

Heading1
Heading2

Complaint Case No. CC/121/2022
(Date of Filing : 06 Oct 2022)

1. GURJAS SINGH CHHABRA

52/63, FIRST FLOOR, RAMJAS ROAD, KAROL BAGH,
NEW DELHI-110005.

.....Complainant(s)

Versus

1. EXTRA MARKS

D-180, SECTOR 63, NOIDA UTTAR PRADESH-201301

.....Opp.Party(s)

BEFORE:

HON'BLE MR.INDER JEET SINGH PRESIDENT

HON'BLE MS. RASHMI BANSAL MEMBER

PRESENT:

Dated : 05 Dec 2024

Final Order / Judgement

Before the District Consumer Dispute Redressal Commission [Central District] - VIII, 5th
Floor Maharana Pratap ISBT Building, Kashmere Gate, Delhi

Complaint Case No.121/06.10.2022.

Sh. Gurjas Singh Chhabra, (through its Legal Guardian)

s/o Sh. Arvinder Singh Chhabra,

r/o 52/63, First Floor, Ramjas Road,

Karol Bagh, New Delhi-110005

Sh. Sh. Arvinder Singh Chhabra, (Legal Guardian of complainant)

S/o Harkishan Singh

r/o 52/63, First Floor, Ramjas Road,

Karol Bagh, New Delhi-110005

...Complainants

Versus

OP1-Extra Marks Education Pvt. Ltd.

(through its, Founder, CMD & Other Concerned Persons)

D-180, Sector 63, Noida,
Uttar Pradesh-201301

OP2. Sh. Atul Kulshrestha
(Founder, Chairman and Managing Director)
Extra Marks Education Pvt. Ltd.
D-180, Sector 63, Noida,
Uttar Pradesh-201301

OP3- Sh. Anand Singh (Manager)
Extra Marks Education Pvt. Ltd.
D-180, Sector 63, Noida,
Uttar Pradesh-201301

OP4- Sh. Yashvardhan (Assistant Manager)
Extra Marks Education Pvt. Ltd.
D-180, Sector 63, Noida,
Uttar Pradesh-201301

...Opposite Parties

Date of filing: 06.10.2022

Coram: Date of Order: 05.12.2024

Shri Inder Jeet Singh, President

Ms Rashmi Bansal, Member -Female

FINALORDER

By the present order, the complaint of the complainant is being disposed of, by which complainant alleged deficiency in services on the part of OP for not refunding the fee charged in full and in advance by it, whereas, the complainant has not availed services of OP which has caused him financial loss, harassment, mental agony and inconvenience.

The complainant being minor has filed the present complaint through his legal guardian.

OP1 is the company through its MD and other concerned persons, OP2 is the MD of OP1, OP3 is the manager of OP1 and OP4 is the Asst. Manager of OP1.

1. It is the case of the complainant that he, through his legal guardian subscribed to the OP's online learning program, namely Extra Marks, by paying a sum of ₹62,000/- on 17.03.2022 for the period of three years as per following format –
 - i. Extra marks, essential – K12 learning pack – three months (CBSE-VII)
 - ii. Extra marks, expert – K12 learning pack - 12 months (CBSE VIII)
 - iii. Extra expert – K12 learning pack- 12 months (CBSE IX)
 - iv. Extra marks, expert – K12 learning pack - 12 months (CBSE –X)

The complainant was issued an enrolment ID and was allotted a batch commencing on 28.03.2022. The complainant attended first class on the same day, however, he was not pleased with the OP's program as he found it below expectation and consequently, on the very same day, on 28.03.2022, within seven days of activation of above stated program had apprised OP1 through OP4, being its assistant manager, via WhatsApp that he did not wish to continue his subscription and requested for cancellation of subscription and requested for refund of the subscription money of ₹ 62,000/-. The said request was duly acknowledged by OP for termination of the subscription, however, the refund was not processed, though, OP kept assuring the complainant that amount would be refunded. Several requests were also made to OPs but to no avail and then on 15.05.2022, complainant registered a complaint bearing number 0022 4266 on OP's toll-free number regarding the refund of subscription amount but not a single penny was refunded to him. Complainant has also visited the office of the OPs many times, but no satisfactory reply was received from them nor was the subscription amount refunded.

2. Complainant submits that vide email dated 19.05.2022, OP1 refused to refund the subscription amount of ₹ 62,000/- to the complainant. Complainant sent legal notice dated 28.05.2022 to OPs demanding refund of the subscription amount of ₹ 62,000/- along with future interest from the date of notice till realisation of the said amount which was duly received by the OPs, but no reply was provided to the complainant. Therefore, the complainant filed the present complaint praying for refund of the ₹62,000/- along with interest pendente-lite and future interest @ 18% p.a., compensation of ₹ 50,000/- as well as litigation charges of ₹25,000/-.
3. In support of his case, complainant has filed documents, viz. copy of Aadhaar card of himself and his guardian, copy of subscription details, copy of the credit and transaction details dated 17.03.2022 and statement, true copy of tax invoice dated 17.03.2022, copies of screen shots of what app chats, copy of legal notice with receipt and track report, copy of email 19.05.2022, certificate under section 65-B of Indian evidence Act, 1860.
4. Despite notice OP1, OP2, OP3 and OP4 failed to appear and as such were proceeded ex-parte vide order dated 10.02.2023. Since OPs chose to remain absent therefore, all the

allegations put forth by the complainant remained uncontroverted.

5. Complainant has filed his ex-parte evidence by way of affidavit with the support of documents filed with the complaint. He has also filed what's app conversation chat with OP4 with supporting affidavit under section 65-B of the Indian Evidence Act, 1860.
6. The Commission heard the arguments of the complainant and have gone through the record available on file.
7. Documents on record show that complainant was enrolled in OP1's institution for three years program commenced from 28.03.2022 and paid a sum of ₹62,000/- towards the fee for the entire course. The complainant submits that he has attended only one class, the first class on 28.03.2022 and being dissatisfied with the program, discontinued the course, intimated OPs on the same day and requested for refund. The what's app chat on record demonstrates that the complainant has requested for refund on two consecutive days through what's app with OP4, on 28.03.2022 and 29.03.2022. OP1's response in email states that refund request of the complainant could not be entertained as it was raised after 7 days of the activation of the course (i.e. on 15.05.2022), which gives inference that had the refund request was generated within 7 days of the activation of course, it would be refunded. OP1, however, has not placed anything on record to show that the refund request was received by it on 15.05.2022.
8. Further, the documents on record show that the course package was activated on 22.03.2022. The what's app chat dated 28.03.2022/ 29.03.2022 of the complainant with OP4 for refund request establish that it was within stipulated time, i.e. on the 7th day of activation of the package on 22.03.2022. Even otherwise, the first class was taken place on 28.03.2022, which fact is not denied by OPs in their what's app chat conversation and on the very first available opportunity, immediately thereafter, the complainant has raised his refund request. Moreover, OPs neither replied nor disputed the facts mentioned in the legal notice of the complainant which was duly received by them. Deposition of the subscription fee and attendance in the first class clearly show complainant's intent to continue with the program, but, due to OP1's substandard and non-yielding services, he decided to discontinue the program.
9. The practice of requiring fee payment in lump-sum offering discounts for services yet to be rendered is unethical and unfair, as students are left with no recourse once fees are paid as per judgment of the Delhi State Consumer Dispute Redressal Commission in *FIIT JEE Limited vs. Minathi Rath*, wherein Hon'ble State Commission condemned similar practices by coaching centers and prohibited charging fees for the entire duration of a course in advance. Though, the said order was modified by Hon'ble NCDRC in revision petition titled '*FIIT JEE Limited vs. Minathi Rath RP. 3365/2006*, decided on 14.11.2011, to the extent of refund of fees for the un-utilised period with interest @ 6% p.a. and compensation towards mental agony and litigation cost and set aside the *orbiter dictum* as well as punitive charges imposed by the State Commission, however, hold that the institute/petitioner could not have charged full advance fees for two years and could have charged prescribed fees for one semester/year.
10. In the similar circumstances, Hon'ble NCDRC in *Jai Preet Singh, Kaushal versus Fiitjee and another*, RP. 918 OF 2015, has allowed the complaint and directed refund of fee considering that coaching institute does not come under the purview of the educational institution. In fact, it is only a facilitator/trainer body to get admission into an educational institution. Therefore, the OP cannot be equated with an educational institution, entitled to consider itself as non-provider of any service. The said order was upheld by Hon'ble Supreme Court of India as the SLP filed by OP was dismissed. The Precedent set by Hon'ble NCDRC establishes that coaching institutions, providing educational services for

consideration fall under the purview of the Consumer Protection Act. The fees once paid could be refunded after deducting non-refundable services charges for the unattended portion of the course.

11. It is not justifiable on the part of OP1 to retain fee for the entire period which is not utilized by the complainant, which act amounts to deficiency in services on the part of OP1. Further, by charging lump-sum fees, OP1 getting itself unjustly enriched, that amounts to unfair trade practice on its part. The complainant was subjected to harassment and inconvenience due to the OP1's unfair trade practices and deficient services that caused mental harassment and detrimental effects on the complainant's studies for which OP1 is liable to compensate the complainant along with refund of the subscription fee and also liable to pay litigation cost as complainant had to take recourse for issuing legal notice and filing present complainant for redressal of his grievances.

The complainant has sought interest pendente- lite and future interest@ 18% p.a., but, there is no agreement between the parties for grant of interest at such rate, however, considering that the complainant had to part with his money and remained deprived of that amount which he was entitled to hold, therefore, it is appropriate to allow simple interest at the rate of 6% p.a. from the date of complaint/ 06.10.2022, till its realization by the complainant.

Further, the complainant has sought damages of ₹.50,000/- in lieu of harassment and agony suffered. By considering totality of facts and circumstances of case of both sides, especially concluded in aforementioned paragraphs that since there was inconvenience, harassment caused to the complainant to get the refund, he deserves reasonable compensation, which is quantified and allowed to ₹ 20,000/- besides the litigation cost of ₹ 15,000/-.

Since the complainant has impleaded, OP2 being Managing Director and others viz. OP3/Manager and OP4/Assistant Manager, who are employees of OP1, which is impleaded through its Director, consequently when OP1 is already through its Director, therefore, the OP2 need not to be impleaded in his individual capacity besides the employees are not necessary party when the legal entity OP1 has already been impleaded. Therefore, the complaint against OP2, OP3 and OP4 is dismissed. Thus, OP1 is liable since the complaint has been proved against it.

So, OP1 is directed to refund the amount of ₹62,000/- with interest at the rate of 6% p.a. from 06.10.2022 till realisation of the amount to the complainant, besides to pay compensation of ₹ 20,000/- and litigation cost of ₹15,000/- .

12. The OP1 will pay amount to the complainant within 45 days from the date of this order. In the event of non-compliance, the OP1 shall pay interest @ 9% p.a. on ₹ 62,000/- from 06.10.2022 till realization. The OP1 is at liberty to deposit the said amount in the Registry of this Commission by a valid instrument in the name of the complainant.
13. Copy of this order be sent forth with to the parties free of cost as per rules and order be uploaded on the website of this commission, before consigning the file to record room.

14. Announced on 05.12.2024.

[Rashmi Bansal]

Member (Female)

[Inder Jeet Singh]

President

**[HON'BLE MR. INDER JEET SINGH]
PRESIDENT**

**[HON'BLE MS. RASHMI BANSAL]
MEMBER**