STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

U.T., CHANDIGARH

Appeal No.	**:**	**109 of 2019**
Date of Institution	:	30.06.2019
Date of Decision	:	11.07.2019

FIITJEE Ltd., 29-A, Kalu Sarai, Sarvapriya Vihar, Malviya Nagar, New Delhi 110017, through its Authorised Signatory Jaswinder Kumar.

Also At :

SCO No.321-322, 1 st and 2 nd Floors, Sector 35-B, Chandigarh.

…….Appellant/Opposite Party.

Versus

Ms. Shinjini Tewari W/o Sh. Rahul Tewari, R/o #914, Sector 39-A, Chandigarh.

...Respondent/Complainant.

Appeal under Section 15 of the Consumer Protection Act, 1986 against order dated 09.04.2019 passed by District Consumer Disputes Redressal Forum-II, U.T. Chandigarh in Consumer Complaint No.448 of 2018.

BEFORE: JUSTICE JASBIR SINGH (RETD.), PRESIDENT.

MRS. PADMA PANDEY, MEMBER.

MR. RAJESH K. ARYA, MEMBER.

Argued by :

Sh. Vivek Lamba, Advocate for the appellant.

PER RAJESH K. ARYA, MEMBER

The appellant/opposite parties have filed this appeal against order dated 09.04.2019 passed by District Consumer Disputes Redressal Forum-II, U.T., Chandigarh (in short 'the Forum' only), vide which, complaint bearing No.448 of 2018 filed by the respondent/complainant was allowed in the following manner:-

> "19] Keeping into consideration the facts & circumstances of the case and the settled law, as discussed in the preceding paragraphs, the complaint is allowed. The Opposite Parties are directed to refund the entire fee of Rs.170350/- to the complainant, after deducting Rs.1000/- thereof, with interest @9% p.a. from the date of making such request i.e. 2.5.2018 (Ann.C-4) till realization. The Opposite Parties are also directed to pay litigation cost of Rs.10,000/- and compensation of Rs.25,000/- to the complainant for the mental agony & harassment caused to him due to their deficient act.
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> This order shall be complied with by the Opposite Parties within a period of 30 days from the date of receipt of copy of this order, failing which the Opposite Party shall be liable to pay additional compensatory cost of Rs.15,000/- apart from the above relief."

2. Before the Forum, it was case of the complainant that her son, namely, Vatsal Tewari took admission in coaching classes of Opposite Party No.2/FIITJEE, when he was in 9 th standard, where he attended 1 st & 2 nd year coaching during 9 th & 10 th classes from April, 2016 to March, 2018. It was stated that new coaching classes, which the son of the complainant was to pursue during his 11 th class, were to commence from Nov., 2017 only. It was further stated that the opposite parties collected the fee for 3 rd & 4 th years of coaching from the complainant in Oct., 2017 in advance through post-dated cheques for a total sum of Rs.1,83,850/-. It was further stated that the son of the complainant attended very few classes during Nov., 2017 only and thereafter, he could not continue due to medical reasons, as he developed severe back pain as a result whereof he was unable to sit for longer duration. It was further stated that when it became almost impossible for the son of the complainant to attend the coaching classes, the husband of the complainant moved a request to Opposite Party No.2 seeking withdrawal of his son from the course under compelling circumstances. A request to remit the amount of fee after making adjustments (Ann.C-4) was made. It was further stated that the opposite parties encashed all the post-dated

cheques given by the complainant for a total sum of Rs.1,38,750/-. It was further stated that the opposite parties despite making request did not refund any amount, hence, complaint was filed before the Forum.

3. The opposite parties, in their joint written statement, while admitting the factual matrix of the case, stated that the son of complainant enrolled himself for Four year Classroom Program for JEE (Advanced)-Weekend Contact Classes and after the end of first two years (Class IX & X), he was upgraded for further two years i.e. for 2018 & 2019. It was stated that fee of Rs.1,48,950/- for further two years i.e. for 2018 & 2019 was inclusive of service tax. It was further stated that as per the declaration and consent accorded thereto by the complainant, he is not entitled for any refund. It was further stated that the complainant and his son were made aware of all the terms & conditions at the time of taking admission and after going through all the conditions, they accepted and signed the same along with declaration. It was further stated that the complainant's seat in said course remained vacant throughout the course duration, as such, the institution was entitled for the fee of Programe and not liable to refund any fee. It was further stated that the Opposite Parties were neither deficient, in rendering service nor did they indulge into unfair trade practice. The remaining averments, made in the complaint, were denied.

4. The complainant filed rejoinder wherein he reiterated all the averments contained in the complaint and repudiated those contained in the written version of the Opposite Parties.

5. The Forum, on analysis of pleadings of the parties, documents on record, and the arguments addressed, allowed the complaint as referred to above.

6. Counsel for the appellant/opposite parties made two fold submissions. Firstly, that the complainant is not entitled to any refund in terms of provisions of the enrolment form, which was duly signed by the complainant at the time of admission of her son and secondly, the impugned order is liable to be set aside in view of ratio of various judgments of Hon'ble National Consumer Disputes Redressal Commission, New Delhi on the subject, reliance whereupon was also placed at the time of submitting arguments. In the grounds of appeal, a specific plea was also taken that the Forum arbitrarily gone to the extent of granting award to the tune of Rs.1,70,350/- to the respondent/complainant as against the amount claimed in the complaint i.e. Rs.1,38,750/-. It was argued that the complainant is not entitled for refund of fees. By raising above arguments, it was prayed that the appeal be allowed and the impugned order be set aside.

7. After going through the evidence on record and submissions of the Counsel for the appellant, we are of the opinion that the appeal is liable to be dismissed at the preliminary stage for the reasons to be recorded hereinafter.

8. In the instant case, admittedly, the son of the respondent/complainant got admission in Four Years Classroom Program for JEE (Advanced)- Weekend Contact Classes (Admission only for IX & X) and after the end of 1st & 2nd year of said coaching progaramme, on 8.10.2017, he was upgraded and enrolled for further two years coaching programme i.e. for year 2018 & 2019 respectively. Unfortunately, he suffered severe back pain and was advised to avoid long sittings vide medical advice (Annexure C-3). On account of above medical problem, the son of the complainant could not continue with the course and as such, his father requested the appellant/opposite parties to refund the fee of Rs.1,48,950/- deposited in advance for two years i.e. for 2018 & 2019 which was inclusive of service tax. However, refund was refused by the appellant/opposite parties citing declaration and consent accorded thereto by the

respondent/complainant and further the seat vacated by the son of the respondent/complainant remained vacant throughout the course duration.

9. It may be stated here that issues qua non-refund of fee by the appellant/opposite parties – Institute on leaving the Course in between by a student; giving of consent and declaration, seat remained vacant due to leaving the course in between etc. have already been dealt with by this Commission in number of cases. Recently, this Commission in the case of **FIIT JEE Ltd. Vs. Lalit Garg & Anr.,** Appeal No.59 of 2019, decided on 11.04.2019 has dealt, in detail, with all the issues raised in this case qua non refund of fee, undertaking given by the student/his or her parents etc. etc. Paras 9 to 11 of the said judgment reads thus:-

> " **9.** Question to be determined before us, is, as to whether refund of fee as ordered by the Forum vide the impugned order was justified or not. Admittedly, complainant No.2 took admission in the Pinnacle-Two Year Integrated School Program for JEE (Advanced) 2020 for preparation of entrance examination of IIT Engineering. On being informed that apart from Sector 34, Chandigarh, the opposite parties also impart coaching at two schools, complainant No.2 took admission in Shri Guru Gobind Singh Collegiate Public School, Sector 26, Chandigarh where she was to be imparted coaching of Physics, Chemistry and Maths during school hours between 08:00 a.m. to 01:30 p.m. commencing from 11.04.2018. She attended the classes from 11.04.2018 to 27.04.2018 i.e. for 17 days only. The classes of Guru Gobind Singh Collegiate Public School were to start from July, 2018 and as such, the complainant did not attend the school of Opposite party No.5 at all. It is also admitted fact that complainant No.2 left the course of opposite parties No.1 and 2 in the month of April 2018 and as such, she did not attend any classes of opposite party No.5 in the month of July, 2018.
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> **10.** The grievance of the complainants was that complainant No.2 was not comfortable from the very beginning with the teaching imparted by the faculty who were favoring only 3-4 students. Not only above, further allegation made was that the opposite parties discouraged the complainant and demoted her in such a manner that she started feeling lonely and demoralized. Further the queries raised were not cleared by the faculty of the opposite parties and it got difficulty for complainant No.2 to move to next chapter without understanding the previous chapters, which resulted into leaving the course just attending only for 17 days.
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> **11.** It may be stated here that similar controversy, whether forfeiture of the entire fee paid by the respondents/complainants for the entire period of course opted and not refunding a single penny, on leaving the said course in between or say 17 days, amounted to unfair trade practice or not, recently came before this Commission in the case of FIITJEE Ltd. Vs. Vikram Seth (Minor) through his Natural Guardian' bearing Appeal No.223 of 2018 decided on 05.04.2019, wherein this Commission held in Paras 10 to 18 as under:-

" **10.** The only law point involved in these appeals, to be determined, by this Commission, is, as to whether forfeiture of the entire fee paid by the complainants for the entire period course opted and not refunding a single penny, on leaving the said course by the complainants after attending the classes for 8 days, 2 months or mid-session, amounted to unfair trade practice or not.

11. To support above argument, Counsel for the appellant cited few judgments. He mainly placed reliance on the judgment of Hon'ble National Consumer Disputes Redressal Commission, New Delhi, comprising Hon'ble Justice K. S. Chaudhari, Presiding Member, Hon'ble Mr. Justice V. K. Jain, Member and Hon'ble Dr. B. C. Gupta, Member, in case titled ' **FIITJEE Ltd. Vs. Harish Soni'** , Revision Petition No.2054 of 2013 decided on 08.10.2015.

12. The issue, in question, before the Hon'ble National Commission, was whether it is justified to allow refund of fees for the remaining part of the course or not.

13. In FITJEE Ltd. Vs. Harish Soni's case (supra) , relied upon by the Counsel for the appellant, the complainant's daughter took admission by paying an advance fee of Rs.1,23,464/- on 15.04.2006 for getting admission in 'FIIT JEE Pinnacle' two years' integrated programme. After studying for one year, being not satisfied by the education imparted, she withdrew from the course and sought refund of the remaining fees alongwith interest and compensation. The Hon'ble National Commission held in Paras 6 & 7 of its judgment as under:-

> "6. The complainant has placed on record the affidavit of its Managing Director Shri Dinesh Kumar Goel, stating therein that no student was enrolled against the seat vacated by the daughter of the respondent during the tenure of the entire course, at any point of time. He has further stated that to ensure quality education and uniform teaching standard and keeping in mind the interest of students, the petitioner company does not fulfill the vacancy created by a student who leaves the course in midway.
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> 7. For the reasons stated hereinabove, I am of the opinion that the complainant is not entitled to refund of the fee for the remaining period of one year."

14. It may be stated here that that the Hon'ble National Commission in **Sehgal School of Competition Vs. Dalbir Singh, 2009 (3) CPC 187** , while dismissing the Revision Petition filed by Sehgal School of Competition, held in Paras 5 to 7, inter-alia, as under:-

> "5. We have heard the learned Counsel for the petitioner. He submitted that the student had withdrawn voluntarily and, therefore, there was no deficiency of service. The petitioner's school has shown excellent results. Hence it is wrong to observe that their coaching was not upto the mark. He also submitted that one of the conditions imposed by their school which accepting lump sum fees

for two years is that 'refundability/ transferability of seat/fee is not possible under any circumstances'.

6. The above condition is one sided and biased totally in favour of the petitioner and against the principle of equity and natural justice and it is not a fair trade practice. The learned Counsel quoted the judgment of this Commission in *Homoeopathic Medical College & Hospital, Chandigarh v. Miss Gunita Virk* , I (1996) CPJ 37 (NC), wherein it is held that Fora constituted under the Consumer Protection Act have no jurisdiction to declare any rule in the prospectus of any institution as unconscionable or illegal.

7. This judgment is 13 years old. Subsequent to this judgment this Commission in catena of judgments has held that it is unjust to collect the fee for the total period of the course. In *Nipun Nagar v. Symbiosis Institute of International Business,* I (2009) CPJ 3 (NC) = 2009 (1) CPC 272 (NC), Revision Petition No.1336 of 2008, decided by this Commission on 7 th November, 2008, after quoting the public notice issued by the University Grants Commission, it was held that the Institute was unfair and unjust in retaining the tuition fee of Rs.1 lakh even after the student withdrew from their institute. Further if a student leaves before attending a single day of the college or school, he is entitled for total refund except for a small registration fee, say Rs.1,000/-. Even the University Grants Commission had issued a public notice directing all the institutions to refund the money of the students for the period, they have not attended the college/institution……."

15. Not only above, in **Brilliant Tutorials Pvt. Ltd. Vs. Ashwani Verma, 2010 (4) CPJ 396** , the Hon'ble National Commission while placing reliance on the judgment of Hon'ble **Apex Court in Islamic Academy of Education and Another Vs. State of Karnataka and others** , (2003) 6 SCC 697, held that charging fees in advance beyond the current semester/year would certainly amount to unfair trade practice and the same cannot be countenanced. In Islamic Academy of Education and Another's case (supra), the Hon'ble Apex Court had expressed unhappiness with educational institutes charging the entire fees upfront and had said that students should only be asked to pay fees for a semester/year to begin with. The argument of FIIT-JEE that the ruling of Islamic Academy was not applicable to it since it is not an educational institute but only a coaching institute was not negated by the Hon'ble National Commission and order of the State Commission was upheld, directing FIIT-JEE to refund the fees. We may add here that Hon'ble Supreme Court of India condemned the practice of the educational institutes of collecting fee in advance for the entire course i.e. for all the years and also debarred

them to claim any interest on the fee deposited. Further the Hon'ble National Commission in **FIIT JEE Ltd. Vs. Dr.Minathi Rath, 2012(1) CPJ 194** while considering the revision petition on identical facts, as involved in the present complaint, has categorically held that FIIT JEE Ltd. could not charge full advance fee for Two years and held the complainant entitled for receipt of refund of fee taken in advance from him by FIIT JEE.

16. In our opinion, the plea of the appellant by way of affidavit that the vacancy created by the complainant(s) was never filled up and remained vacant, cannot be read against the respondent(s)/complainant(s). The appellant cannot be allowed to be on an advantageous position, keeping in mind the interest of poor consumer. It (appellant – Institute) cannot gulp whole of the fee paid, being the hard earned money. When a student or his/her parents signs the admission form, they have no bargaining power to negotiate, or refuse to sign any particular clause in the admission form. Hence, such clauses should not be held against the student. The appellant is continuing with an unfair trade practice of collecting huge amount to get itself enriched, which is totally against public interest at large, specially the parents, who send their children by putting a big cut on their stomach and giving each and every penny of their earnings to the coaching institute like the appellant, for imparting coaching, which does not guarantee or assure success in getting admission in IIT/NIT. Sometimes, after paying such hefty coaching fee, it becomes difficult for them to meet out their daily needs. Every parent, whether rich or poor or from any mediocre family, would desire that their children should get better education for which, sometimes, they have to obtain loan for paying fees etc. from Banks or Private Financiers. The appellant – Institute is not only a structure made up of bricks and cement where the students go and get coaching after paying hefty fees. The Institutes imparting coaching are also supposed to bear in mind that a child/student, who is coming to them, is also a future of our country, who at some stage is to contribute towards nation building or serve the country by entering into some field of his/her choice at some stage. Every student may not be so lucky to crack the entrances, after getting coaching etc. but it is a fact which cannot be denied that every student puts his/her best effort to clear these entrance exams. The coaching institutions should not act like money collection machines, without keeping in mind the feelings and future prospects of the student. The student may not be comfortable with the teaching methods/skills and attitude of some of the teachers at the coaching centre. In case, the student leaves in between or midsession or after attending for few days or months, in our opinion, he/she should not be denied refund of the fee for the remaining period, which he/she did not attend. If the student is given refund, he/she can pay the said amount to some other educational institute, where he/she wants to pursue coaching or education. The student is not supposed to pay another hefty amount to other coaching institute after leaving the appellant - institute. Parents may not be in a position to afford another heavy fee of another coaching institute and the student will be deprived of precious opportunity and formative years of career building. In case, the fee is refunded, the student can further move on with that amount to explore much better avenues of education, as per his/her desire. We may also add here that Consumer Protection Act, 1986, which is Consumer Oriental Legislation, is meant to protect the interest of

consumers who show their courage to come forward and put forth their grievance against the unfair trade practices adopted by such like educational institutions. Future of an aspiring student, who will certainly contribute towards the development of our nation at some stage of his/her life, is of paramount importance and cannot be put at stake like this. Educational Institutions like the appellant must bear in mind the feelings and sentiments of an aspiring student who took admission with such like institutions with an aim and hope to achieve some better prospects and positions in their future. In our opinion, educational institutes should be prudent, desist from charging upfront fees for the entire course, and if they do, should not refuse a refund. A student or a trainee may leave midstream if he finds the service deficient, substandard and non-yielding, and to tell him that fees once paid are not refundable was an unfair trade practice, as no service provider can take or charge the consideration of the service which it has either not given or has not been availed. The existing practice in many institutions of collecting advance payment and not refunding this should be done away with. Such blatant act of the appellant(s) is a clear example of unfair trade practice, which has to be stopped by exercising a moral responsibility especially when seen in the light of the above facts and circumstances of this case.

17. Therefore, in our opinion, interest of such like consumers is to be taken care of and protected while interpreting the law settled on the subject.

18. We are of the considered opinion that the appellant miserably failed to make out any case and no benefit of the aforesaid judgment of Hon'ble National Commission rendered in the case of **FIITJEE Ltd. Vs. Harish Soni' (supra)** can be extended to the appellant. We opine that the respondents/complainants are definitely entitled to refund of fees as ordered by the Fora below vide the impugned orders."

It may also not be out of place to mention here that after thoroughly discussing the import of two judgments i.e. Bihar School Education Board Vs. Suresh Prasad Sinha, IV (2009) CPJ 34 (SC) and Maharishi Dayanand University Vs. Surjeet Kaur (supra) , this Commission in First Appeal No.219 of 2018 titled ' Frankfinn Institute of Air Hostess Training & Anr. Vs. Aashima Jarial' , which was dismissed vide order dated 23.08.2018, in Para 10 to 12, inter-alia, held as under:-

"10. It was specifically said that the Board was not carrying any commercial, professional or service oriented activity and as such, consumer complaint was not maintainable, in such like cases before the Consumer Fora. However, it was also observed in later part of the judgment that ratio of a judgment is not mechanically to be applied to other case, without analysing the context in which observations were made by the Court in a given judgment. Same was the situation in the case of **Maharshi Dayanand University** (supra). In that case also, there was a dispute

between the Authorities and student qua grant of B.Ed. degree to her. By taking note of observations made by the Supreme Court in the case of **Bihar School Examination Board** (Supra) it was said that Statutory Authority when performing statutory functions cannot be termed as service provider/industry.

11. In the present case, as has been noted in earlier part of this order, the appellant have no statutory regulations/backing. It is a private Institute, not discharging any social obligation. In such like cases, we are of the considered opinion that no benefit of ratio of the judgments cited above, can be extended in favour of the appellant.

12. The case of the respondent is also supported by the ratio of judgment passed by the Hon'ble Supreme Court of India in Buddhist Mission Dental College & Hospital, Versus Bhupesh Khurana & Others, Civil Appeal No.1135 of 2001, decided on February 13, 2009 , wherein, the findings given by the National Commission, to the effect that imparting of education by an educational institution for consideration falls within the ambit of `service' as defined in the Consumer Protection Act , were upheld. Relevant part of the said judgment reads thus:-

> *"The Commission also held that this Court in Bangalore Water Supply and Sewerage Board (supra) held as under: [para 118 at page 583]:-*
>
> *"...In the case of the University or an educational institution, the nature of the activity is, ex hypothesi, education which is a service to the community. Ergo, the University is an industry..."*
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> *The Commission further held as under:*
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> *"Imparting of education by an educational institution for consideration falls within the ambit of `service' as defined in the Consumer Protection Act . Fees are paid for services to be rendered by way of imparting education by the educational institutions. If there is no rendering of service, question of payment of fee would not arise. The complainants had hired the services of the respondent for consideration so they are consumers as defined in the Consumer Protection Act ."*
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> *33. The Commission rightly came to the conclusion that this was a case of total misrepresentation on behalf of the institute which tantamounts to unfair trade practice. The respondents were admitted to the BDS Course for receiving education for consideration by the appellant college which was neither affiliated nor recognized for imparting education. This clearly falls within the purview of deficiency as defined in the Consumer Protection Act , which defines the `deficiency' as under:*
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> *"`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 in relation to any service."*

34. Therefore, the Commission rightly held that there was deficiency in service on the part of the institute and the claimants respondents are entitled to claim the relief as prayed in the plaint. The appeal filed by the appellant is devoid of any merit and deserves to be dismissed."

13. Not only as above, in the case of Krishan Mohan Goyal Vs. St.Mary's Academy and Anr., Revision Petition No.3144 of 2016 , the National Commission has also held that in some aspects of education activities, the Consumer Fora is competent to take action against the erring Educational Institutes such like the opposite parties, adopting unfair trade practices and also not rendering proper service. Same is the ratio of the judgment decided by the National Commission, in Jaipreet Singh Kaushal Vs. FIIT JEE Limited and another, Revision Petition No.918 of 2015 decided on 14.11.2017 , wherein, it was held that the Institute is not justified in charging fee, for the entire course in one go……"

Very recently the Hon'ble National Commission in Revision Petition No.3052 of 2018 titled ' **Frankfinn Institute of Air Hostess & Anr. Vs. Aashima Jarial'** , decided on 04.04.2019, while upholding the above order passed by this Commission in the Appeal No.219 of 2018 held in Paras 14 to 17 as under:-

" **14.** From the above, it can be concluded that the educational institutions, which are imparting education of any kind within the admissible legal frame work of the country can be covered under the judgment of the Hon'ble Supreme Court in **Maharshi Dayanand University Vs. Surjeet Kaur** (supra). In other words, educational institutions covered under UGC, AICTE, State Universities, Central Boards and State Boards etc. can claim immunity from the provisions of Consumer Protection Act, 1986 for educational services. Moreover, the State Commission has relied upon the decision of the Hon'ble Supreme Court in **Budhist Mission Dental College & Hospital Vs. Bhupes Khurana & Others,** wherein the following has been observed:-

"32. The Commission also held that this Court in Bangalore Water Supply and Sewerage Board (supra) held as under: [para 118 at page 583]:-

"...In the case of the University or an educational institution, the nature of the activity is, ex hypothesi, education which is a service to the community. Ergo, the University is an industry..."

The Commission further held as under:

"Imparting of education by an educational institution for consideration falls within the ambit of `service' as defined in the Consumer Protection Act . Fees are paid for services to be rendered by way of imparting education by the educational institutions. If there is no rendering of service, question of payment of fee would not arise. The complainants had hired the services of the respondent for consideration so they are consumers as defined in the Consumer Protection Act ."

15. From the above discussion, it is clear that the petitioner institution cannot be given advantage of the judgment of the Hon'ble Supreme Court in **Maharshi Dayanand University Vs. Surjeet Kaur** (supra).

16. Based on the forgoing discussions, it is concluded that the complainant is a consumer and the petitioner institution is a service provider in the present case.

17. It is seen from the order of the District Forum that the District Forum has ordered refund of Rs.14,000/- as fee along with Rs.5,000/- as compensation for unfair trade practice on the part of the opposite parties and Rs.5,000/- as cost of litigation. The order of the District Forum is based on equity and therefore, the complainant would be only entitled to the refund of fees paid as directed by the District Forum and the cost of litigation. In the circumstances of the case, I do not see any justification for awarding any further compensation. Consequently, the order of the District Forum in respect of the compensation of Rs.5,000/- to be paid to the complainant by the opposite parties is set aside. However, the remaining order of the District Forum regarding refund of Rs.14,000/- and payment of Rs.5,000/- as litigation cost is maintained. This order be complied within 30 days from the date of receipt/service of this order. No notice to the respondent has been issued in the matter keeping in view the amount involved in the present case and to save the respondent's further expenses on litigation. However, if the respondent complainant feels aggrieved by this order the respondent can approach this Commission."

The Hon'ble National Commission upheld the order qua refund of fee to the student as ordered by the Forum and upheld in appeal by us by giving detailed judgment. However, order qua award of compensation was set aside by the Hon'ble National Commission. Be that as it may, our order qua refund of fee charged by the Frankfinn Institute of Air Hostess Training and award of litigation expenses has been upheld and has become final."

10. Not only above, further in Para 17, this Commission held as under:-

"17. We may also mention that coaching classes are just befooling & cheating students with tall claims by flashing through advertisements in newspapers and brochures etc. that their classes are achieving 70% to 90% or 100% results. The ugly face is that they make assurances for students that their career is secured but unfortunately, these are just gimmicks to attract young minds and swindle money in the name of education. They are playing with the lives of many innocent students. It will not be out of place to mention here that in this competitive world, everyone intends to perform well in life and there are no easy short cuts. What quality education means? Every child or a student has his/her own ability to understand the things and when it comes to studies, we can say with confidence that five fingers cannot be equal or at par. Coaching industry is booming in India, a multi billion industry now. It's a rat race and everyone wants to outshine others. Coaching Centres for professional courses, which have mushroomed across the Country, are

notorious for harassing students over fees and issuing misleading advertisements about their achievements which create false hope and even lead to suicides amongst students. Sometimes, innocent parents get allured by results of coaching institute published in any type of advertisement and trust it with blind eyes despite the fact that it might be a trick to lure students and their parents to get admission into the institute. After paying hefty fee of coaching institutes by shelling money from hard earned savings and at times by raising loans etc., poor parents, who are always concerned about the carrier of their children, would not think of going to Courts and knock the doors of justice to get their money back because every penny of hard earned money means to them."

11. Further in Paras 20 to 23, it was further held, inter-alia, as under:-

"20. As regards the argument raised by the Counsel for the appellant/opposite parties that the complainants are not entitled to any refund in term of provisions of Clauses 8 and 10 of the enrolment form, which was duly signed by them at the time of taking admission with opposite parties No.1 & 2, we would like to extract aforesaid clauses as under:-

"8. I undertake that if I leave the Institute midway before completing the full course for any reason whatsoever, including but not limited to transfer of my father/mother/legal guardian/ill health of myself or any other member of the family or my admission in any institute/course/engineering college etc. I or my father/mother/legal guardian shall not be entitled for refund of fees.

10. In addition to the above, I understand without any ambiguity that the fee once paid is not refundable at all, whatever the reasons be, nor is it adjustable towards any other existing courses at FIITJEE or any yet to be launched nor towards the fee of any other existing or prospective student."

21. It is a fact that when parents approach some coaching institute to get their ward admitted for coaching, they are supposed to sign the enrolment form and other terms and conditions, which are printed in very small letters. No doubt, the aforesaid clauses are totally one sided and against the interest of the complainants and also did not take care of the second party i.e. the complainants, yet there was no way out but to sign on dotted lines. Since complainant No.2 is minor, therefore, the said enrolment contract is void abinitio qua her.

22. It may be stated here that the Hon'ble Supreme Court of India has recently in the case of **Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan** , Civil Appeal No.12238 of 2018 decided on 02.04.2019 held that incorporation of one-sided clauses in a builder-buyer agreement constitutes an unfair trade practice as per Section 2(r) of the Consumer Protection Act, 1986. The Bench was considering an appeal against the order of Hon'ble National Consumer Disputes Redressal Commission, New Delhi wherein it was held that the clause relied upon by the builder to resist the refund claims made by the co0mplainant buyer, were wholly one sided, unfair and unreasonable and could not be relied upon. The Hon'ble Apex court held in Paras 6.7 and 7 of the judgment as under:-

> "6.7 A term of a contract will not be final and binding, if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the Agreement dated 08.05.2012 are ex-facie one sided, unfair and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2(r) of the Consumer Protection Act, 186 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder.
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> 7. In view of the above discussion, we have no hesitation in holding that the terms of the Apartment Buyer's Agreement dated 08.05.2012 were wholly one-sided and unfair to the Respondent – flat Purchaser. The Appellant – Builder could not seek to bind the Respondent with such one-sided contractual terms."

23. Therefore, in view of law settled by Hon'ble Supreme Court of India, the aforesaid enrolment contract or the above clauses have no binding force on the complainants……"

12. Thus, in view of our findings given in the case of FIITJEE Ltd. Vs. Vikram Seth (Minor) through his Natural Guardian (supra) , and in the preceding paras, no case is made out to set aside the impugned order passed by the Forum.

13. In the instant case, the appellant/opposite parties went on further to show their attitude as they even did not bother about the ill health of the son of the complainant who had developed severe back pain, due to which, he was unable to sit for longer duration. The Coaching Institute are not meant only to collect huge fee from the students and earn profits out of it but they are also supposed to show courtesy, empathy and secure the interests of the students. Admittedly, the son of the respondent/complainant attended only few coaching/tuitions classes of the appellant/Opposite Parties in the year 2018 and withdrew from the course on extreme medical grounds.

14. Not only above, the appellant/opposite parties further despite instructions not to present the post-dated cheques collected from respondent/complainant, presented the same and got them enchashed, which exposed their greed for money with clear cut intention to shell out as much as money from the respondent/complainant. Money was much more important for the appellant/opposite parties than the health of the son of the respondent/complainant. The act of the appellant/opposite parties in not refunding the fee to a student who left the course after attending few classes on extreme medical grounds is atrocious. One can easily see the height of atrocities being committed by the appellant/ opposite parties. This has to be stopped somewhere. Future of students/children is to be protected at large and this will only become possible, when the coaching/educational institutions understand their responsibility and duty towards the students in true perspective. In our view, the Forum rightly observed that the appellant/Opposite Parties were aware of the law laid down by the Hon'ble Supreme Court as well Hon'ble National Commission, however, it blatantly violated the dictum of the Hon'ble Apex Court and charged Fee for Two Years in advance from the complainant. The Forum also righty observed that the appellant/opposite parties are not an accredited academic institution affiliated with any Board or University and are merely a Coaching Centre for providing Coaching to the students who aspire for admission to engineering/ technical institutions. Undoubtedly, the appellant/opposite party, a coaching centre is in a dominating position and as such, maneuvered to get the signature of parents of students on pre-settled printed enrollment undertaking. It further observed that the parents under duress sign such undertaking with an anxiety to get his pupil admitted for best coaching to enable him/her for better performance in the competitions for admission to high ranked engineering/technical institutions/universities, which is nothing but an emotional exploitation and could not be acquiesced. The Forum further went on to observe that if any child, after joining the coaching institute, failed to cope up with the coaching schedule for the reasons whatsoever, or if a student is not in a position to continue/attend coaching classes due to medical reasons, he/she cannot be penalized by way of forfeiture of his/her money, which is deposited by the parents with such coaching centres. In our opinion and as rightly held by the Forum, the Coaching Centres are entitled legally to charge fee only for the services, which they actually provide to the student and not more than that.

15. In view of law settled in the case of Sehgal School of Competition (supra) , the Forum rightly ordered refund of the entire fee collected from the respondent/complainant towards admission of her son after deduction of the processing fee of not more than Rs.1,000/- besides awarding Rs.25,000/- and Rs.10,000/- towards compensation for mental and physical harassment and litigation cost.

16. It is one of the grounds in appeal that the respondent/complainant prayed for refund of Rs.1,38,750/- whereas the Forum has ordered refund of Rs.1,70,350/-. It may be stated here that besides refund of aforesaid amount of Rs.1,38,750/-, the complainant also sought direction to the appellant/opposite parties to return two post-dated cheques bearing Nos.000352 & 000353 dated 20.12.2018 for Rs.15,000/- & Rs.30,100/- respectively, totaling Rs.45,100/-. It is on record that during the pendency of the complaint, the respondent/complainant moved a petition before the Forum under Section 151 C.P.C wherein she categorically stated that the aforesaid two cheques in the sum of Rs.45,100/- were got encahsed by the appellant/opposite parties on 24.12.2018 despite request made to the appellant/opposite parties not to encash those post-dated cheques. Thus, in our considered opinion, the respondent/ complainant was entitled to refund of an amount of Rs.1,83,850/- minus Rs.1,000/- i.e. Rs.1,82,850/-. However, in this appeal, which is filed by the appellant/opposite parties, we cannot order modification of the impugned order to the extent indicated above.

17. No other point was raised by the Counsel for the appellant/opposite parties.

18. For the reasons recorded above, this appeal being devoid of any merit, is dismissed in limine with no order as to costs. The impugned order dated 09.04.2019 passed by the District Forum–II, U.T., Chandigarh in Consumer Complaint No.448 of 2018 is upheld.

19. Certified copies of the order be sent to the parties free of charge.

20. File be consigned to the Record Room after completion.

Pronounced

11.07.2019 .

[JUSTICE JASBIR SINGH (RETD.)]

PRESIDENT

(PADMA PANDEY)

MEMBER

(RAJESH K. ARYA)

MEMBER

Ad