Ludhiana on 19.02.2021 and remained under treatment up to 12.03.2021 where the treating doctors also observed the infection resulting due

to insect. The complainant further stated that he complaint the matter to opposite party on the same day about the insect in the cake but he misbehaved and threatened the complainant to do whatever he can. Due to said act and conduct of the opposite party, the complainant suffered physical and mental pain, agony, and harassment etc. The complainant sent a legal notice to the opposite party but to no avail. Hence this complaint, whereby the complainant has prayed for issuing direction to the opposite party to pay Rs.10,000/- as compensation, Rs.25,000/- on account of spoil the function, Rs.10,000/- as medical expenses and Rs.21,000/- as medical expenses.

2. Upon notice, the opposite party appeared and filed written statement and by taking preliminary objections, assailed the complaint on the ground of maintainability of the complaint, the complaint has not come to the court with clean hands, suppression of material facts; the complaint has been field with ulterior motive etc. The opposite party admitted the factum regarding purchase of cakes from him stating that the cake was unboxed in the presence of the complainant and some writing was made on the same on the asking of the complainant and at time, the complainant did not raise any objection regarding condition of the cake. The opposite party further stated that no other person fell ill except Kartik son of the complainant as there was lot of gathering depicted from the photographs. However, the doctor opined that Kartik affected due to infection which can be caused by some other eatable items. The opposite party further stated that there is no legal or authenticated test report regarding supply of the defective cake. However, the opposite party himself got examined the cake from Food & Drug Administration, Punjab, Kharar and as per said report dated 09.02.2021, no insect was detected in the cake.

On merits, the opposite party reiterated the crux of averments made in the preliminary objections. The opposite party has denied that there is any deficiency of service and has also prayed for dismissal of the complaint.

3. In support of his claim, the complainant tendered his affidavit Ex. CA in which he reiterated the allegations and the claim of compensation as stated in the complaint as we as affidavit Ex. CB of Sh. Sanjay Bhandari son of Sh. Sobat Singh, affidavit Ex. CC of Sh. Gurpreet Singh son of Narinder Singh. The complainant also tendered documents i.e. Ex. C1 to Ex. C7 are the photographs, Ex. C8 to Ex. C10 are the copies of medical record of Kartik, Ex. C11 is the legal notice, Ex. C12 is the copy of Aadhar card of complainant, Ex. C13 is the copy of Aadhar card of Sanjay Singh Bhandari, Ex. C14 is the postal receipt, Ex. C15 is the copy of Aadhar card of Kartik and closed the evidence.

4. The opposite party failed to adduce any evidence despite grant of last opportunities and imposition of cost of Rs.500/- and as such, evidence of the opposite party was closed by order vide order dated 25.05.2023.

5. We have heard the arguments of the counsel for the parties and also gone through the complaint, affidavit and annexed documents and written produced on record by both the parties.

6. Admittedly, on 15.02.2021, the opposite party had supplied a cake on the occasion of birthday of son of the complainant. Although no bill of purchase was issued. During the cake cutting ceremony, an insect was found in

the cake resulting in embarrassment to the complainant as well as to his family members in front of guests invited for birthday celebrations. The complainant has produced his affidavit and affidavits of his brother Sanjay Bhandari and friend Gurpreet Singh besides its photographs Ex. C1 to Ex. C7 in order to prove the factum of purchase of cake from the opposite party and detection of an insect at the time of birthday celebrations. The complainant has also placed two prescription slips of the doctor dated 19.02.2021 (Ex. C9) and 08.03.2021 (Ex. C10) in order to substantiate his claim that birthday boy Kartik of 3 years age remained indisposed and under treatment of doctor after the birthday celebrations.

7. The counsel for the opposite party asserted that the cake was fit for human consumption and even officials of Food and Drug Administration, Punjab, Kharar have verified in its report dated 09.03.2021 that no insect was detected in the cake. Strangely enough, the opposite party has not placed any such report on record which was very material document for the purpose of adjudication of the matter in controversy. As such, this

Commission left with no option but to draw adverse inference against the opposite party. Even otherwise, qua the quality of the cake, the opposite party has not led any evidence despite availing so many opportunities.

8. The counsel for the opposite party has assailed the maintainability of the complaint claiming that the form of the complaint is legally defective. Section 2 (6) (v) of the Consumer Protection Act defines "complaint" which means that any allegation that made by the complainant for obtaining any relief provided by or under this Act. With regard to the goods, which are hazardous to life and safety when used, are being offered for sale to the public in contravention of standards relating to safety of such goods as required to be complied with, by or under any law for time being in force.

9. Further Section 2(21) of the Consumer Protection Act defines "goods" means every kind of movable property and includes "food" as defined in clause (j) of sub-section (1) of Section 3 of the Food Safety and Standards Act, 2006(34 of 2006). The definition of the word "goods" also includes "food", as defined under Section 3(1) (j), Food Safety and Standards Act, 2006, which reads as under.

"food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food, genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting drugs and medicinal products, cosmetics, narcotic or psychotropic substances."

10. Further Section 2(9) (i) of the Consumer Protection Act provides that "consumer rights" includes - the right to be protected against the marketing of goods, products or services which are hazardous to life and property.

11. A conjoint reading of aforesaid provisions makes it crystal clear that the complaint does not suffer from any illegality, irregularity and infirmity and is maintainable. The complainant has right to maintain an action where his statutory "right to safety" has been infringed. Further the acts and omissions of the opposite party has not only resulted in causing of illness to his child but he has also suffered mental agony and shock in front of distinguished guests invited for birthday celebrations. Generally, cake is symbol of celebrations and in the present case, it turned out to be a spoil spot.

12. There is another aspect of this case. Admittedly, no bill was issued to the complainant by the opposite party. Further Section 2(47) (vii) of the Consumer Protection Act provides that if any trader or service provider does not issue the bill or cash memo or receipt for the goods sold or services rendered in such a manner as may be prescribed, then he is said to adopt an unfair trade practice. Further, it has also contravened the consumer rights of the complainant. As per Section 2(9) (ii) of the Consumer Protection Act, which provides that the complainant has *the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices.*

As such, the opposite party is guilty of deficiency in service and adoption of unfair trade practice. In view of the given set of facts and circumstances, it would be just and appropriate if the opposite party is burdened with a composite costs of Rs.20,000/- to be paid to the complainant within 30 days.

13. As a result of above discussion, the complaint is allowed with direction to the opposite party to pay a composite cost of Rs.20,000/- (Rupees Twenty Thousand only) to the complainant within 30 days from the date of receipt of copy of order, failing which the opposite party shall pay interest @8% per annum on the said amount from the date of complaint till actual payment. Copies of order be supplied to parties free of costs as per rules. File be indexed and consigned to record room.

14. Due to huge pendency of cases, the complaint could not be decided within statutory period.

(Monika Bhagat)**(Jaswinder Singh)****(Sanjeev Batra)****Member****Member****President**

Announced in Open Commission.

Dated:11.08.2023.

Gobind Ram.

Rajinder Singh Vs Jatin Sood

CC/21/192

Present: Sh. Rajinder Singh in person with Sh. Sukhvir

Singh, Advocate.

None for the OP. (Evidence of OP closed by order vide order dated 25.05.2023)

None turned up for the OP today also.

Arguments on behalf of the complainants heard. Vide separate detailed order of today, the complaint is allowed with direction to the opposite party to pay a composite cost of Rs.20,000/- (Rupees Twenty Thousand only) to the complainant within 30 days from the date of receipt of copy of order, failing which the opposite party shall pay interest @8% per annum on the said amount from the date of compliant till actual payment. Copies of order be supplied to parties free of costs as per rules. File be indexed and consigned to record room.

(Monika Bhagat)**(Jaswinder Singh)****(Sanjeev Batra)****Member****Member****President**

Announced in Open Commission.

Dated:11.08.2023.

Gobind Ram.