

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, LUDHIANA.

Complaint No:105 dated 17.03.2022.

Date of decision: 23.07.2024.

Vasu Gupta D/o. Rajneesh Gupta, R/o. H. No.6855/1, Street No.1, Naveen Nagar, Jassian Road, Haibowal Kalan, Ludhiana. PIN Code-141001.

(M. No.9815300463) (Aadhar Card No.664502039746) vasugupta018@gmail.com.

.....Complainant

Versus

1. Behrouz Biryani, G-10, First Floor, Gill Tower, Sarabha Nagar, Ludhiana through its Director/Proprietor/Business Partner. PIN Code-141001.

anuroop@mosaicwellness.in mehfil@behrouzbiryani.com help@behrouzbiryani.com.

2. Swiggy, 59, Malhar Cinema Road, I-Block, Sarabha Nagar, Ludhiana, PIN Code-141001, through its Director/Proprietor/Business Partner support@swiggy.in.

.....Opposite

parties

Complaint Under Section 35 of the Consumer Protection Act, and prayer for relief, compensation etc.

QUORUM:**SH. SANJEEV BATRA, PRESIDENT****MS. MONIKA BHAGAT, MEMBER****COUNSEL FOR THE PARTIES:**

For complainant : Sh. Chandan Rai Dhanda, Advocate.

For OP1 : Sh. Sachin Vasudeva, Advocate.

For OP2 : Exparte.

ORDER**PER SANJEEV BATRA, PRESIDENT**

1. Briefly stated, the facts of the complaint are that that the complainant is pure vegetarian girl being follower of Hindu beliefs. On 14.01.2022, she ordered Spicy Subz-E-Biryani (Hyderabadi Veg Biryani) through the OPs with specific directions to supply only veg Biryani which the OPs assured to carried out in true letter and spirit. The order was delivered at 05.39 PM through OP2 but she shocked on opening the box as it was a Lazeez Bhuna Murgh (Chicken Biryani Boneless) i.e. non-vegetarian biryani instead of vegetarian. The complainant stated that due to negligent and deficiency services of the OPs, her religious and cultural sentiments were hurt. This has caused mental agony and physical harassment to the complainant as on opening the box she could not tolerate the smell of chicken and felt pukish immediately. She raised a complaint through OP2 i.e. Swiggy and the customer care apologized for the error and refunded the amount paid by her for order of veg biryani. Even she reported the mater on Twitter, a social media platform but no

response was received from OP1. However, customer care of OP2 called the complainant with assurance to bring the matter into notice of OP1. Even the complainant wrote a complaint to OP1 on 16.01.2022 on their Email addresses and then OP1 offered the complainant a complimentary biryani but failed to understand the extent of hurting her religious sentiments. The complainant claimed to have suffered mental harassment, agony, tension and hurting of her religious sentiments due to deficiency in service and negligent behavior of the OPs. The complainant sent a legal notice dated 29.01.2022 upon the OPs through Sh. Rajneesh Gupta, Advocate but to no effect. Hence this complaint, whereby the complainant has prayed for issuing direction to the OPs to pay compensation of Rs.20 Lacs along with litigation expenses.

2. Upon notice, OP1 appeared and filed written statement by taking preliminary objections assailed the complaint on the ground of maintainability; lack of cause of action; the complainant being not Consumer; the complainant has no locus standi to file the present complaint; the complainant being estopped by her own act and conduct etc. OP1 stated that Rebel Foods Private Limited is a company incorporated under the Companies Act, 2013 having registered office at Lohegaon, Pune and having one of its internet restaurant i.e. OP1 situated at Ludhiana. OP1 is an internet restaurant company having 4000+ internet restaurants in the India and own various food brand like Faasos, OvenStory, Behrouz Biryani, Sweet Truth, Firangi Bake etc. which are been prepared at these internet restaurants and delivered to the ultimate customer either directly or through third party aggregators. Op1 stated that the complainant has already received refund of Rs.164/- paid to OP2 without any objection in full and final settlement of her claim and now she has filed the present complaint to squeeze money and to harass OP1.

On merits, OP1 reiterated the crux of averments made in the preliminary objections. OP1 stated that it was not offered any opportunity for the physical inspection of the concerned food order, the authenticity of the complaint stands desiccated from being ascertained from OP1 side. OP has, denied that there is any deficiency of service and has also prayed for dismissal of the complaint.

3. Upon notice, none appeared on behalf of OP2 despite service through affixation and munadi and as such, OP2 proceeded against exparte vide order dated 03.05.2023.

4. In support of her claim, the complainant tendered her affidavit Ex. CA in which she reiterated the allegations and the claim of compensation as stated in the complaint. The complainant also tendered documents Ex. C1 is the copy of screen shot of the order of veg biryani, Ex. C2 is the copy of tag of non-veg biryani, Ex. C3 and Ex. C4 are the copies of screen shots of chatting/messages, Ex. C5 is the copy of Email dated 16.01.2022, Ex. C6 is the copy of screen shot of website of OP1, Ex. C7 is the legal notice dated 29.01.2022, Ex. C8 and Ex. C9 are the postal receipts and closed the evidence.

5. On the other hand, counsel for OP1 tendered affidavit Ex. RA of Mr. Manu Tyagi, authorized representative of OP1 and closed the evidence.

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

7. The complainant Vasu Gupta, a Hindu, claimed herself to be religiously vegetarian. Admittedly, on 14.01.2022, she through OP2 ordered one Spicy Subz-E-Biryani (Hyderabadi Veg Biryani-Serves 1) vide screen shot of order slip Ex. C1. On delivery, she found that it was a Lazeez Bhuna Murgh (Chicken Biryani Boneless-Serves 1) cooked and got delivered by OP1 vide order slip ex. C2. According to the complainant, she unable tolerate the smell of chicken which was being emitted from the dish so received and she continued to feel pangs of nausea and disgust on the following days as well. According to the complainant, her physical and religious beliefs were breached by the rash and negligent act of the OPs. The complainant immediately contacted OP1 through Emails and brought the fiasco to the notice of OP1 who felt sorry and promised not to repeat the blunder in future. OP1 further offered the refund of the price in the shape of coupons to which the complainant declined. Ex. C3 to Ex. C5 is the trail of chatting/text message/Emails whereby the complainant had been interacting with the officials of the OPs and has been raising her grievance being deeply hurt. OP1 in written version and affidavit could not counter the averments of the complainant and were just able to raise a feeble defence stating therein that the complainant had received a refund of Rs.164/- so the present complaint is liable to be dismissed on this score only. The refund of purchase price cannot be a mitigating circumstance or substitute to the sufferings, mental agony and harassment that complainant faced. It is a matter of common observance that even non-hospitable eateries turn more courteous and humble when they

realize their follies in providing food and service to the customer. The present case is also not an exception to such dubious and unfair practices which eateries or food service providers oftenly adopt.

8. OP2 is a market place E-commerce entity which provides information technology platform of digital and electronic network to facilitate transactions between buyers and sellers. OP1 is a seller within the meaning of Caluse 37 of Section 2 of the Consumer Protection Act, 2019. Further Rule 5 and Rule 6 of the Consumer Protection (E-Commerce) Rules, 2020 enlists the liability of market place e-commerce entity (OP2) and duties of seller of material (OP1) respectively. These rules prohibit the adoption of unfair trade practice while rendering services to the consumer. Further these rules provide that each e-commerce entity will establish 'Consumer Grievance Redressal Mechanism' and will redress the consumer complaint within one month from the date of receipt of this complaint. But in the present case, after initially entertaining few Emails of the complainant, the OPs stopped taking calls from the complainant and started flashing message '**Delivery incomplete**' and '**Recipient inbox full**'. It also amounts to deficiency of service on their part. It is obvious that complainant has suffered lot of mental tension, agony and harassment and her religious feeling has grievously hurt. As such, in the given facts and circumstances, it would be just and appropriate, if the OPs are jointly and severally burdened with a composite costs of Rs.50,000/-.

9. As a result of above discussion, the complaint is partly allowed with an order that the OPs shall jointly and severally pay a composite costs of Rs.50,000/- (Rupees Fifty Thousand only) to the complainant within 30 days from the date of receipt of copy of order failing which the OPs shall pay interest on the said amount @8% per annum from the date of filing of the 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.

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

(Monika Bhagat)

(Sanjeev Batra)

Member

President

Announced in Open Commission.

Dated:23.07.2024.

Gobind Ram.