

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAMDated this the 30th day of January, 2025.

Filed on: 17/11/2023

PRESENT

Shri.D.B.Binu

Shri.V.Ramachandran

Smt.Sreevidhia.T.N

President

Member

Member

C.C No. 849/2023**COMPLAINANT**

1. Stalin. N. Gomaz, S/o Nobert T Gomez, 48F, Railway Quarters, M.M. Road, Ernakulam North.S.O, Pin-682018

(Adv. Mishal.M.Dasan, Flat No. 55/2332, Cheruparambath apratments, Mattalil Temple Road, Kadavanthra.P.O, Pin-682020)

Vs

OPPOSITE PARTY

Byju's Learning App, Thapasya Building, 4th Floor, Thapasya Road, Infopark Campus, Infopark, Kochi, Kerala, Pin-682030

F I N A L O R D E R**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, the father of an 8th standard student, was contacted by the opposite party, a learning support app service provider, on 19/08/2023. Despite initially refusing the service, the complainant faced persistent calls from the opposite party, pressuring him to enrol his child on a trial basis. The opposite party assured him that if his child were not satisfied after attending two or three trial classes, a full refund of Rs. 16,000/- would be provided.

On 20/08/2023, the opposite party scheduled a trial class, but due to short notice, the complainant's son could not attend. On 27/08/2023, the opposite party insisted that the complainant send an ID card of his son and his Aadhaar card. To avoid continuous harassment and believing in the

refund assurance, the complainant paid Rs. 16,000/- via G-Pay. The payment is evidenced by a transaction screenshot and a bank statement.

After attending the trial class, the complainant's son found the service unsatisfactory and decided not to continue. The complainant promptly informed the opposite party, but there was no response. After three weeks, the opposite party demanded an additional Rs. 16,000/- and continued making persistent phone calls. Despite repeated emails (Document No.3 series) stating his son's disinterest, the harassment continued, causing immense mental distress to the complainant and his family.

The complainant alleges unfair trade practices and negligence by the opposite party. He seeks relief directing the opposite party to stop making further demands, refund Rs. 16,000/- with 12% interest, and pay Rs. 1,00,000/- as compensation for mental distress, and Rs. 20,000/- for legal expenses.

2. NOTICE:

The Commission issued a notice to the opposite party on 20.03.2024, which was duly received by the opposite party on 30.05.2024. However, the opposite party failed to file their version within the statutory period. As a result, they were set ex-parte by the Commission.

3. EVIDENCE:

The complainant submitted a proof affidavit along with three documents. The documents in the complaint are marked as Exhibits A1 to A3.

- **Exhibit A-1:** Screenshot of the G-Pay payment for Rs. 16,000/-

- **Exhibit A-2:** True copy of the complainant's bank statement reflecting the transaction.
- **Exhibit A-3 series:** Printouts of email communications regarding the complainant's request for a refund and non-interest in the service.

4. Points for Consideration:

- i) Whether the complaint is maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice by the opposite parties?
- iii) If so, whether the complainant is entitled to any relief?
- iv) Costs of the proceedings, if any?

5. ARGUMENT NOTE FILED BY THE COUNSEL FOR THE COMPLAINANT

- A. The complainant is the father of an 8th-standard school-going student. On 19/08/2023, the opposite party contacted him over the phone, introducing themselves as the service provider of a learning support app, which they claimed would be highly beneficial for his child. The complainant clearly stated that he did not want the service.
- B. However, the opposite party persistently contacted the complainant from various numbers, pressuring him to purchase their service on a trial basis. They assured him that if his child was not willing to continue after attending two or three trial classes, the full amount of Rs. 16,000/- paid by the complainant would be refunded. The opposite party sent a message confirming a Zoom meeting (trial online class) on 20/08/2023, but due to the short notice, the complainant's son could not attend. On 27/08/2023, the opposite party insisted that the complainant send a

photo of his son's ID card and his Aadhaar card. To avoid continuous harassment and believing in the refund assurance, the complainant paid Rs. 16,000/- via G-Pay. The screenshot of the transaction is marked as **Exhibit A-1**, and the bank statement confirming the payment is marked as **Exhibit A-2**.

- C. After attending the trial class, the complainant's son found the online classes unsuitable and decided not to continue. The complainant immediately informed the opposite party, but there was no response for a few days. However, after three weeks, the opposite party demanded another Rs. 16,000/- via G-Pay and continued making persistent phone calls. This caused the complainant and his family immense mental distress.
- D. The complainant repeatedly informed the opposite party that his son was no longer interested and that no further payments would be made. He also asserted that, per the opposite party's assurance, they were obligated to refund the Rs. 16,000/- already paid.
- E. The complainant communicated his son's disinterest multiple times via email, yet the opposite party continued daily harassment through phone calls, disrupting the complainant's family life. The printouts of the email communications are marked as **Exhibit A-3 series**. This persistent harassment and mental distress amount to **unfair trade practices and willful negligence** on the part of the opposite party.
- F. The opposite party has not filed a version in the case and has remained **ex parte**.

Therefore, in the interest of justice, this Commission may be pleased to allow the complaint as prayed.

We have meticulously considered the detailed submissions of the complainant, as well as thoroughly reviewed the entire record of evidence, including the argument notes.

We have also noticed that Notices were issued from the Commission to the opposite party but did not file their version. Hence the opposite party set ex-parte. The complainant had produced three documents marked as Exbt.A-1 to A-3. All in support of his case. However, the opposite party did not make any attempt to appear in the case and participate in the above proceedings before this commission or set aside the ex-prate order passed against it. It was further stated that this illegal, arbitrary and unjustified act of the Opposite Party amounted to deficiency in service, indulgence in unfair trade practice, and caused mental agony and hardship to the complainant.

The opposite parties' conscious failure to file their written version in spite of having received the Commission's notice to that effect amounts to an admission of the allegations levelled against them. Here, the case of the complainants stands unchallenged by the opposite party. We have no reason to disbelieve the words of the complainant. The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).

i) Maintainability of the Complaint

The complaint was filed under **Section 35 of the Consumer Protection Act, 2019**, which provides for the right of a consumer to file a

complaint regarding deficiency in service and unfair trade practices. The complainant, being a consumer, had engaged with the opposite party for an online educational service, and the matter falls within the purview of the Consumer Protection Act. Hence, the complaint is **maintainable** before this Commission.

ii) Deficiency in Service and Unfair Trade Practices

The complainant has alleged that the opposite party persistently coerced him into purchasing a learning support service, despite his initial refusal. The opposite party assured the complainant that if his child was dissatisfied after attending the trial classes, a full refund of Rs. 16,000/- would be provided. However, despite informing the opposite party about his son's disinterest, the complainant was neither refunded nor relieved from further payment demands. Instead, the opposite party harassed him with continuous calls, demanding additional payments.

This constitutes a **deficiency in service** as defined under **Section 2(11) of the Consumer Protection Act, 2019**, which includes failure to provide services as promised, resulting in mental agony and financial loss to the consumer. Furthermore, the **repeated harassment and coercion** by the opposite party amounts to **unfair trade practice** under **Section 2(47) of the Act**, which prohibits misleading statements and coercion to force a consumer into a contract.

- **The failure to provide a refund as promised amounts to a deficiency in service.** In the present case, the opposite party gave a false assurance of a refund but failed to honour the commitment.

- **The persistent harassment through continuous phone calls demanding payment constitutes a deficiency in service and an unfair trade practice.** In the complainant's case, the opposite party continued to harass him despite clear communication of his disinterest.
- **Failing to refund the amount within a reasonable time frame constitutes both a deficiency in service and negligence.**

Upon reviewing the evidence submitted, including **Exhibits A-1 to A-3**, it is evident that the opposite party failed to refund the complainant as promised, engaged in repeated harassment, and demonstrated utter disregard for consumer rights. Furthermore, the opposite party did not file a version despite receiving due notice and remained ex-parte throughout the proceedings. This constitutes an implied admission of the allegations made by the complainant.

iii) Liability of the Opposite Party

The opposite party is **liable** under **Sections 2(11) and 2(47) of the Consumer Protection Act, 2019**, for deficiency in service and unfair trade practices. Their conduct also violates **consumer rights** by failing to provide a service fairly and reasonably.

Upon reviewing the evidence, including **Exhibits A-1 to A-3**, it is clear that the complainant was not only denied the refund that was rightfully promised but was also subjected to persistent harassment. Such actions reflect a complete disregard for consumer rights and fair business practices. What makes this case more concerning is the opposite party's silence—despite due notice, they chose not to respond or defend

themselves, remaining ex-parte throughout the proceedings. This silence speaks volumes and, in legal as well as moral terms, amounts to an implied admission of wrongdoing. Justice is not just about legal formalities; it is about fairness, accountability, and ensuring that individuals are not left helpless against unfair trade practices.

We determine that issue numbers (I) to (IV) are resolved in the complainants' favour due to the significant service deficiency 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 Party is liable to compensate the complainant.

Hence, the prayer is allowed as follows:

- I. The opposite party shall refund ₹16,000/- (Rupees Sixteen Thousand Only) to the complainant, as evidenced by Exhibit A1.
- II. The opposite party shall pay ₹25,000/- (Rupees Twenty-Five Thousand Only) as compensation for the complainant's mental agony, financial loss, physical hardship, and suffering caused by the deficiency in service and unfair trade practices.
- III. The opposite party shall pay ₹10,000/- (Rupees Ten Thousand Only) to the complainant towards the cost of the proceedings.

The opposite party is liable to comply with the above orders within 45 days from the date of receipt of this order. Failure to make payments

under Points I and II within the stipulated time will attract an interest rate of 9% per annum from the date of filing the complaint (17.11.2023) until the complete realization of the amount.

Pronounced in the Open Commission this the 30th day of January 2025

D.B. Bmu, President

V. Ramachandran, Member

Sreevidhya T.N, Member

APPENDIX

Complainant's Evidence

- 1. Exhibit A-1:** Screenshot of the G-Pay payment for Rs. 16,000/-
- 2. Exhibit A-2:** True copy of the complainant's bank statement reflecting the transaction.
- 3. Exhibit A-3 series:** Printouts of email communications regarding the complainant's request for a refund and non-interest in the service

Opposite Parties' Evidence:

NIL

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