

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-III: WEST
GOVT. OF NCT OF DELHI
150-151, C-BLOCK, COMMUNITY CENTRE, PANKHA ROAD, JANAK PURI
NEW DELHI-110058**

Complaint Case No. 350/2022

IN THE MATTER OF:

ARUN KUMAR TAKKAR A-803,
GOKUL APARTMENT, SECTOR-11,
DWARKA, NEW DELHI-110075
Complainant

VERSUS

1. THE BODY CARE
THROUGH ITS PROPRIETOR DIVYA SOOD

2. Ekta, Center Manager,
THE BODY CARE

3. DR. SEEMA JAIN
ALL AT: A-15, VISHAL ENCLAVE,
1ST FLOOR, RAJOURI GARDEN,
NEW DELHI-110027

Opposite parties

**DATE OF INSTITUTION: 06.09.2022
JUDGMENT RESERVED ON: 28.10.2024
DATE OF DECISION: 21.11.2024**

CORAM

**Ms. Sonica Mehrotra, President
Ms. Richa Jindal, Member
Mr. Anil Kumar Koushal, Member**

**Present: Complainant in person
OP ex parte.**

ORDER

Per: Anil Kumar Koushal,

Succinctly put, facts of the present complaint are as under:

1. Complainant submits that he required certain treatment for Scar on his face which was prominently visible. The Complainant had read about various advertisements in respect of OP No.1 company which was engaged in providing services related to Beauty Treatment and Slimming through surgical process. According to him, OP No.2 has been working as a public relation officer at the customer care Centre of OP No.1 whose job was to convince the customers to undergo the required treatment in terms of misleading facts treated to be true and OP No.3 is the doctor giving treatment as per the services required by the Complainant in OP No.1 clinic.

2. According to complainant, OP No.2 persuaded and convinced him for the Hair and Fat programme which could be 100% beneficial to the Complainant and assured him that after taking the Hair, Face and Fat treatment programme it would ultimately give the Complainant positive and everlasting impression for the OPs. Based on the alleged facts about the treatment and services, OP No.2 with consent of OP No.1 made a package for the required treatment which could have been completed within 7 to 8 months with number of sitting and the schedule of each treatment was proposed as follow:-

A. Face:

- a. Brightening Firming-3 sittings
- b. Binding
- c. Melano-5 sittings
- d. Glass Look-2 sittings
- e. Forehead
- f. PRP

B. Hair:

- a. Stem Cell Therapy-5 sittings
- b. Meso Scalp-5 sittings

- c. PRP-5 Sitzings
- d. Derma Rollen-5 sittings

C. Weight-with cool sculpting machine approved by F.D.A of USA

- a. Fat-X-2 sittings
- b. Prob-2 Sitzings
- c. Sport Reduction-5 sittings
- d. Tuck-5 sittings

For this purpose a card was received by the Complainant from the OPs showing the above stated number of sittings.

Complainant further states that for the aforementioned sittings of treatment, OP No.1 demanded an advance payment of Rs.3,00,000/- for complete package which the Complainant in good faith paid to OP No.1. Thereafter OP No.1 through OP No.3 started giving treatment to the Complainant in accordance with the package sitting details as mentioned below:-

S.No.	Date	Treatment
1.	14.11.2021	Fat Treatment
2.	20.11.2021	Hair-PRP
3.	01.12.2021	Fat Treatment
4.	08.12.2021	Hair Meso
5.	18.12.2021	Face PRP + Brightening firming
6.	18.01.2022	Maleno brightening Face and Hair PRP

This way the Complainant has availed 6 sittings given by the OP No.1 out of the total sitting as described in the contracted package.

3. Complainant states that unfortunately, soon after the 5th sitting conducted by the OPs, he started feeling lot of pain over his face, swelling in mouth and lumps and blister over his face which also got worst with time due to the above services for which an adverse reaction has occurred on Complainant's face and he was restrained to go for any work and to meet any person for which he has suffered mental trauma and agony in terms of choosing the treatment in the hands of the OPs.

4. According to Complainant, he made all efforts to give information to OP No.3 through OPs 1 and 2 but OP No.3's contact details were not shared as it was told that it is against OP No.1 policy. The Complainant even sent message to OP No.1 through its staff Sukaniya @ Kajal Pandey on mobile No.8539020452 via whatsapp for the contact details of OP No.3 but no response was received from OP No.1. The Complainant also shared his photographs of cracks, lumps and blisters and other injuries on his face to OP No.1 through its staff named above on her mobile phone through Whatapps, but even then no seriousness was shown towards injuries suffered by the Complainant. It is very shocking that there was no end of pain and sufferings faced by the Complainant which categorically reveals the deficiency of service on the part of OPs for which they had received lump sum package charges in advance. The Complainant then complained about his suffering and pain due to the treatment conducted by OP No.1 over his face to proprietor of OP No.1 via whatsapp chat dated 24.12.2021 on 9810992714 as under:

"Good Evening Divya Mam

I am writing this message with a very sad heart. As you know I had a face binding procedure on Saturday and you were also there with me. Appreciate!!!

You know very well how much pain that process caused me and I took the medicine your doctor prescribed. Since that day I was struggling with my health, today I am able to touch my face which is still hurting at various points.

My face was full of lumps, blisters and marks of swallowing, I could not show it to anyone and was not able to go to office. On Tuesday I requested to speak to the doctor who did this procedure but I could not get her number. I was told that you cannot be shared it, as per your policy. Noted. Finally I have to consult my doctor and I showed him my face on VC and shared the medicine I am taking. He was surprised to learn that I was taking steroids which needed to be taken under medical supervision. And the said medicine should be written on the doctor's letter head.

I trusted you guys as Chitra recommended. I will talk to her on this later. I thought you guys were true and different from others but I was wrong, I have paid a hefty amount of three lakh rupees and see what I am getting in return? To be honest, you don't do justice to the service industry you are in.

God Bless You.

Will meet you soon for the balance services's cost and understanding.

Take care

ArunTakkar"

However, she did not respond to the whatsapp message of the Complainant.

5. Complainant submits that the conduct of OPs elaborated above categorically shows that they owe no accountability with respect to pain, suffering, agony and the hardship faced by the Complainant for which Complainant tried his best to convey to the OPs to come out of the suffering but the deliberate negligence on the part of OPs and specifically not sharing doctors phone number i.e. of OP No.3 is totally unethical, unlawful and unjust in the eye of law. It is very surprising that so long as the OPs had not received the full payment, they were totally accountable and extended all the assurances that the Complainant like people fall under the allurements and misrepresentation of OPs, which is totally unfair trade practice as the OPs used to give the advertisement in general and allured the customers including

the Complainant. This had convinced the Complainant not to continue with the treatment further in the hands of OPs and sought refund of balance payment which the OPs have received in terms of total package. However, it is very surprising that the OPs again tried their best to allure the Complainant, assuring best treatment with special care for which 18.01.2022 was fixed for further treatment. However, again on taking treatment on 18.01.2022 Complainant requested for the contact number of OP No.3 which was shared very reluctantly. Again on taking treatment new cracks, lumps on the face of Complainant had developed which created lots of pain, whereupon Complainant made Complaint to OP No.3 on her contact No. 9899338662 and she called on Complainant at her clinic to clear all the enquiries in the mind of Complainant. The Complainant made complaint to her as under:-

"Hi

Good Morning Hope you are doing well! Need to ask something.

1. Last time we did PRP, did we mix meso on the scalp and melano on the face?

2. What brightening Firming and glass look?

3. It still hurts with cracks when I rub the face. How long will it take for this pain to go away"

4. No noticeable changes are visible, are we doing the correct procedure or do we need to do something else. The mark is still there, no improvement.

Please let me know when we can talk about this. Will call you accordingly.

Arun".

6. Complainant further states that he visited office of OP No.1 on 27.01.2022, where he was shocked to hear from the OPs that the PRP treatment is not working on him and he was required to go for hair transplant and more facial treatment for

which an additional cost of Rs.2,30,000/- will be charged. The Complainant got convinced that neither he is getting proper treatment nor there is any hope for further treatment in the hands of OPs, rather the OPs have trapped the Complainant in cruel conspiracy hatched by them whereby they have already extorted his hard earned money of Rs.3,00,000/- and further trying to extort more money by blackmailing him. It is submitted that the OPs instead of being apologetic for the wrong and negligent treatment, resulting into deficiency of service and despite demanding refund of his balance amount, have not entertained him properly and rather further demanded Rs. 2,30,000/- which was totally ridiculous.

7. Complainant submits that in order to seek redressal of his grievance, he also preferred to sent a legal notice dated 29.02.2022 through his Advocate seeking refund of sum of Rs.3,00,000/- along with compensation for giving wrong treatment and surprisingly applied steroid without convincing the Complainant and giving any written prescription as is mandatorily required under medical jurisprudence.

8. It is submitted by the complainant that he learnt through various agencies that the OPs are habitual cheaters of the consumers for grabbing their hard earned money by misleading the customer. Hence for the deficiency in service and unfair trade practice followed by OPs, the present complaint was resorted to. The following reliefs are claimed in this complaint:

1. To direct the OPs to refund the amount of Rs.3,00,000/- alongwith interest @ 18% p.a. from the date of instituting this complaint;

2. To direct the OPs to pay Rs.25,00,000/- towards the harassment, pain and injury in terms of deficiency of service and on account of physical, mental and monetary loss caused to the Complainant due to negligent acts on the part of OPs;

3. To direct the OPs to pay the cost of litigation in the sum of Rs.1,00,000/- and to pass such order/orders as this Commission may deem fit in the facts and circumstances of the case.

9. Complainant attached copies of payment proof, recommended home kit with terms and conditions, bill of supply for Rs.3,00,000/- dated 01.11.2021, whatsapp chats with OPs for treatment procedure at home, legal notice dated 28.2.2022, judgements of District Consumer Commissions.

10. Though the complaint has alleged that he was asked to pay another Rs.2,30,000/- but his statement is not substantiated by any corroborative evidence to this effect. The complainant has admittedly been taking treatment for weight loss, face and hair. However, he has not divulged any details of shortcomings or improvement in his condition qua those two treatments. The whatsapp chats clearly depict the type of treatments he was getting from the OPs. His focus in this complainant is restricted only to face treatment taken by him. The complainant has not placed on record any proof to prove his fact that after wrong treatment given by the OPs, he had consulted any independent Doctor who had opined that the OPs were giving him steroids. No advertisements allegedly published by the OPs wherein they have assured 100% benefit from the treatments offered by them have been filed on record to prove unfair trade practice followed by the OPs. We feel that the complainant has been selective in attacking the OPs on a particular treatment which

is not substantiated from the photographs filed on record as they do not bear any date. Further, from the treatment chart and the whatsapp chat with the OPs, it is not germane that the complainant was estopped by the OPs from completing his remaining course for all the three treatments chosen by him with the OP. The complainant has himself admitted in his complaint that he came from other sources that the reputation of the OPs is not upto the mark in the market. Therefore, before going for the treatment from the OPs for the hefty amount, he should have been vigilant. In any case, it is a settled law in medical jurisprudence that no relief does not amount to deficiency in service or negligence. In this regard we may refer to the verdict of Hon'ble NCDRC in the case of **Dr. M. Kochar vs Ispita Seal**, decided on 12 December, 2017 wherein while dealing with the IVF issue, it was held as under:

"It should be borne in mind that In vitro fertilization (IVF) is a complex series of procedures used to treat fertility and assist with the conception of a child. It involves several steps -- ovulation induction, egg retrieval, sperm retrieval, fertilization and embryo transfer. The hospital or any treating doctor will not give assurances or guarantees of the treatment. There are chances of failure by the IVF also. Moreover, the patient was having sufficient time to choose or accept IVF depends on several factors..... According to medical literature the chances of having a healthy baby using IVF depend on many factors, such as patient's age and the cause of infertility. In addition, IVF can be time-consuming, expensive and invasive..... According to literature, the success rate of IVF internationally is 13.4% in women less than 35 years and 3.6% in women above 35 years. A woman's age is the most important factor that influences the success rate of IVF procedures. The IVF success rate is highest for women between 24 and 34 as this is the period when they are at their peak fertility levels.

It is known that "No cure/no success is not a negligence", thus fastening the liability upon the treating doctor is unjustified. The State Commission has erred in holding the OP liable without any cogent evidence or medical ground."

11. Recently, the Hon'ble National Commission in the case of **Om Parkash Sikka & Anr vs. IVY Hospital, Mohali, Punjab** (CC No.195/2010), decided on 01.12.2022 has reiterated the dictum that "No cure is not a Negligence".

12. Following the above dictum, we are of the opinion that if the complainant has not received any relief from the treatment given by the OPs, that cannot be treated as negligence or deficiency on their part. Therefore, we do not find any merit in the complaint and the same is dismissed as such.

A copy of this order shall be supplied free of cost , to parties to the dispute in the present complaint, upon a written requisition being made in writing in the name of President of the Commission in terms of Regulation 21 of the Consumer Protection Regulations, 2020. File be consigned to record room.

(Richa Jindal)
Member

(Anil Kumar Koushal)
Member

(Sonica Mehrotra)
President