

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
8TH FLOOR, B.W.S.S.B BUILDING, K.G.ROAD,BANGALORE-09**

**Complaint Case No. CC/242/2022
(Date of Filing : 19 Oct 2022)**

1. Smt. Gayathri B G

.....Complainant(s)

Versus

1. Anand Nallapete

.....Opp.Party(s)

BEFORE:

**HON'BLE MRS. M. SHOBHA PRESIDENT
HON'BLE MRS. K Anita Shivakumar MEMBER
HON'BLE MRS. SUMA ANIL KUMAR MEMBER**

PRESENT:

Dated : 10 Aug 2023

**Final Order / Judgement
BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION AT
BANGALORE (URBAN)**

DATED 10th DAY OF AUGUST 2023

PRESENT:-

SMT.M.SHOBHA

: PRESIDENT

BSC., LLB

SMT.K.ANITA SHIVAKUMAR

MEMBER

:

M.S.W, LL.B., PGDCLP

SMT.SUMA ANIL KUMAR

: MEMBER

BA., LL.B., IWIL-IIMB

COMPLAINT No.242/2022

Smt. Gayathri. B.G,

OMPLAINANT 1

(SRI, Mahalingaiah. H.H, Adv)

Anand Nallapeta,

OPPOSITE PARTY 1

Also at:

(SRI. Chalubaraju. G, Adv)

ORDER

SMT. K. ANITA SHIVAKUMAR, MEMBER

Complaint filed by the complainant U/S 35 of Consumer Protection Act 2019, seeking direction to Op to refund amount of Rs.80,000/- along with interest at the rate of 18% per annum from 15.01.2021, to pay sum of Rs.2,00,000/- as compensation for mental agony, hardship and to pay cost of litigation and such other reliefs.

2. Brief facts of this case are as follows:-

Complainant submits that her marriage was fixed with one Yogesh KR on 05.03.2021, was intending to have a photograph of her marriage ceremony. She approached OP for engaging his service of photography and videographer of her marriage. After the negotiation between OP and complainant, settled it for payment of Rs.80,000/- which includes photography with

album and video coverage with CD. For that complainant has paid advance amount of Rs.5,000/- by online payment on 15.01.2021 to OP, whereas agreed to pay part amount at the time of marriage and remaining balance amount will be paid at the time of collecting album and CD.

3. Complainant further stated that she paid Rs.65,000/- on the date of marriage to OP in the marriage hall, it is before her friends and in total complainant has paid Rs.70,000/-. Complainant stated in her complaint that she also paid sum of Rs.10,000/- by online transfer (Google pay) at the time of receiving the album. OP was supposed to hand over CD also at the time of handing over the photo album, but OP failed to deliver the same on the reasons that some pending work is balance with CD and also assured to hand over the same within 15 days.

4. Complainant further stated that after lapse of 15 days OP has not made any efforts to hand over marriage video CD to complainant. Even after the receipt of entire amount of Rs.80,000/- and he dragged the matter by giving one or the other reasons and failed to hand over the CD. Complainant approached the OP and requested for CD several times, OP was giving evasive replies all this days till the date of filing the complaint. Complainant has issued legal notice on 02.09.2022 to both address of OP, calling upon to refund the entire amount of Rs.80,000/- along with interest, which were duly served on OP on 05.09.2022. But OP did not come forward to comply the claims of the complainant. Hence this complaint.

5. OP made his representation through his counsel and filed version, denies all the allegations made by the complainant and he also denies that the entire payment made by the complainant. OP stated in his objection that he admitted the payment of Rs.5,000/- and Rs.10,000/- online transfer but denies Rs.65,000/- which she has paid by way of cash at the marriage hall. Hence he prays that complainant has not made payment towards CD. Therefore he has not handed over the CD to complainant and the complaint filed by the complainant has no reason to prove the deficiency of service on his part and prays to dismiss the complaint with cost.

6. After the stage of version, the stage is set down to adduce complainant evidence. Accordingly complainant has filed her affidavit evidence, reiterated as stated in her complaint. She also filed 7 documents along with certificate U/S 65(B) of Indian Evidence Act, which are marked as Ex.P.1 to Ex.P.8. OP filed his affidavit evidence, no documentary evidence from OP.

7. After the evidence of OP, complainant filed IA under order XVI Rule 1, 1A with R/W section 151 to CPC with accompanying affidavit to examine the witness. IA was allowed and witness was allowed to filed affidavit evidence. Accordingly affidavit evidence of witness was taken on record. Counsels for both parties have filed written arguments and submitted arguments. We perused the documents on record.

8. On the basis of above pleadings for our consideration are as follows:-

- i) Whether the complainant prove the deficiency of service on the part of OP?
- ii) Whether complainant is entitled for the relief?
- iii) What order?

9. Our answers to the above points are as follows:-

Point No.1:- In the affirmative

Point No.2:- Partly affirmative

Point No.3:- As per the final order.

REASONS

10. Point No.1&2:- These points are inter connected to each other and for the sake of convenience, to avoid repetition of facts, this points are taken up together for common discussion.

11. It is not disputed that complainant has agreed to take service of OP for her marriage ceremony held on 05.03.2021 by engaging OP to take photograph and videography. It is also not disputed that complainant has paid Rs.5,000/- as an advance on 15.09.2021 and Rs.10,000/- after marriage at the time of handing over the photo album both the payments were made through online, which are at Ex.P.2 and Ex.P.2(a).

12. Complainant alleged that even after the entire payment made to OP, OP has not handed over the video CD as assured by him while taking the assignment. Complainant has produced Rs.5,000/- and Rs.10,000/- online transfer documents but she is unable to produce the evidence for the payment of Rs.65,000/- which has made by way of cash on the date of marriage as agreed. Complainant has requested OP for CD, OP has given one or the other reasons for failure of the same. Even complainant has approached OP several times, requested for the CD, OP was giving evasive replies till the date.

13. On the perusal of the complaint filed by the complainant and the version filed by the OP, nowhere in complaint, the complainant has referred that OP has demanded Rs.65,000/- more, even after the payment of Rs.80,000/-. In the documents produced by complainant, nowhere OP has demanded for balance amount, even after complainant has stated that she will approach Police Station to file complaint against him. Even in whatsapp chat, OP not demanded amount of Rs.65,000/- due from complainant and CD will be handed over after payment of due amount of Rs.65,000/-. It shows the payment of Rs.65,000/- is also paid by complainant. The whatsapp chat are on Ex.P.2(b) to Ex.P.2(d), clearly discloses that there is no due of amount till date of filing this complaint, OP has raised the issue of payment of Rs.65,000/- which is paid by way of cash only after filing this complaint.

14. Complainant stated in the complaint that OP has given evasive replies whenever she approached and requested for CD, if in case, OP demanded money which is due according to him, obviously complainant alleges the same throughout her complaint. In our considered view it is after thought defence by the OP which is concocted to defend himself. If it is so, OP could have replied to the legal notice when he claimed to refund the entire amount of Rs.80,000/-, which is paid towards the photography album and CD. OP did not do so. He neither replied to the legal notice nor he responded the same in whatsapp chats. It clearly reveals that OP has received Rs.80,000/- from complainant and failed to provide the CD as he assured. Therefore, complainant approached this commission, otherwise there was no reason to come before this commission.

15. In Ex.P.2(B) OP promised to handover the CD within 15 days, later he expressed that he is facing problem in editing and non availability of editors. At the same time he apologized for the inconvenience caused due to his act. It is clearly exhibits OP has taken stand for payment of Rs.65,000/- is best known to him that complainant cannot produce any evidence of the payment of Rs.65,000/- which is paid in cash. OP taken stand on the reason, and contested his matter. At the same time, OP did not produce any evidence to prove that complainant is due to pay Rs.65,000/-.

16. In between the proceedings of this case before this commission, OP has sought for a settlement, if complainant is ready to pay Rs.65,000/-. Upon going through this statement of OP, we can analyze that OP is having the CD after all editing work. Hence in our view OP is liable to hand over the CD if he has already prepared, with compensation because the memories of marriage will not be recreated, it is very essential and precious document throughout the life. If in case OP is failed to produce the CD, he has to refund amount he received for CD after deducting the amount he spent for photography and its album. OP has already handed over the photography and its album as complainant herself stated in the complaint. Hence OP is liable to refund amount in respect of video CD only.

17. Since the marriage photographs and video are precious one without providing CD of complainant marriage is unfair. By receiving entire amount towards photography and video OP has failed to keep up his assurances. Hence, it amounts to deficiency of service and is liable to compensate it by paying Rs.20,000/- with interest at the rate of 10% from 05.03.2021 i.e., on the date of marriage when she paid substantial amount, the claim of Rs.2,00,000/- towards compensation, seems to be exorbitant. For the foregoing reasons we answer Point No.1&2 in accordingly.

18. Point No.3:- In view of the discussion referred above, we proceed to pass the following:-

ORDER

- i) Complaint filed U/S 35 is hereby, allowed in part.
- ii) OP shall hand over CD of complainants marriage to the complainant and to pay Rs.20,000/- compensation with interest at the rate of 10% per annum from 05.03.2021, and to pay Rs.8,000/- towards cost of proceedings within 30 days from this day.
- iii) In case OP failed to provide CD, directed to refund Rs.35,000/- to complainant towards cost of video CD along with compensation and cost, failing which OP shall pay interest at the rate of 12% per annum on Award amount from date of order till realization.

(Dictated to the Stenographer, got it transcribed and corrected, pronounced in the Open Commission on this 10th day of AUGUST, 2023)

(SUMA ANIL KUMAR)

(K.ANITA SHIVAKUMAR)

(M.SHOBHA)

MEMBER

MEMBER

PRESIDENT

Documents produced by the Complainant-P.W.1 are as follows:

1.	Ex.P.1	Copy of the marriage invitation.
2.	Ex.P.2, P.2(A)to (D)	Copy of the screen shots of Phonepe for having paid the amount.
3.	Ex.P.3	Copy of the legal notice dated 02.09.2022.
4.	Ex.P.4	Copy of Postal receipts.
5.	Ex.P.5 & 6	Copy of postal acknowledgements.
6.	Ex.P.7	Copy of Aadhaar card of complainant.
7.	Ex.P.8	Certificate U/S 65B of Indian Evidence Act.

Documents produced by the representative of opposite party – R.W.1;

NIL

(SUMA ANIL KUMAR)

(K.ANITA SHIVAKUMAR)

(M.SHOBHA)

MEMBER

MEMBER

PRESIDENT

**[HON'BLE MRS. M. SHOBHA]
PRESIDENT**

**[HON'BLE MRS. K Anita Shivakumar]
MEMBER**

**[HON'BLE MRS. SUMA ANIL KUMAR]
MEMBER**