

Date of Filing:06.04.2023

Date of Disposal:29.09.2023

**BEFORE THE IV ADDL DISTRICT CONSUMER DISPUTES
REDRESSAL COMMISSION BENGALURU****1ST FLOOR, BMTC, B-BLOCK, TTMC BUILDING, K.H ROAD,
SHANTHINAGAR, BENGALURU - 560 027.****PRESENT:-****Hon'ble Sri.Ramachandra M.S., B.A., LL.B., President****Sri H.N.Shrinidi, B.com, LL.B., Member****Smt.Nandini H Kumbhar, B.A., LL.B., LL.M., Member****ORDER****C.C.No.97/2023****Order dated this the 29th day of September 2023**Smt.RajithaKalprdha,
D/o J.S.R.Moorthy,
Aged about 40 years,
R/a No.114, Vithola
Apartments, Kalena Agrahara,
Bannerghatta road,
Bengaluru-560076**(Smt.K.R.Reshma, Adv.,)****COMPLAINANT/S****- V/S -**

1. VIBES

Head office at:
D5, Block-D, Hauz Khas,
New Delhi-110016**(Ex-parte)**

2. VIBES

No.253, Ground floor,
24th Main road, 16th cross,

5 th Phase, J.P.Nagar, Bengaluru-560078 Rep. by its Managing Director (Ex-parte)	OPPOSITE PARTY/S
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ORDER

SMT.NANDINI.H.KUMBHAR, MEMBER

1. This complaint is filed by the complainant under section 35 of the C.P.Act, 2019 against the OP alleging deficiency of service with a direction to OP refund Rs.40,000/- along with interest at 24% p.a., further direct the OP to pay compensation of Rs.5,00,000/- for cheating and mental agony and Rs.50,000/- towards cost of the proceedings and such other reliefs.

2. The brief facts of the case is as follows:

This is the case of the complainant that the complainant after Bariatric Sleeve Surgery, she was looking for tightening abdomen and other service. Accordingly she approached and OP have explained about the services related to abdomen tightening and suggested to take 02 service packages of "RF Abdomen Tightening and "Aroma Veda Therapy". The complainant



submits that OP employee insisted the complainant to immediately enrol as it is currently on going offer and discount as "Anti-Obesity" package and insisted by OP employee and keep on forcing the complainant, but the complainant repeatedly telling that she would come back after consulting with her doctor, but OP employee had convinced the complainant that it is just initial session free of cost and if not satisfied there is no need to continue further and fully refundable. The complainant has taken out her daughter's debit card and the OP collected he debit card and swiping the card as 1st transaction with Rs.25,000/- and Rs.15,000/- as 2nd transaction in total amount of Rs.40,000/- has been deducted in the name of security deposit. When the complainant attended her 1st free session, she immediately developed pain in her surgery region, as the complainant has some serious health issues post-surgery and need to undergo further surgery. The complainant's doctor advised not to undergo such skin toning service of OP, when the complainant has discussed with OP and requested to refund the



deposited amount, but OP have refused to refund and did not do the needful. On 14.12.2022 the complainant emailed to the OP Vibes, but the complainant did not get any correct response from the OPs, after multiple emails on 19.12.2022 without signature the agent of OP VIBES customer care team replied stating that "Appreciate, if you can go through terms and conditions mentioned in the invoice, which is self-explanatory, the invoice clearly states the terms and conditions that "Money once paid is not refundable". For the above grievance the complainant sent legal notice to the OP dt.22.12.2022, after receipt of the said notice OP has not made any refund. Aggrieved by the act of the OP, the complainant preferred to file the present complaint seeking relief as prayed in the complaint.

3. Notice to OPs duly served, remained absent and they have been placed ex-parte.
4. Complainant filed chief examination affidavit along with relevant documents in support of their contentions.



5. Heard arguments and matter is reserved for orders.

6. The points that arise for our consideration are;

1) Whether the Complainant prove that there is deficiency of service on the part of the OPs as alleged in the complaint and thereby prove that she is entitled for the relief sought?

2) What order?

7. The findings on the above points are as under:

Point No.1 : Affirmative in Part

Point No.2 : As per final order

REASONS

8. **POINT NO.1:-** The complainant approached the OP-2 services related to abdomen tightening and as per on going offer and discount as "Anti-Obesity" package and insisted by employee of OP and keep on forcing the complainant to avail the service, but the complainant repeatedly telling that she would come back after consulting with her doctor, but OP employee had convincing the complainant that it is just initial session free of cost and if not satisfied there is no need to

continue further assured full refund. As the complainant was not carrying debit card and the complainant has taken her daughter's debit card and the OP collected he debit card and swiping the card as 1st transaction for a Rs.25,000/- and Rs.15,000/- as 2nd transaction in total amount of Rs.40,000/- has been deducted in the name of security deposit. When the complainant attended her 1st free session, she immediately developed pain in her surgery region, as the complainant has some serious health issues post-surgery and need to undergo further surgery. The complainant's doctor advised not to undergo such skin toning service of OP, when the complainant has discussed with OP and requested to refund the deposited amount, but OP have refused and did not do the needful. On 14.12.2022 the complainant emailed to the OP Vibes, but the complainant did not get any correct response from the OPs, after multiple emails on 19.12.2022 without signature the agent of OP VIBES customer care team replied stating as per terms and conditions the money once paid is not re-fundable. For the above grievance the complainant sent legal notice to



the OP dt.22.12.2022, after receipt of the said notice OP has not made any refund. Aggrieved by the act of the OP, the complainant preferred to file the present complaint seeking relief as prayed in the complaint.

9. After receipt of notice, the OPs remained absent and not chosen to contest the matter in the present complaint. As per decision of NCDRC reported in 2018, non-filing of version amounts to admission of allegations made by the complainant.

10. The complainant filed chief examination affidavit by reiterating the complaint averments as against OP and also produced relevant documents in support of their contention. From the perusal of the complaint affidavit and the documents produced as Annexure-C2 bank statement, in which the transaction amount of Rs.40,000/- to the OP and also the document marked as Annexure-C3 mail communication. It is crystal clear that there is a transaction between the complainant and the OP, wherein the complainant availed service related to



abdomen tightening as on going offer discount as "Anti-obesity" package insisted by the OP and collected the amount of Rs.40,000/- as security deposit and convincing the complainant that it is initial session free of cost and if she is not satisfied then then there is no need to continue further and get full refund of said deposit. Subsequently, when the complainant attended her 1st free session, she immediately developed pain in her surgery region and when the complainant consulted the doctor advised not to undergo such skin toning service of OP. The complainant was forced to cancel the service of the OP due to her serious health issues. When such being the case, the reason for the rejection of availment of the OP service appears to be genuine and on other hand rejection of refund of the claim amount of Rs.40,000/- on the ground that as per service conditions the amount once paid is non-refundable. As there is no provision in their service condition to refund the said amount. The reply of the OP has no legal sanctity and no law will recognize such condition. The terms and conditions which is relied by the OP appears to be



unilateral and arbitrary in nature. It is created and formulated by the OP only for their benefit. Such condition is not tenable either in law or on facts. The condition on which the OP relied needs to be observed as illegal and against the principles of law and no law will not recognize such an arbitrary condition.

11. When such being the position of law, the contention taken by the OP in their email need not be considered. It is to be held against the principles of natural justice.

12. In view of the above discussion and by considering the documents produced by the complainant, the commission opined that there is a clear deficiency in service and also an act of unfair trade practice, for which OPs are held liable to refund the said amount along with other reliefs. Accordingly, we answer the **Point No.1 partly in affirmative.**

13. **POINT NO.2:-** In the result, for the forgoing reasons, we passed the following:



ORDER

1. The complaint filed by the complainant U/s 35 of C.P.Act is hereby allowed in part.
2. The OPs are directed to refund a sum of Rs.40,000/- along with interest at 8% p.a. from the date of payment till the payment is made.
3. The OPs are further directed to pay compensation of Rs.10,000/- towards deficiency in service, pain and suffering and compensation of Rs.5,000/- towards unfair trade practice together with cost of litigation of Rs.5,000/- to the complainant.
4. The OPs shall comply the order within 45 days from the date of receipt of this order, failing which the OP shall pay interest at 8% p.a. on the said amount.
5. Furnish free copy of this order to both the parties.

(Dictated to the Stenographer, got it transcribed, typed by him and corrected by me, then pronounced in the Open Commission on 29th September 2023)


(RAMACHANDRA M.S.)
PRESIDENT


(NANDINI H KUMBHAR)
MEMBER


(SHRINIDHI.H.N)
MEMBER

Witness examined on behalf of the complainant by way of affidavit: Smt.Rajitha Kalprdha- Who being the complainant.

Documents produced by the complainant:

1	C1: Copy of Booking Estimate
2	C2: Copy of Bank statement
3	C3: Copies of email correspondence
4	C4: Copy of Legal notice dt.30.12.2022
5	C5: Postal Acknowledgement
6	C6: Copy of Discharge summary.

Witness examined on behalf of the OPs by way of affidavit: Nil

Documents produced by the OPs: Nil


(RAMACHANDRA M.S.)
PRESIDENT


(NANDINI H KUMBHAR)
MEMBER


(SHRINIDHI.H.N)
MEMBER

