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**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION  
ERNAKULAM**

Dated this the 15<sup>th</sup> day of November, 2023.

Filed on: 22/07/2021

**PRESENT**

Shri.D.B.Binu

Shri.V.Ramachandran

Smt.Sreevidhia.T.N

President

Member

Member

**CC No: 240/2021**

**COMPLAINANT**

Santhosh M.S

(Rep. by Adv. Blossom Mathew, M/s. A&S Associates, 5<sup>th</sup> Floor, Empire Building, Opp. Central Police Station, Kochi -18)

VS

**OPPOSITE PARTY**

The Manager, The Sports Terrain, XIII/464, Kalappillil Building, Meempara, Aikkaranaad South, Ernakulam 682308.

**FINAL ORDER**

**D.B. Binu, President.**

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

The complaint was filed under Section 35 of the Consumer Protection Act, 2019. The brief facts, as averred in the complaint, are that the complainant, who operates the Legends Academy football academy and ground in Chottanikara, has faced significant issues with a supplier over artificial turf installation. The academy, the sole income source for the complainant's family, is located on rented premises. In 2019, the complainant was persuaded by the supplier to install FIFA standard artificial turf and was promised "LIMONTA" brand turf. After paying Rs. 25,04,700, transferred by mortgaging his home, the turf was installed. However, it quickly became damaged and was discovered to be a local brand, not the promised LIMONTA.

Despite assurances of repair or replacement from the supplier, the damaged turf was again replaced with local turf rather than LIMONTA. The supplier's failures have included not meeting FIFA standards and proper

drainage system requirements, leading to further damage and causing the complainant to suffer financial losses and mental stress. The complainant seeks legal action for the replacement of the turf with the promised LIMONTA brand, a refund with interest, compensation for rent payments during the period the ground was unusable, and damages for mental anguish. The complainant demands a total of Rs. 30,44,757 in compensation, additional interest, ground rent, and damages for mental suffering, as well as the cost of the complaint.

### **2) Notice**

The notice to the opposite parties was sent by the commission. However, despite accepting the notices, the opposite party did not file a version, and as a result, they have been set ex-parte.

### **3) Evidence**

The complainant had filed an ex-parte proof affidavit and 7 documents that was marked as Exhibits-A-1 to A-7.

**Exhibit-A-1:** True copy of the Rent Agreement executed between the complainant and the owner of the ground.

**Exhibit-A-2:** True copy of Quotation No. 2479/09-08/19 dated 08.08.2019 issued by the Opposite Party.

**Exhibit-A-3:** True copy of the Certificate of Conformance issued by the Opposite Party.

**Exhibit-A-4:** True copy of the Lawyer's Notice dated 14.06.2021.

**Exhibit-A-5:** True copy of the Acknowledgement Card dated 16.06.2021, confirming the receipt of the lawyer's notice.

**Exhibit-A-6:** The original statement of accounts issued by Canara Bank, Mulanthuruthy Branch.

**Exhibit-A-7:** True copy of the Certificate issued by Ms. Seena C.V., who is a distinguished former player for the Indian national football team and the current coach of the Indian Women's Football Team.

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

- i) Whether the complaint is 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 are answered as follows:**

In the present case in hand, as per Section 2(7) of the Consumer Protection Act, 2019, 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 original statement of accounts issued by Canara Bank, Mulanthuruthy Branch. This document evidencing payment to the opposite party (**Exhibits A-6**). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 2019.

The actions of the opposite party constitute a shortfall in the service provided, warranting redress for the complainant. This includes the provision of the specified LIMONTA brand turf, financial recompense for the sustained losses, and compensatory damages for the distress endured. The case was filed by the complainant in pursuit of restitution for the service deficiencies resulting from the opposite party's failure to fulfil their commitments.

We have heard from Sri. Blossom Mathew, the learned counsel representing the complainant. He submitted that the complainant operates a football academy, which is the primary source of income for his family, and has encountered severe issues due to the conduct of the opposite party. The academy, situated in Chottanikara, is maintained on leased premises. Following the advice from the opposite party, the complainant invested a substantial sum into artificial turf with the expectation that it would be of the internationally recognized LIMONTA brand, as per the promise and detailed quotation provided by the opposite party.

The counsel emphasizes that despite full payment, which was secured by mortgaging personal property, the opposite party installed substandard turf, divergent from the agreed specifications and brand. This turf deteriorated quickly, causing injury and difficulty for the children at the academy. The opposite party's repeated assurances to rectify the situation proved unfulfilled, culminating in the installation of a similarly inferior turf and, following

complaints, the lodging of a false accusation against the complainant, which led to further distress and reputational damage.

The counsel stresses that these actions not only represent a breach of contract and guarantee but also constitute a severe deficiency of service and negligence. Furthermore, by failing to respond to legal notices and to rectify the defective installation, the opposite party has compounded the damage, financially and emotionally, to the complainant. Therefore, the counsel for the complainant argues that the opposite party is liable to compensate for the substandard turf, the additional rent paid due to the unusable facility, and the distress caused.

Moreover, the counsel maintains that the complainant is indeed a "consumer" under the Consumer Protection Act, as the services were availed not for commercial resale but for personal livelihood. Thus, the complaint is entirely maintainable under the Act.

In conclusion, the counsel asserts that the opposite party's actions amount to a deficiency in service, entitling the complainant to relief, including the replacement of the turf with the promised LIMONTA brand, monetary compensation for the losses incurred, and additional damages for the mental anguish experienced.

The evidence presented included an ex-parte proof affidavit filed by the complainant, and it was unchallenged by the opposite party. 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).**

The complaint has been brought before this Commission under Section 35 of the Consumer Protection Act, 2019. After careful consideration of the submissions, documents, and the relevant legal provisions, the Commission has reached its decision.

- A. **Maintainability of the Complaint:** The Commission finds that the complaint is maintainable under the Consumer Protection Act, 2019, as the complainant qualifies as a consumer under the Act, having availed services for consideration, as evident from the original statement of accounts (**Exhibit-A-6**).
- B. **Deficiency in Service and Unfair Trade Practice:** There is a clear deficiency in service as the supplier failed to provide the FIFA standard 'LIMONTA' brand artificial turf, despite accepting full payment. The repeated installation of inferior quality turf, in contrast to the promises made, constitutes an unfair trade practice.
- C. **Entitlement of Relief:** The Complainant is entitled to relief due to the deficient service and the unfair trade practice on part of the opposite party. The evidence provided by the complainant, which includes the ex-parte proof affidavit and **Exhibits-A-1 to A-7**, stands unchallenged as the opposite party did not file a version despite receiving notice. However, the complainant failed to substantiate the claim for rent payments with sufficient evidence for the period during which the ground was unusable. Therefore, no compensation has been awarded for this claim.

The Commission has placed reliance on the judgment of the Hon'ble National Commission in the order dated 2017 (4) CPR page 590 (NC), which supports the complainant's position when the opposite party fails to file a version. In light of the evidence presented and the uncontested testimony of the complainant, the claims are deemed credible.

The supplier's conduct in failing to deliver the promised product and service, coupled with their lack of response to the legal notices, amounts to a blatant disregard for consumer rights and is indicative of negligence and unfair trade practice.

We find in favour of the complainant on Issues I to IV, due to the serious service deficiency by the opposite party. The complainant has suffered

considerable inconvenience, mental agony, hardship, and financial loss due to this negligence.

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

Hence the prayer is partly allowed as follows:

- I. The Opposite Party shall refund Rs.25,04,700/- to the complainant, which is the amount paid for the installation of the turf on the football ground.
- II. The Opposite Party shall pay Rs.75,000/- to the complainant as compensation for the mental agony, inconvenience, physical hardships, and deficiency in service caused by their actions and Unfair Trade Practices.
- III. The Opposite Party shall also pay Rs.10,000/- to the complainant towards the cost of the proceedings.

The Opposite Party shall be liable for the aforementioned directives and must adhere to them within 30 days from the receipt of this order. Failure to comply with the directives outlined in (i) and (ii) above will result in the accrual of interest at a rate of 9% per annum. The interest will be calculated from the date of payment until the date of realization for directive (i), and from the date of the filing of this complaint on July 22, 2021, until the amount is fully paid for directive (ii).

Pronounced in the Open Commission on this the 15<sup>th</sup> day of November, 2023

  
D.B. Bindu, President

  
V. Ramachandran, Member

  
Sreevidhya TN, Member