

**IN THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION, KOLLAM**

PRESENT

SMT. S.K.SREELA, B.A.L, LL.B, PRESIDENT

SMT.SANDHYA RANI, BSC, LL.B, MEMBER

SRI. STANLY HAROLD, BA, LL.B, MEMBER

C.C. No. 26/ 2023

ORDER DATED 21ST DAY OF AUGUST , 2023

BETWEEN

Vishnu.R : Complainant
S/o Sri.N.Ramakrishnan
Gayathri, PN-58,
Thirumullavaram P.O
Kollam-12.
[By Adv.Vishnu.R]

AND

1. Mr.Gopinathan : Opposite parties
The Proprietor
G-max Cinemas,
Bishop Jerome Nagar
Chinnakada,
Kollam-691001.
2. The Manager
G-max Cinemas
Bishop Jerome Nagar, Chinnakada
Kollam-691001.

ORDER

S.K.SREELA, PRESIDENT

1) The crux of the complaint is as follows: The complainant had booked 2 tickets for watching the English 3D movie '*Avatar: The Way of Water*' on

06.01.2023, through 'Book my Show' application installed in his mobile phone. He paid an amount of Rs.367.20 including ticket charges and convenience fee for 2 tickets. Apart from the ticket charges and convenience fee already paid by the complainant, the opposite parties charged him an additional amount Rs.30/- each for 2 glasses for providing the 3D glasses which were necessary for watching the movie. Charging an amount of Rs.60/- or any amount, as rent for the spectacles amounts to restrictive trade practice and fleecing. When it was informed to the person issuing the voucher that any such collection of extra amounts is illegal and unauthorized, it was informed that such an amount is collected as rent for 3D glasses for all the 3D movies.

2) Complainant further pleads that, if 3D glasses were necessary for the better viewing of a 3D movie, it is imperative that they are supplied for free to all the viewers. The 3D spectacles were kept in plastic covers after use and were issued to the viewers of the next show without being sterilized which might cause serious hygienic problems to the people using them. That the opposite parties collected the additional amount from all the viewers who were ignorant about the fact that charging any extra amount for providing 3D glasses for viewing 3D films is unauthorized. The action of the Proprietor amounts to a serious violation of the rights of the consumers. The mandatory collection of such additional charges as rent for 3D glasses over and above the ticket charges from customers amounts to fleecing. That the above acts of the opposite parties amount to unfair trade practice, gross deficiency in service and fleecing, thus extracting unlawful profit from customers. Hence this complaint.

3) The opposite parties duly acknowledged the notice from this Commission. Despite a representation made on their behalf on 5th April, 2023, they subsequently remained absent and failed to submit their version. Consequently, the opposite parties were declared *exparte*. The complainant, on the other hand, submitted an affidavit in lieu of chief examination, along with Exhibits P1 and P2

to substantiate his case. Importantly, the complainant's affidavit remains uncontested as no cross-examination has taken place.

4) The following issues are raised for consideration:

(i) *Whether the opposite parties have engaged in any unfair trade practices.*

(ii) *Whether there is any deficiency in the services provided by the opposite parties, warranting compensation.*

(iii) *Relief and associated costs.*

5) **Point No.(i) to (iii):** The primary concern of the complainant revolves around their reservation of two tickets for the English 3D movie "*Avatar: The Way of Water*" scheduled for January 6th, 2023. He made the booking through the '*Book my Show*' app on his mobile device and paid a total of Rs. 367.20, covering ticket charges and convenience fees for both seats. In addition to the previously settled expenses, the opposite parties imposed an extra fee of Rs. 30/- per pair of 3D glasses – essential for viewing the film. That this charge of Rs. 60/-, as a rental cost for the eyewear, is recognized as a restrictive trade practice and a form of exploitation.

6) The complainant argues that when the complainant raised concerns about the legality and legitimacy of this extra charge, he was informed by the voucher issuer that it is a standard rental fee applied to 3D glasses for all such movies. The complainant contended that if 3D glasses are necessary for optimal enjoyment of 3D films, they should be provided without charge to all viewers. Nonetheless, the glasses were stored in plastic covers post-use and then passed on to the audience of the subsequent screening without proper sterilization, raising hygiene worries. The opposite parties levied this additional cost on all consumers, who were unaware of the unapproved nature of charging extra for 3D glasses. This action by the Proprietor was perceived as a severe infringement on consumer rights. In the process, the Proprietor accrued money from customers without offering any meaningful advantage in return. Such practices by individual theater

owners could exploit consumers and are not in their best interests. The obligatory collection of these additional fees as a rental charge for 3D glasses, on top of ticket expenses, from unsuspecting customers, can be equated to unethical profiteering.

7) Furthermore, the complainant argued that the 3D glasses rent is added to the ticket fees without paying any entertainment tax. Levying Rs. 30/- as a rental charge for 3D glasses is identified as a restrictive trade practice and an unfair business practice that has legal consequences. The actions of the opposite parties are classified as unfair trade practice, a significant service shortfall, and a type of unethical profit-making from unsuspecting customers. Therefore, this complaint has been filed by the complainant.

8) We have thoroughly gone through the complaint and examined the documents presented by the complainant to substantiate his claims. Ext.P1 serves as evidence that the complainant procured two tickets, making a payment of Rs. 320/- along with a convenience fee of Rs. 47.20/-. This cumulative transaction amounted to a total of Rs. 367.20/-. The 1st opposite party is the Proprietor of the cinema theatre named 'G-max Cinemas' in Bishop Jerome Nagar, Kollam. As per the complainant, this individual is reported to own various theaters across Kerala and is engaged in the business of screening movies in these theaters. The 2nd opposite party is the Manager of the theatre owned by the 1st opposite party.

9) Based on Ext.P1, it is evident that the featured film is presented in a 3D format. Supporting this, Ext.P2, submitted by the complainant, substantiates the claim that the opposite parties imposed an extra charge of Rs.30/- per pair of glasses essential for viewing the 3D movie. This additional amount was collected for the provision of the necessary 3D glasses, an integral component for watching the 3D movie. When a movie is released in a 3D format, the provision of compatible spectacles is integral to ensuring a complete and immersive viewing experience. Not providing the necessary equipment is akin to offering an incomplete tool for a specific purpose. This underscores the consumer's rightful expectation that all essential elements should be provided to fully enjoy the

product they have paid for. The complainant's pursuit of justice in the face of a seemingly minor issue highlights the broader importance of consumer rights protection. This case emphasizes the need for suppliers to fulfill their commitments comprehensively, ensuring that consumers receive the complete and satisfactory product or service they have paid for.

10) The conspicuous absence of any defense raised by the opposite parties in response to the allegations presented in the complaint raises significant concerns. In instances where justifications for collecting the additional amount were indeed valid, one would anticipate the opposite parties to provide a comprehensive explanation to clarify their actions. The absence of a counterargument can be perceived as indicative of an inability to provide a credible explanation that would stand up to scrutiny. Consequently, the assumption that the opposite parties engaged in unfair and restrictive trade practices gains merit.

11) At this point, it is imperative to refer to Section 2(41) of the Consumer Protection Act of 2019, which provides the following definition:

2(41): "Restrictive trade practice" means a trade practice which tends to bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include—

(i) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;

(ii) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent for buying, hiring or availing of other goods or services;

12) Restrictive trade practices encompass any trade practice that obligates a consumer to purchase, rent, or use certain goods or services as a prerequisite for

obtaining other goods or services. In this instance, the opposite parties mandated the complainant to pay Rs. 30 each for the 3D glasses towards rent, which unambiguously falls under the purview of section 2(41) of the Act. This unquestionably constitutes an unfair trade practice on the part of the opposite parties. In this case, the failure on the part of the opposite parties to offer any counterpoint could be seen as an indirect admission, that the charged amount for the 3D glasses potentially lacks reasonable justification. This can be construed as a form of restrictive trade practice, where the consumer is left without valid reasoning for the imposed charges.

13) Similarly, restrictive trade practices involve actions that hinder healthy competition in the market, resulting in unfair advantage for one party. By not addressing the allegations or providing clarity on the additional charges, the opposite parties inadvertently create an environment where consumers are left with little choice but to accept the imposed fees. This could potentially lead to an exploitation of consumers' lack of information and options. The opposite parties' silence can imply a failure to take responsibility for their actions or to provide transparent communication with their consumers. Such conduct could be interpreted as a breach of consumer trust and an unwillingness to address valid grievances.

14) To substantiate the complaint, the complainant has drawn upon the ruling of the Hon'ble Kerala State Consumer Disputes Redressal Commission in the case of *Ravikrishnan N.R. Vs The Proprietor, Remya Theatre*, in Appeal Nos. 431/2016 & 533/2016 dated 09-04-2021, wherein the complainant had raised a similar argument, contending that levying Rs. 30/-, which exceeded half the ticket cost, as a rental fee for the 3D spectacles, constituted a restrictive trade practice that was legally actionable. The Hon'ble KSCDRC observed that;

*“... Therefore, extracting an amount of Rs.30/- as rent for similar spectacles can only be termed as excessive exploitation....
Therefore, the finding of the District Forum that charging of Rs.30/-*

as rent for the 3D spectacles was unjustified, cannot be found fault with. ... Rs.30/- charged as rent for the 3D spectacles was admittedly being recovered over and above the ticket charges, for which no entertainment tax has admittedly been paid."

15) In the aforementioned case, the Hon'ble Kerala State Consumer Disputes Redressal Commission reached the following conclusion:

"We find that the action of the opposite party in charging rent @ Rs. 30/- per 3D glasses made available for viewing the 3D movie amounts to a serious violation of the rights of the consumer. In the process, the opposite party would have extracted a tidy sum of money, without providing any consequential benefit to the consumer who has availed the use thereof. If 3D glasses are necessary for the better viewing of the 3D movie, it is imperative that the said glasses are supplied free of cost for the use of the viewers. Extraction of such amounts by individual theatre owners at their whims and fancies would only give room for exploitation of the consumers. We are, therefore, of the considered view that the amount of compensation and punitive damages granted by the District Forum are justified and reasonable..."

16) We ascertain that the aforementioned ruling is directly pertinent to the present case at hand. In essence, the conspicuous absence of any defense or substantiation from the opposite parties in response to the raised allegations remains a pivotal issue of contention. Hence the act of the opposite parties in collecting additional charges for the 3D glasses amounts to restrictive trade practice and underscores the potential involvement in unfair and restrictive trade practices. This silence could be interpreted as an attempt to circumvent accountability and transparency, at the expense of consumer rights and trust.

17) Consumers who have been subjected to unjustified charges, such as the rental fees for 3D glasses, experience a range of negative emotions and

challenges. The emotional distress, suffering, and negative sentiments experienced by the complainant who has fallen victim to deceptive practices, such as the charging of rental fees for 3D glasses, hold significant importance. In the context of charging rental fees for 3D glasses, the complainant, who has been charged for an essential component of his movie experience, definitely had endured mental agony and emotional distress due to the deficient acts of the opposite parties for which he has to be compensated.

18) In view of the above discussions, we find that the complainant has succeeded in proving his complaint. The complainant's claims for relief are deemed justified.

19) The commendable action taken by the complainant in seeking recourse from the Commission to address his grievance, despite the seemingly modest amount involved, deserves recognition. Despite the relatively small sum, the complainant perceives himself to have been deceived by the opposite parties, prompting him to pursue this matter before the Commission. His decision to contest the issue, even for a seemingly minor sum, speaks volumes about his determination to uphold his consumer rights. This situation raises a pertinent point about consumer empowerment and the significance of even seemingly trivial matters. The complainant's willingness to challenge the wrongful imposition of charges exemplifies the importance of safeguarding consumer rights, regardless of the monetary value at stake. Such actions serve as a reminder that consumer protection extends to all transactions, irrespective of their scale.

20) From the foregoing, the complaint is allowed. The opposite parties are directed to refund the amount of Rs.60/- to the complainant along with an amount of Rs.10,000/- towards compensation and Rs.2,000/- towards costs of the proceedings within a period of 45 days from the date of receipt of the order failing which the amounts aforementioned shall carry interest @ 12% from the date of order till realization.

Dictated to the Confidential Assistant Smt. Deepa.S transcribed and typed by her corrected by me and pronounced in the Open Commission on this the 21st day of August, 2023.

**S.K.SREELA :Sd/-
(President)
S.SANDHYA RANI :Sd/-
(Member)
STANLY HAROLD :Sd/-
(Member)
Forwarded/by Order**

Senior Superintendent

INDEX

Witnesses Examined for the Complainant:-Nil

Documents marked for the complainant

Ext P1: Copy of online booking details.

Ext P2: Voucher dated 06.01.2023.

Witnesses Examined for the opposite party:-Nil

Documents marked for the opposite party:-Nil

**S.K.SREELA :Sd/-
(President)
Forwarded/by Order**

Senior Superintendent