

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, ERNAKULAM
Dated this the 27th day of June, 2025

PRESENT

Shri. D.B. Binu
Shri. V. Ramachandran
Smt. Sreevidhia T.N

Filed on: 30/05/2016

Hon'ble President
Hon'ble Member
Hon'ble Member

CC.No. 306 of 2016

COMPLAINANT:

Seeja.K.M, W/o Santhosh.K.T, San Villa, S.K. Bazar, Elathur, Kozhikode-673303.

(Adv. Philip.T. Varghese, Thomas.T. Varghese, Alex. M. Thombra, Achu Shubha Abraham, Denny Varghese, Advocates, T.D. Road, Ernakulam, Cochin-682011.)

VS

OPPOSITE PARTIES:

1. M/s Broun Hall International India Pvt.. Limited, 27/3218 A-H, Opp. Kochi Shipyard, Atlantis, M.G. Road, Ernakulam-682015. Rep by its Managing Director.
2. Dr. Mahendran, Fertility Guide, Broun Hall Clinic, 27/3218 A-H, Opp. Kochi Shipyard, Atlantis, M.G. Road, Ernakulam-682015.
3. Dr. Meera, IVF Specialist, Broun Hall Clinic, 27/3218, A-H, Opp. Kochi Shipyard, Atlantis, M.G. Road, Ernakulam-682015.
(Adv. A. Anilkumar, P. J Anilkumar, P.S. Sreeprasad, Advocates, H.No.28/3085C, Parvathy Nivas', Tagore Nagar, Ponneth Temple Road, Kadavanthra, Cochin-682020 for Ops 1 &3)

FINAL ORDER

D.B. Binu, President:

1. A brief statement of facts of this complaint is as stated below:

The complaint was filed under Section 12 of the Consumer Protection Act, 1986. The complainant, married on 02.06.2002 and unable to conceive, attended a medical camp organised by the 1st opposite party at Sahakarana Hospital,

Vadakara, on 15.05.2014. At the camp, Mr. Praveen Nair and Mr. Praveen Pillai, misrepresented as infertility specialists, assured the complainant and her husband of a 100% success rate in IVF treatment, urging immediate booking due to high demand. Relying on their representation, the complainant paid Rs. 1,000/- as an advance and subsequently paid Rs. 2,40,000/- through cheques to the 1st, 2nd, and 3rd opposite parties.

After receiving payment, the opposite parties stated that IVF success was doubtful due to medical conditions and demanded an additional Rs.40,000/- for a hysteroscopy. The complainant discovered that Mr. Nair and Mr. Pillai were marketing agents, and the promises of success were baseless. Upon requesting a refund, the opposite parties assured repayment but failed to refund despite repeated follow-ups. A notice was issued on 19.04.2016, but no response or refund was made.

The complainant alleges unfair trade practices and deficiency in service by the opposite parties and seeks a refund of Rs.2,41,000/- with interest, Rs.2,00,000/- as compensation, and Rs.25,000/- as litigation expenses. The transaction occurred within the jurisdiction of the Ernakulam Consumer Commission.

2. NOTICE:

The Commission issued notice to the Opposite Parties on 02.06.2016. Opposite Parties 1 and 3 filed their versions belatedly on 05.08.2016, i.e., beyond the statutory period. Opposite Party 2 failed to file any version. Accordingly, all the Opposite Parties were set ex parte by the Commission on 30.06.2016 and 16.08.2024.

3. EVIDENCE:

The complainant submitted a proof affidavit along with five documents, which are marked as Exhibits A1 to A5.

- **Exhibit A1** – Receipt issued by the opposite parties to the complainant dated 15.05.2014
- **Exhibit A2** – Office copy of the lawyer's notice dated 19.04.2016 along with three postal receipts
- **Exhibit A3** – Two acknowledgement cards received in response to the legal notice
- **Exhibit A4** – Returned postal cover of the notice sent to the 2nd opposite party (undelivered)
- **Exhibit A5** – Account statement of the complainant's account maintained at Union Bank of India Account No. 339802010106424 (Kozhikode Main Branch) for the period from 01.04.2014 to 31.03.2015, along with Section 65B Certificate.

4. **Points for Consideration:**

- i) Whether there is any deficiency in service or unfair trade practice by the opposite parties?
- ii) If so, whether the complainant is entitled to any relief?
- iii) Costs of the proceedings, if any?

5. **Summary of Written Argument of the Complainant:**

- a. The complaint is filed aggrieved by the unfair practice resorted to by the opposite parties in inducing the complainant to undergo an all-inclusive IVF procedure at a package cost of Rs. 2,40,000/-, and subsequently failing to provide the service promised and undertaken by them.
- b. The complainant and her husband attended a medical camp on 15.05.2014, conducted by the 1st opposite party. There, they met two persons, Mr. Praveen Pillai and Mr. Praveen Nair, who impersonated themselves as doctors and held discussions with the complainant and her husband regarding their medical concerns. They directed the complainant to proceed with the IVF procedure immediately, assuring a 100% success rate. Based on these promises and assurances, the complainant made an advance

payment of Rs. 1,000/- on 15.05.2014. The receipt issued by the opposite parties is marked as **Exhibit A1**.

- c. The complainant subsequently paid the entire amount of Rs. 2,40,000/- through cheques drawn on her account maintained with Union Bank of India. The corresponding bank account statement along with the Section 65B Certificate is produced and marked as **Exhibit A5**.
- d. After receiving the full payment, the 2nd and 3rd opposite parties informed the complainant that the success of the IVF procedure was doubtful and that she must undergo a Hysteroscopy procedure, requiring an additional payment of Rs. 40,000/-. By this point, the complainant and her husband had realised that Mr. Praveen Nair and Mr. Praveen Pillai were not infertility specialists or medical practitioners, but mere marketing representatives of the opposite parties.
- e. As the complainant had lost faith in the opposite parties, she and her husband sought a refund of the entire amount paid. Though the opposite parties assured that the amount of Rs. 2,40,000/- would be refunded, the refund was repeatedly delayed under various pretexts. Eventually, the opposite parties informed the complainant that only Rs. 1,50,000/- would be refunded, claiming that Rs. 17,000/- was spent for lab tests, Rs. 40,000/- was deducted by the Head Office, and the remaining amount was paid to a donor. However, the complainant asserts that no such lab tests worth Rs. 17,000/- were conducted—only blood tests and scanning were done, costing no more than Rs. 3,000/-. These deductions are thus imaginary and impermissible.
- f. Despite assurances, no refund was made. A lawyer's notice dated 19.04.2016 was issued to the opposite parties, with postal receipts and acknowledgement cards produced and marked as **Exhibits A2 and A3**.

respectively. The notice sent to the 2nd opposite party was returned undelivered and is marked as **Exhibit A4**.

g. There is no dispute regarding the payment of Rs. 2,40,000/- by the complainant, which is admitted by the 1st and 3rd opposite parties in paragraph 4 of their version. Moreover, the complainant was not cross-examined by the opposite parties. Even after the lapse of nearly 10 years, the opposite parties have not refunded the amount, clearly indicating their unwillingness to fulfil their commitment.

h. The opposite parties induced the complainant to make the payment based on false promises. No treatment or medical benefit was provided in return. They later demanded an additional Rs. 40,000/- to initiate the IVF process, thereby exploiting the emotional vulnerability of the complainant for financial gain. The opposite parties, having accepted the payment, were under a legal and moral obligation to provide the promised service.

We have also noticed that a Notice was issued by the Commission to the opposite parties, but they did not file their version within the statutory period. Hence, the opposite party set ex parte. The complainant had produced five documents marked as **Exbt.A-1 to A-5**. All in support of her case. However, the opposite parties did not make any attempt to appear in the case and participate in the above proceedings before this commission or set aside the ex parte order passed against them. It was further stated that this illegal, arbitrary and unjustified act of the opposite parties amounted to a 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 complainant 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).*

We have meticulously considered the detailed submissions of the complainant, as well as thoroughly reviewed the entire record of evidence, including the argument notes. It is noted that the opposite parties have failed to submit any argument notes or participate in the proceedings.

The complaint is based on the grievance that the opposite parties induced the complainant and her husband through false assurances to undergo an IVF procedure costing Rs. 2,40,000/-, promising a 100% success rate. It was later discovered that the two individuals who gave these assurances were not medical professionals but marketing representatives. After the complainant paid the full amount, the opposite parties conveyed that the success of the treatment was doubtful and further demanded Rs. 40,000/- for a hysteroscopy. The complainant, having lost trust, requested a refund, which was initially promised but never delivered.

Despite repeated follow-ups and legal notice, only a partial refund was later offered. The opposite parties failed to respond to the Commission's notice in time and were set ex parte. The complainant submitted a proof affidavit and **Exhibits A1 to A5** supporting her version, which remains unchallenged.

i). Deficiency in Service and Unfair Trade Practice:

Under Section 2(1)(g) and 2(1)(r) of the Consumer Protection Act, 1986, "deficiency in service" and "unfair trade practice" include acts of misrepresentation and failure to provide promised services. The opposite parties made false promises through unauthorised agents and induced the complainant to pay a substantial amount. The treatment was never rendered. Such conduct squarely falls under both "deficiency in service" and "unfair trade practice."

The failure to provide promised treatment amounts to a deficiency in service. The mental harassment and deficiency of service attract liability for compensation.

The opposite parties failed to appear before the Commission and did not challenge the complainant's version, which is supported by documentary evidence. Their conduct in failing to refund the full amount or provide the promised service demonstrates an intent to exploit the complainant's emotional and financial vulnerability.

The complainant has undergone mental agony and financial hardship due to the callous and unethical behaviour of the opposite parties. The complete absence of any counter-evidence or cross-examination reinforces the credibility of the complainant's allegations.

ii). Liability of the Opposite Parties:

All opposite parties acted in concert and are jointly and severally liable. The 1st opposite party orchestrated the camp, the 2nd and 3rd opposite parties gave false medical advice, and the complainant was misled by marketing representatives. Their failure to honour their commitment and provide treatment constitutes clear negligence and deficiency in service.

iii). Is the complainant entitled to any relief?

The opposite parties failed to refund the full amount despite admitting receipt of payment and offering a refund. Their continued silence, failure to appear, and lack of rebuttal further strengthen the complainant's case. The complainant also suffered mental agony, financial loss, and emotional distress.

This case reveals a deeply distressing account of how emotionally vulnerable individuals—such as the complainant, who longed to experience motherhood—were misled by false promises and professional misrepresentation. It is particularly troubling that the opposite parties not

only failed to provide the promised medical services but also exploited the complainant's hopes by assuring a 100% success rate and then retreating from their commitments. The conduct of the opposite parties reflects a grave breach of trust and ethics expected from medical institutions, turning what should have been a journey of care and healing into one of deceit, financial loss, and emotional trauma. The Commission cannot overlook the pain and disappointment suffered by the complainant, and this judgment must serve both as a remedy for her injustice and a stern message against such exploitative practices in the healthcare sector.

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 Parties. Consequently, the complainant has endured considerable inconvenience, mental distress, hardships, and financial losses as a result of the negligence of the Opposite Parties.

In view of the above facts and circumstances of the case, we are of the opinion that the Opposite Parties are liable to compensate the complainant.

Hence, the prayer is partly allowed as follows:

- I).** The opposite parties shall refund ₹ 2,41,000/- (Rupees Two Lakh forty one thousand Only) to the complainant as per **Exhibit A1& A5.**
- II).** The opposite parties shall pay ₹20,000/- (Rupees Twenty Thousand Only) to the complainant as compensation for mental agony, financial loss, and inconvenience. This amount is awarded for the deficiency in service and unfair trade practices, as well as for the mental agony and physical hardships endured by the complainant.

III). The opposite parties shall pay **₹5,000/-** (Rupees Five Thousand Only) to the complainant towards the cost of the proceedings.

The opposite parties are jointly and severally liable for the fulfilment of the above orders. These orders must be executed within 30 days from the date of receiving this order. Failure to comply with the payment orders under Points I and II will result in an interest rate of 9% per annum from the date of filing the complaint (30/05/2016) until the date of full payment realisation.

Pronounced in the Open Commission on this the 27th day of June, 2025.

D.B. Binu, President

V. Ramachandran, Member

Sreevidhya T.N, Member

APPENDIX

Complainant's Evidence:

Exhibit A1 – Receipt issued by the opposite parties to the complainant dated 15.05.2014

Exhibit A2 – Office copy of the lawyer's notice dated 19.04.2016 along with three postal receipts

Exhibit A3 – Two acknowledgement cards received in response to the legal notice

Exhibit A4 – Returned postal cover of the notice sent to the 2nd opposite party (undelivered)

Exhibit A5 – Account statement of the complainant's Union Bank of India Account No 339802010106424 (Kozhikode Main Branch) for the period from 01.04.2014 to 31.03.2015, along with Section 65B Certificate.

Opposite parties Evidence: Nil

Date of Despatch

By Hand::

By post::

BR/