

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
ERNAKULAM**

Dated this the 17th day of May, 2024.

Filed on: 05/05/2023

PRESENT

Shri.D.B.Binu

Shri.V.Ramachandran

Smt.Sreevidhia.T.N

President

Member

Member

C.C. NO.289/2023

COMPLAINANT

Amrutha K.A., D/o. Ajayan P.G., Kalathiparambil Kadebhagam, Vyasapuram Road, Palluruthy, Cochin - 682006

Vs

OPPOSITE PARTY

Beenu Balakrishnan, Cynosure, Room No 118, 2nd floor, DD Mile Stone, Kadavanthara Kochin-682020.

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 complainant contacted the opposite party to inquire about enrolling in a two-month offline English class. Beenu Balakrishnan of Cynosure responded with an offer that if the complainant joined immediately, a discounted fee of Rs. 9,000 would apply, otherwise it would be Rs. 11,000. The complainant decided to join and was assured of a 100% fee refund if dissatisfied, leading her to borrow money to pay the initial fee. However, after multiple failed communications and a lack of clarity on class details, the complainant faced unprofessional behaviour from the institution's staff, including being told not to call and a refusal to refund her fees when she expressed disinterest in additional courses. This escalated to the point where the institution cut off contact completely, prompting the complainant to file a police complaint. Despite police intervention, the institution remained uncooperative. As an accountant, Amrutha

lost a job opportunity and valuable study time due to these issues. She has sought resolution and compensation for her financial losses and time wasted.

2) Notice

The commission sent notice to the opposite party. The opposite party subsequently appeared and submitted their version.

3) THE VERSION OF THE OPPOSITE PARTY

The opposite party contends that the complaint filed is baseless and designed to tarnish the reputation of the opposite party, which has been operational since 2004. According to the opposite party, the institution boasts a longstanding reputation for delivering excellent results in various training courses, including communicative English, among others. The opposite party states that the actual fee for the offline communicative English course is Rs. 11,000 for a two-month duration, with a discount of Rs. 2,000 offered if booked within 24 hours of inquiry. Upon the complainant's request for further discounts due to financial constraints, the fee was reduced to Rs. 8,000, and she enrolled with an initial payment of Rs. 4,000 on February 17, 2023.

The opposite party explains that although the institute does not typically allow part payments for discounted fees, an exception was made for the complainant to pay the balance within a week—an agreement that was not fulfilled, leading to significant losses for the institute as the slot was held open for four months without taking other admissions. The opposite party denies making any false promises, asserting that only the benefits of the course were explained, and significant accommodations were made to help the complainant attend the class.

Further, the opposite party alleges that Amrutha did not attend the arranged classes and instead used violent language to demand a refund. When the police were involved, they reportedly recognized the institute's goodwill and suggested that the complainant proceed with a consumer case if she wished. The opposite party strongly refutes any allegations of multiple calls and offers

discounts as false and claims that these accusations are intended to damage the institution's image.

The institution claims a loss of approximately Rs. 33,000 for the individual class slot, estimating a potential loss of Rs. 1,70,000 had the slot been allocated to a group class. Consequently, the opposite party requests that the commission requires the complainant to pay the remaining Rs. 3,500 for the classes attended, compensate for the estimated loss and dismiss the complaint to protect the institution's reputation.

3) . **Evidence**

The complainant had filed 2 documents that were marked as Exhibits-A-1 and A-2.

Exhibit A1: Screenshot of the Google Pay transaction showing Rs. 4000 paid by the complainant to the opposite party as the coaching fee.

Exhibit A2: The copy of the poster published by the Opposite Party.

The Opposite Party had filed a proof affidavit and 6 documents that were marked as Exhibits-B-1 to B-6.

- **Exhibit B1:** Copy of WhatsApp chats between the opposite party and the complainant from February 22, 24, 27, and 28, 2023.
- **Exhibit B2:** Voice recordings of the sessions focused on increasing concentration, dated March 2 and March 3, 2023.
- **Exhibit B3:** Shared text and voice messages between opposite party and the complainant, dated March 11, 2023.
- **Exhibit B4:** Documentation proving the registration of Cynosure Institute with the Central Board of Excise & Customs.
- **Exhibit B5:** Certification from IDP Australia, Test Centre Planet Edu, recognizing the institute as an authorized center for conducting IELTS training.
- **Exhibit B6:** Trade mark registration certificate from the Government of India.

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

- i) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- ii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- iii) Costs of the proceedings if any?

5) **The issues mentioned above are considered together and 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. Screenshot of the Google Pay transaction showing Rs. 4000 paid by the complainant to the opposite party as the coaching fee (**Exhibits A-1**). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 2019, (**Point No. i**) goes against the opposite party.

The complainant approached Cynosure Institute, operated by Beenu Balakrishnan, to inquire about a two-month offline English course. The complainant was offered a discounted fee if enrollment occurred immediately. Despite assurances of a 100% refund if dissatisfied, the complainant experienced multiple communication failures and a lack of class clarity, leading to severe unprofessional treatment, including being instructed not to contact the institution, and a subsequent refusal to refund fees upon expressing disinterest in further courses. This resulted in significant personal and professional setbacks for the complainant, including lost job opportunities and study time.

After considering the submissions made by the complainant, the responses from the opposite party, and the evidence presented before this Commission, it becomes imperative to address the core issues identified during the proceedings.

A. Deficiency in Service and Negligence: Under the Consumer Protection Act, 2019, a "deficiency" means any fault, imperfection, shortcoming, or inadequacy in the quality, nature, and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise about any service. The refusal of the institute to initiate a refund despite the promises made constitutes a deficiency in service and an unfair trade practice.

The non-adherence to committed service quality that affects consumers negatively is a clear deficiency in service. Furthermore, the institute failed to provide clear information about class schedules, despite receiving payment.

The conduct of the institute, as described, meets the criteria of both negligence and deficiency in service. By not delivering the promised services and cutting

off communication, the institute breached the consumer's trust and the contractual agreement implied by the payment of fees.

B. Liability of the Opposite Party: The institute is held liable for not fulfilling its service obligations and for the lack of professionalism in handling the complainant's reasonable requests. This liability is compounded by the adverse impact on the complainant's personal and professional life.

The institute's arguments focus heavily on reputational defence and alleged financial losses due to reserved class slots. However, these do not excuse or justify the failure to provide the paid-for service or the non-compliance with the refund policy explicitly communicated to the complainant.

We determine that issue numbers (i) to (iii) are resolved in the complainant's favour due to the significant service deficiency and the unfair trade practices on the part of the opposite party. Consequently, the complainant has endured considerable inconvenience, mental distress, hardships, and financial losses as a result of the negligence of the opposite party.

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

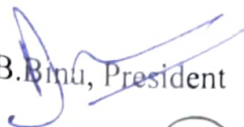
Hence the prayer is partly allowed as follows:

- I. The Opposite Party shall refund to the complainant ₹4,000 (Rupees Four Thousand Only), which is the amount paid by the complainant to the Opposite Party as a fee, as per **Exhibit A-1**.
- II. The Opposite Party shall pay ₹10,000 (Rupees Ten Thousand Only) to the complainant as compensation for the loss of job opportunities and mental agony caused by the Opposite Party's failure to provide the promised service. Additionally, compensation for loss of study time and inconvenience caused to the complainant.
- III. The Opposite Party shall also pay the complainant ₹5,000 (Rupees Five Thousand Only) towards the cost of the proceedings.

The Opposite Parties are jointly and severally liable to fulfil the aforementioned directives within 45 days of receiving this order. Should they fail to comply, the amounts specified in points (i) and (ii) will accrue interest at

9% per annum, calculated from the date of filing the complaint (05.05.2023) until the date of payment.

Pronounced in the Open Commission on: this the 13th day of May 2024


D.B. Bina, President


V. Ramachandran, Member


Sreevidhya T.N., Member

Appendix

Complainant's Evidence

Exhibit A1: Screenshot of the Google Pay transaction showing Rs. 4000 paid by the complainant to the opposite party as the coaching fee.
Exhibit A2: The copy of the poster published by the Opposite Party.

Opposite party's Exhibits

Exhibit B1: Copy of WhatsApp chats between myself and the complainant from February 22, 24, 27, and 28, 2023.
Exhibit B2: Voice recordings of the sessions focused on increasing concentration, dated March 2 and March 3, 2023.
Exhibit B3: Shared text and voice messages between myself and the complainant, dated March 11, 2023.
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Despatch date:

By hand: By post

kp/

CC No. 289/2023

Order Date: 13/05/2024