

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, GURGAON-122001.

Consumer Complaint No.1032 of 2023

Date of Institution: 06.11.2023

Date of Decision: 17.05.2024

Harsh Rathi, resident of B-452A, Sushant Lok, Phase-I, Gurugram, 122009.

.....Complainant

Versus

M/s Sparta Gym, 2nd Floor Times Square, Block B, Sushant Lok-I, Gurugram.

.....Opposite party

Complaint under Section 35 of Consumer Protection Act, 2019.

**BEFORE: SHRI SANJEEV JINDAL, PRESIDENT.
MS. JYOTI SIWACH, MEMBER.
MS. KHUSHWINDER KAUR, MEMBER.**

Present: Ms. Nikita, Advocate for the complainant.
OP proceeded against ex-parte VOD 26.02.2024.

ORDER KHUSHWINDER KAUR, MEMBER.

Shorn off unnecessary details, briefly stated, it is the case of the complainant that on 19.04.2023, he purchased the membership of the OP-Gym after making a payment of INR 25,000/- (via UPI Transaction ID 310990524916) vide receipt **Annexure-I (Colly)**, being satisfied with the proposed services which were to be provided by the OP-Gym as per its pamphlets of the advertisement **Annexure-II**, but when he joined the Gym in question, he found that the facilities and the

equipments therein were not the ones as were promised to him, pursuant to which, he requested the OP-Gym for the refund of his deposited amount, consequent upon which, the OP-Gym vide its Gmail letter **Ex.C-7** dated 04.10.2023 informed the complainant that the request for refunding the amount of his membership fees had since been accepted and the process in respect thereof would take 15 days approximately. Accordingly, the complainant stopped attending the OP-Gym from 3rd October expecting a refund, but, thereafter, till the present date, the OP-Gym did not refund the membership fee of the complainant despite the repeated requests made by the complainant in that regard including the serving of the legal notice. Hence, this complaint.

In the end, the complainant prayed that the respondent/OP-Gym be directed to make the payment/refund of Rs.14,583/- along-with interest @ 15% p.a. from the promised date of refund i.e. w.e.f. 30.09.2023 till its actual realization. The complainant further prayed to direct the respondent to make the payment of Rs.25,000/- on account of mental and physical harassment suffered by him due to non-performance of the implied obligations and services promised by it along-with Rs.20,000/- as litigation expenses. Any other relief which deemed fit by this Court has also been prayed for by the complainant.

2. The OP preferred to be proceeded against ex-parte on 26.02.2024 by not bothering/opting to appear in this Court till 3.00 P.M despite having been served. Thereafter, the case was fixed for ex-parte evidence of the complainant to be adduced at his own responsibility.

3. On 22.04.2024, the complainant adduced his ex-parte evidence by way of tendering his own affidavit i.e. **Ex.CW1/A** and supporting documents **Ex.C-1 to Ex.C-8** and closed his evidence. Thereafter, the case was fixed for ex-parte arguments.

4. We have gone through the record on the file of this complaint, carefully and have heard the ex-parte arguments.

5. As stated above, the complainant in his ex-parte evidence has tendered his own affidavit i.e. **Ex.CW1/A** and other supporting documents **Ex.C-1 to Ex.C-8**. In his aforesaid affidavit, the complainant has reiterated the averments made by him in his pleadings as narrated above, almost, on the similar lines, in the same fashion, and, hence, the contents of the affidavit in question are not being reproduced here-in-after in order to avoid the repetition.

Even otherwise, the perusal of the documents placed on the record of this file by the complainant including the documents: **Ex.C-1 (colly)** i.e. Google Transaction ID which shows that the complainant had paid a sum of Rs.25,000/- to the OP-Gym, **Ex.C-2 (colly)** i.e. pamphlets of advertisement of the OP-Gym, **Ex.C-3** i.e. copy of chats denoting the break and the activities conducted and **Ex.C-4 to Ex.C-7** i.e. the email correspondence which took place between the parties, further, confirms the aforesaid assertions/submissions of the complainant.

6. There is nothing on the record of this file to disbelieve and discredit the

aforesaid ex-parte evidence of the complainant as the OP has preferred to be proceeded against ex-parte instead of defending the present lis.

Since, the OP in this case has been proceeded against ex-parte and there is no evidence on its behalf on the record of this file, so, on this score also the evidence produced on the record of this file by the complainant goes unrebutted, and, as such, this Commission does not find any reasons to disbelieve the same.

7. Thus, in view of our aforesaid discussions, the OP is hereby held guilty of severe deficiency in service. Resultantly, the present complaint is accepted with costs. Accordingly, the OP is directed to refund the amount of Rs.14,583/- to the complainant along-with interest @ 9% from the promised date of refund i.e. w.e.f. 30.09.2023 till its realization. Keeping in view the mental harassment, pain, agony and inconvenience caused to the complainant, the OP is further directed to pay compensation to the tune of Rs.15,000/- along-with litigation expenses amounting to Rs.11,000/-. The opposite party is directed to pay the aforesaid amount within 45 days from the date of uploading of this order after the expiry of 24 hours (one day) therefrom, failing which the amount will attract interest @ 12% per annum, for the same period, till actual realization.

8. If the order of this Commission is not complied with, then the complainant shall also be entitled to file the execution petition under Section 71(1) of the Consumer Protection Act, 2019 and in that eventuality, the OP may also be held liable for prosecution under Section 72 of the said act which envisages punishment with

imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than Rs.25,000/-, but which may extend to Rs.1,00,000/-, or with both. The copy of the order be supplied to the parties free of cost as per the rules. The Order be promptly uploaded on the website of this Commission. File be consigned to the record room, after due compliance.

Announced.
17.05.2024

(Jyoti Siwach)
Member

(Khushwinder Kaur)
Member

(Sanjeev Jindal)
President,
District Consumer Disputes
Redressal Commission, Gurgaon