

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
ERNAKULAM**

Dated this the 20th day of February, 2024.

Filed on: 18/02/2019

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member

Smt.Sreevidhia.T.N

Member

C.C. No. 90/2019

COMPLAINANT

1. Ratheesh B., S/o. Balan P.V., Allunkal Veli House, Aroor P.O., Cherthala 688534.

2. Dhanesh B., S/o. Balan P.V., Allunkal Veli House, Aroor P.O., Cherthala 688534.

(Rep. by Adv. Rajesh Vijayendran, Infant Jesus Church Building, 2nd Floor, Near High Court of Kerala, Cochin 682031)

V/s

OPPOSITE PARTY

Matrimony. Com Limited, Jose Annex Building, 3rd Floor, Jose Junction, MG Road, Kochi 682016.

(Rep. by Adv.s Jacob Chacko, Rajaraja Varma, Mathew Joseph, Alliance Lawyers, 40/9480, Farah Mansion, MG Road, Ernakulam)

FINAL ORDER

D.B. Binu, President.

1. A brief statement of facts of this complaint is as stated below:

The complaint filed under Section 12 of the Consumer Protection Act, 1986. The complaint outlines a grievance against the opposite party for failing to deliver a video album of a marriage reception held on 27th August 2017, despite full payment. The complainants, including the first complainant and his brother, paid a total of Rs. 36,000 for videography services for the event. Despite initial agreements and payments, the opposite party delayed and ultimately announced their inability to provide the video due to technical issues. This failure has caused significant emotional distress to the complainants, especially as the video was to contain last memories of a deceased family member who played a crucial role in their lives. The opposite party's lack of response and failure to recover the footage, despite acknowledging their

inability, underscores their responsibility for the situation. The complainants seek compensation and consequential reliefs for the hardships caused by the opposite party's negligence.

2) Notice

The Commission sent notices to the opposite parties. However, they did not submit their versions, and as a result, the case was set to proceed ex parte.

3) . Evidence

The complainants had filed an ex-parte proof affidavit and 5 documents that were marked as Exhibits-A-1 to A-5.

Exhibit A1: A true copy of receipt No. 446 dated 18.07.2017 issued by the Opposite party, evidencing an initial payment made by the complainant for the videography services.

Exhibit A2: A true copy of receipt No. 129 dated 21.08.2017 issued by the Opposite party, indicating a subsequent payment related to the services contracted for the marriage reception.

Exhibit A3: A true copy of receipt No. 199 dated 26.10.2020 issued by the Opposite party, documenting a further payment by the complainant, contributing to the total financial exchange for the videography services.

Exhibit A4: A true copy of the SBI credit card statement dated 17.08.2017, showing the transaction details related to the payment made for the videography services, which corroborates the financial engagement between the complainant and the opposite party.

Exhibit A5: A true copy of the SBI credit card statement dated 17.11.2017, providing additional proof of payment made by the complainant towards the services agreed upon with the opposite party.

4) The main points to be analysed in this case are as follows:

- i) Whether the complaint maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- iv) Costs of the proceedings if any?

5) The issues mentioned above are considered together and answered as follows:

In the present case in hand, as per Section 2 (1) (d) of the Consumer Protection Act,1986, a consumer is a person who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment. The

true copies of receipts issued by the Opposite parties, indicating payments related to the services contracted for the marriage reception (**Exhibits A-1 to A-5**). Hence, the complainants are consumers as defined under the Consumer Protection Act, 1986 (**Point No. i**) goes against the opposite parties.

The case involves the complainant's seeking compensation and other reliefs due to the opposite party's failure to deliver a video album of a marriage reception, constituting a deficiency in service and unfair trade practice. The complaint highlights the emotional and financial repercussions of the opposite party's inability to fulfil their contractual obligations, underscoring the significant sentimental value of the undelivered video album to the complainants.

We have heard Sri. Rajesh Vijayendran, the learned counsel appearing for the complainants, submitted that the event in question, involving the first complainant and Reshma Krishnan, took place on 27th August 2017 at Kalapurakkal Auditorium, Aroor. Despite the opposite party's acknowledgment of the notice, they did not file a response within the statutory timeframe, leading to an *ex parte* decision.

The first complainant provided an *Ex parte* Proof Affidavit and submitted five documents (**Exhibit A1 to A5**) as evidence, which primarily consisted of the oral testimony of PW 1 and the mentioned documents. These documents detailed the financial transactions made to the opposite party, including an advance payment and subsequent payments totaling Rs. 36,000, with an agreement that the photography and videography services would be delivered within a month.

However, the opposite party indefinitely delayed the delivery and ultimately reported that the video could not be captured due to technical issues, rendering the memorable moments of the event unrecoverable. This failure has caused significant distress to the complainants, particularly because the video

held sentimental value, capturing the last moments of a beloved family member who passed away shortly after the event.

The opposite party's admission of their inability to recover the footage and lack of communication with the photographer further solidifies their responsibility for the mishandling of the service. Given these circumstances, the complainants have requested that the commission allow the relief sought in their complaint, highlighting the emotional and financial grievances caused by the opposite parties' negligence.

In the legal case concerning the non-delivery of a promised video album by the opposite parties', the complainant's evidence is presented directly within the narrative, highlighting the financial transactions and agreements made. Initially, an **Exhibit A1**, a receipt numbered 446 and dated 18.07.2017, signifies the first payment made to the opposite party for videography services. Following this, **Exhibit A2**—receipt number 129 from 21.08.2017—records a subsequent payment for the contracted marriage reception services. Further financial commitment is demonstrated through **Exhibit A3**, receipt number 199 dated 26.10.2020, which documents an additional payment towards the total cost of videography services.

To corroborate these transactions, **Exhibit A4** and **Exhibit A5** offer detailed insights through SBI credit card statements. Exhibit A4, dated 17.08.2017, and Exhibit A5, dated 17.11.2017, provide concrete evidence of the complainant's payments towards the services agreed upon with the opposite parties. These exhibits collectively establish a comprehensive financial narrative, underscoring the complainant's significant investment in the videography services and forming the basis of their claim for compensation due to the non-fulfilment of the service agreement by the opposite parties.

The evidence presented included an ex-parte proof affidavit filed by the complainant, and it was unchallenged by the opposite parties. Therefore, the complainant's claims were considered credible and supported by the evidence.

Therefore, the complainant requests the commission to grant the relief sought, including compensation for mental agony and unfair trade practices.

The opposite parties' conscious failure to file their written version in spite of having received the Commission's notice to that effect amounts to an admission of the allegations leveled against them. Here, the case of the complainant stands unchallenged by the opposite parties. We have no reason to disbelieve the words of the complainant as against the opposite parties. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

In the case II (2005) CPJ 682, the Delhi State Consumer Disputes Redressal Commission, led by Hon'ble Mr. Justice J.D. Kapoor, with members Mr. Mahesh Chandra and Ms. Rumnita Mittal, decided on Appeal Case No. A-1731 of 2001 on December 6, 2004. The appellant, Jagdish Chandra Sharma, filed a complaint against the respondent, R.K. Verma, concerning the non-delivery of a photo album for a marriage ceremony that took place five years prior. The commission found a deficiency in service on the part of the photographer, proving the complaint valid under Section 15 of the Consumer Protection Act, 1986. The judgment acknowledged the sentimental value and enduring significance of a daughter's wedding photo album, emphasizing that such an album preserves cherished memories for a lifetime. Consequently, the complaint was allowed, and directions were given to address the deficiency in service.

In the matter at hand, the complainants have sought compensation and other reliefs due to the failure of the opposite party to deliver a video album of a marriage reception, constituting a deficiency in service and unfair trade practice. After careful consideration of the evidence, legal arguments, and relevant case laws presented, this commission finds the following:

A. Consumer Status: The complainants have been established as consumers under Section 2(1)(d) of the Consumer Protection Act, 1986, as they have

availed of videography services for consideration paid to the opposite parties.

- B. Deficiency in Service:** The evidence presented clearly indicates that the opposite parties failed to fulfill their contractual obligation of delivering the video album of the marriage reception. Despite receiving payments and assurances, they were unable to provide the promised service, causing distress and financial loss to the complainants.
- C. Negligence and Unfair Trade Practice:** The opposite parties' admission of technical issues leading to the inability to capture the video, coupled with their failure to communicate effectively or provide alternative solutions, demonstrates negligence and unfair trade practice. Their conscious failure to file a written response further supports this conclusion.
- D. Relevant Case Laws:** The case law presented, particularly **Case II (2005) CPJ 682**, establishes precedence where non-delivery of a promised album was deemed a deficiency in service under the Consumer Protection Act, 1986. This supports the complainants' claim for relief.
- E. Emotional and Financial Repercussions:** The evidence and arguments presented highlight the emotional and financial repercussions suffered by the complainants due to the opposite party's negligence. The sentimental value attached to the video album, particularly in capturing the last moments of a beloved family member, further emphasizes the gravity of the situation.
- F. Liability of the Opposite Parties:** The opposite parties' failure to fulfill their contractual obligations, coupled with their admission of the allegations and lack of response, establishes their liability in this matter. They are responsible for the emotional distress and financial loss incurred by the complainants.

Upon the circumstances presented by the complainants, it's impossible to overlook the profound emotional resonance this case carries. The indefinite delay and eventual revelation that the video album, a repository of joyous matrimonial moments, could not be captured due to technical failures, stands as a poignant testament to the vulnerabilities inherent in our reliance on technology to preserve our most treasured memories. The fervent endeavors undertaken by the complainants to salvage these irreplaceable memories underscore a universal longing to hold onto the ephemeral moments that define the essence of our human experience.

This case transcends the mere non-delivery of service; it touches the very core of familial bonds and the sacred rituals that celebrate them. The video was not just a collection of images and sounds but a vessel for the heartbeats of a family's collective journey, carrying the laughter, tears, and love of a day that marked the beginning of a new chapter in their lives. The absence of this video leaves a void that mere compensation cannot fill—a poignant reminder of moments that will remain unretrieved and words unspoken. Particularly heartrending is the narrative thread involving the late uncle, whose presence at the wedding was a final act of familial unity before his untimely departure from this world. His involvement in the celebration was a beacon of joy and love, making the loss of this visual memento all the more grievous. This video was to serve as a bridge to the past, a means to once again feel the warmth of his smile and the resonance of his laughter, to momentarily dissolve the barriers between the now and the then.

In contemplating the gravity of what has been lost, the commission is acutely aware of the deep chasm that the absence of this video creates in the tapestry of a family's history. It is a stark reminder of the impermanence of our existence and the preciousness of the moments we share. The commission is moved by the depth of the emotional impact this case reveals, a somber reflection on the essence of memory, loss, and the unyielding passage of time.

We determine that issue numbers (I) to (IV) are resolved in the complainant's favour due to the significant service deficiency and unfair trade practice on the part of the opposite parties. Consequently, the complainant has endured considerable inconvenience, mental distress, hardships, and financial losses as a result of the negligence of the opposite parties.

In view of the above facts and circumstances of the case, we are of the opinion that the opposite parties are liable to compensate the complainants.

Hence the prayer is partly allowed as follows:

- I. The Opposite Parties shall refund ₹40,000 (Forty Thousand Rupees) to the complainant for the payments made by the complainant for the undelivered services as per Exhibits A-1 to A-5.
- II. The Opposite Parties shall pay ₹1,00,000 (One Lakh Rupees) towards compensation to the complainant for the deficiency of service and unfair trade practice committed by the opposite parties, and for the emotional distress and mental agony caused by their negligence.
- III. The Opposite Parties shall also pay the complainant ₹20,000 (Twenty Thousand Rupees) towards the cost of the proceedings.

The Opposite Parties are jointly and severally liable for compliance with the directions mentioned above, which must be executed by the Opposite Parties within 30 days from the date of receiving a copy of this order. Should there be a failure to comply with the amounts ordered under points I and II above, interest at the rate of 9% per annum will be applied from the date of filing this complaint (18-02-2019) until the date of full payment realization.

Pronounced in the Open Commission on this the 20th day of February, 2024

D.B.Binu, President

V.Ramachandran, Member

Sreevidhia.T.N, Member