

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,  
U.T., CHANDIGARH**

<b>Appeal No.</b>	:	14 of 2022
Date of Institution	:	28.01.2022
Date of Decision	:	10.08.2022

- 1] M/s VLCC Health Care Limited, SCO 43, First Floor, Pocket No.1, Manimajra, Chandigarh.
- 2] M/s VLCC Health Care Limited, SCO 43, First Floor, Pocket No.1, Manimajra, Chandigarh through its Managing Director/Authorised Person.

**AT PRESENT:**

VLCC Health Care Ltd., SCO 425-426, 1<sup>st</sup> Floor, Sector-35C, Chandigarh – 160022.

.....Appellants/Opposite Parties.

**Versus**

Sh. Vijay Aggarwal.

.....Respondent/Complainant.

**BEFORE: JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT**

**MR. RAJESH K. ARYA, MEMBER**

**Argued by:-**

Sh. Atul Goyal, Advocate for the appellants.

Sh. Harsh Nagra, Advocate for the respondent.

**PER RAJESH K. ARYA, MEMBER**

This appeal has been filed by the opposite parties, namely, M/s VLCC Health Care Limited (appellants herein) against order dated 11.11.2021 passed by District Consumer Disputes Redressal Commission-I, U.T., Chandigarh [in short 'District Commission'], whereby consumer complaint bearing No.267 of 2018 filed by the complainant, namely, Sh. Vijay Aggarwal (respondent herein) has been partly allowed by the District Commission in the following manner:-

“11. In view of the above discussion, the present consumer complaint succeeds and the same is accordingly partly allowed. OPs are directed as under :-

- i. to refund Rs.75,500/- to the complainant alongwith interest @ 9% per annum from the respective date of deposits till realization.
- ii. to pay an amount of Rs.20,000/- to the complainant as compensation for causing mental agony and harassment to him;
- iii. to pay Rs.10,000/- to the complainant as costs of litigation.

This order be complied with by the OPs within thirty days from the date of receipt of its certified copy, failing which, they shall make the payment of the amounts mentioned at Sr. No.(i) & (ii) above, with interest @ 12% per annum from the date of this order, till realization, apart from compliance of direction at Sr. No.(iii) above.”

2. The brief facts as culled from the impugned order dated 11.11.2021 passed by the District Commission were as under:-

“1. Briefly stated the allegations are that the complainant took the program (A)+(B) and paid advance for the program in the month of March 2015 amounting to Rs.50,000/-. The Opposite Parties confirmed the reduction of 5kg weight and 4 inch loss of tummy circumference within one month, Brochures and advertisements of their program guarantee is annexed as **Annexure C-1**. The complainant wrote email dated 10.03.2015 regarding the meeting/discussion which is annexed as **Annexure C-2**. As per the program which were obtained by the complainant neither any progress nor the results as guaranteed as by the OPs. The complainant visited OPs 30 times approximately for the sittings as detailed by the OPs, but there is no result and so the complainant talked to the OPs. Copy of email is annexed as **Annexure C-4**. The complainant informed the OPs, that he has undertaken 30 sessions after 16.12.2016, but there is no progress on weight loss and the complainant could manage 1Kg of loss caused by diet control only. The patience of the complainant had ended, the complainant asked for refund of the amount. Copy of the email dated 16.02.2017 is annexed as Annexure C-11.

In order to allure the complainant he was shown an imported costly machine through which the treatment would be done and the complainant was induced fraudulently to take up the program and money back guarantee and the complainant paid another amount of Rs.28,000/- again on 31.03.2017. But there is no improvement in the weight loss and inch reduction. The complainant's legal notice was sent through email dated 03.08.2017, which is annexed as **Annexure C-16**. Payments detailed are annexed as **Annexure C-20 & C-21**. Hence, this present consumer complaint.

2. OPs contested the consumer complaint. The complainant had approached them for weight loss on 09.03.2015. The complainant was satisfied with their services therefore, the complainant purchased a new treatment for slimming and weight loss on 14.01.2016 and

again on 28.01.2016 and 25.02.2016. As per OPs if the complainant had any issue with any of the services availed from them then he would have not purchased other plans. The complainant's another plan for weight loss and the treatment was commenced by the OPs. As per the program record, the complainant had to come present on regular basis for the treatment and had to continue strict diet for desired results. But the complainant neither remained regular for the treatment nor followed his diet as per the terms of the treatment. The complainant was being provided appropriate treatment but after one sitting, the complainant came for further treatment then due to uncontrolled diet the weight of the complainant was increased whereas it should be reduced. It was only unhealthy and uncontrolled diet that's why the treatment was not resulting into desired consequences. The copy of treatment chart is annexed as **Annexure OP-2**.

Therefore the complaint again purchased another plan of slim sonic and tummy trim 5 units each for an amount of Rs.24,999/- on 31.03.2017 is annexed as **Annexure OP-3**. The complainant was suggested by the OPs representative on various occasions to continue with strict diet of the treatment but the complainant many times used to avoid the suggestions of the OPs. Therefore, the complaint deserves to be dismissed."

**3.** In their grounds of appeal, setting aside of the impugned order has been sought by the appellants mainly on two grounds, firstly that the respondent had given a specific undertaking vide declaration, Annexure C-20, duly signed by him that he understands that no guarantee/assurance could be given to him regarding the result and outcome of the programme and in circumstances of unsatisfactory results due to factors beyond the control of the staff of the centre/opposite parties, he shall not be entitled to claim/damages or to hold the centre/opposite parties or its staff liable for the same and secondly, that the respondent in order to reduce his weight had to abide and strictly follow the dietary instructions and complete the entire duration of course/sittings but the same was not done and as such, he could not complain that the treatment given to him had failed and there was any deficiency on the part of the appellants.

**4.** On the other hand, on behalf of the respondent, it has been stated that the plea of the appellants with regard to disclaimer cannot be accepted in view of the fact that in Annexure C-1, the appellants specifically mentioned that lose 4 kgs in a month or your money will be refunded, which clearly shows that the appellants are misleading the consumer by a misleading advertisement and if they don't lose weight, puzzle them in disclaimer clause which is a clear cut case of deficiency in service. It has further been stated that a similar instance was taken by the appellants in Shipra Sachdeva Vs. VLCC Health Care Ltd. and anr., First Appeal No.93 of 2008 and the order of this Commission was upheld by Hon'ble National Consumer Disputes Redressal Commission, New Delhi (in short 'Hon'ble National Commission' vide order dated 04.11.2008 passed in RP/2500/2008. The appellants further cited similar instance in case Divya Sood Vs. Gurpdeep Kaur, RP No.3467 of 2006 decided by Hon'ble National Commission on 27.11.2006. Lastly prayer for dismissal of appeal has been made by the respondent.

**5.** After giving our thoughtful consideration to the contentions raised by the Ld. Counsel for the parties and going through the record, impugned order and the written arguments filed by the parties very carefully, we are of the considered view that the appeal is liable to be dismissed for the reasons to be recorded hereinafter. It may be stated here that the Ld. District Commission while allowing the complaint of the respondent has based its order both on facts and evidence on record. The contention raised by the appellants that as per the declaration, Annexure C-20, no guarantee/ assurance could be given to the respondent regarding the result and outcome of the programme and in circumstances of unsatisfactory results due to factors beyond the control of the staff of the centre/opposite parties, the respondent shall not be entitled to claim/damages or to hold the centre/opposite parties or its staff liable for the same, is not sustainable in the eyes of law as their own advertisement, Annexure C-1, itself assures that "lose 4 Kg in

30 days or take your money back”. Now when no desirable results were forthcoming from the first plan, the appellants further allured the respondent by showing him an imported costly machine, through which the treatment would be done, for which, again the appellants made the respondent to make further payment. The Ld. District Commission, in its order, rightly observed that when no desirable results were achieved after selling the 1st Plan to the respondent and the appellants were very much sure of the careless attitude of the respondent of not following the diet schedule strictly to attain desirable results, then, there was no occasion to sell another additional program to the respondent to grab more money from him instead of refunding the previous amount as promised in Annexure C-1.

6. The act of allurement or unfair trade practice on the part of the appellants, by way of misleading emails and advertisement(s), is further established from the emails placed on record by the respondent i.e. Annexure C-8, email dated 26.06.2016 vide which one Tanya on behalf of the appellants, assured the respondent that the respondent would be more clear & determined towards the results. Not only this, vide email dated 10.03.2015, Annexure C-3, the appellants informed the respondent that their professionals would guide him during the program to achieve the committed results and on an average, with medical conditions, the respondent should be able to lose 3-4 kgs in month's time in case, he is regular with the program. No doubt, the respondent visited the appellants regularly and does what he was told to do coupled with the diet plan as prescribed to him, which did not bring any fruitful results. In our concerted view, the Ld. District Commission rightly held the appellants deficient in not providing proper services in the form of expected/desired results as weight reduction, wasting precious time and energy of the respondent by forcing him to indulge in the present unnecessary litigation by non-refunding the amount paid as guaranteed. The appellants are very much held liable to refund the amount paid by the respondent purely on the basis of their own advertisement, Annexure C-1, saying “lose 4 Kg in 30 days or take your money back”, which squarely falls under the definition of ‘misleading advertisement’ as defined in Section 2(28) of the Consumer Protection Act, 2019. The act of the appellants of giving false assurances on one hand by way of misleading advertisements and on the other hand, obtaining declaration from the consumers qua no guarantee/assurance regarding the result and outcome of the programme, is a clear example of unfair trade practices adopted by them, for which, the consumers (respondent in this case), could not be made to suffer at the hands of the appellants.

7. It may be stated here that similar issue was earlier decided by this Commission in case titled Shipra Sachdeva Vs. VLCC Health Care Ltd. and anr., First Appeal No.93 of 2008, which was allowed by this Commission vide order dated 29.04.2008 by setting aside the dismissal order dated 17.01.2009 passed by the District Forum below. In the said case, the consumer (Shipra Sachdeva) had leveled similar allegations of unfair trade practice adopted by the respondents (VLCC Health Care Ltd.) by giving an advertisement that she could reduce her weight by 20 kgs, within 5-8 months. This Commission allowed the appeal of Shipra Sachdeva and directed the opposite parties to pay a consolidated amount of Rs.25,000/ as compensation etc. The matter went before the Hon'ble National Consumer Disputes Redressal Commission, New Delhi by way of Revision Petition No.2500 of 2008, which was dismissed by Hon'ble National Commission vide order dated 04.11.2008, finding it not fit for admission. Similar view was held by Hon'ble National Commission in case titled Smt. Divya Sood Versus Ms. Gurdeep Kaur Bhuhi, Revision Petition No.3467 of 2006 decided on 27.11.2006, wherein while dismissing the said revision petition, the Hon'ble National Commission observed, *inter-alia*, as under:-

“We entirely agree with the findings recorded by the fora below. Such tempting advertisements, giving misleading statements with regard to the alleged treatment, are increasing day-by-day and are required to be controlled so that persons may not be lured to pay large amount to such bodies in a hope that they can reduce their weight by undergoing the so-called treatment.....”

8. Thus, in our considered view, in the instant case, the Ld. District Commission rightly partly

allowed the complaint of the respondent and directed the appellants to refund the amount alongwith interest besides awarding compensation and litigation expenses.

**9.** Therefore, in our concerted view, the impugned order, being legal and just, does not call for any interference and the present appeal is liable to be dismissed.

**10.** For the reasons recorded above, this appeal, being devoid of any merit, is dismissed with no orders as to costs.

**11.** Certified copies of this order be sent to the parties free of charge.

**12.** File be consigned to Record Room after completion.

Pronounced

10.08.2022.

**(RAJ SHEKHAR ATTRI)**

**PRESIDENT**

**(RAJESH K. ARYA)**

**MEMBER**

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