

Date of filing: 25.04.2022
Date of Disposal: 31.12.2022

**BEFORE THE BANGALORE URBAN II ADDITIONAL
DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
SHANTHINAGAR, BANGALORE - 560027**

DATED THIS THE 31st DAY OF DECEMBER 2022

CONSUMER COMPLAINT NO.121/2022

PRESENT:

SRI K.S.BILAGI, B.COM, M.A., LL.M.,	... PRESIDENT
SRI B.DEVARAJU, B.A.L., L.L.B.	... MEMBER
SMT.V.ANURADHA, B.A., LL.B.,	... MEMBER

COMPLAINANT:

✓ Mr. Abhishek.M.R,
Aged about 28 years,
S/o C.Ravikumar,
R/a No.22, F1 Suggi,
16th Cross, 6th Main,
Malleshwaram West,
Bangalore - 560 055.

(Complainant is In Person)

V/s

OPPOSITE PARTIES:

1. M/s.Zomato Foods Pvt. Ltd.,
Reg. Office T-19 Basement,
Green Park Main,
Delhi New Delhi,
DL 110016 IN,
Rep. by its
Managing Director.
2. The Manager,
M/s.Zomato Foods Pvt. Ltd.,
Address:5, 20th Main Rd,
KHB Colony,
Koramangala Industrial Layout,



✓
8/16/22

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Koramangala,
 Bengaluru – 560 034,
 Karnataka.

3. Box8 Desi Meals,
 No.1762/2, Akshay Complex,
 Prakash Nagar, Ward No.98,
 Dr.Rajkumar Road,
 Rajajinagar,
 Bangalore – 560 010,
 Rep. by its
 Proprietor.

(OPs No.1 & 2 are Rep. by Adv. Sri Harsh Vardhan)
 (OP No.3 is Ex parte)

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Author **SRI.K.S.BILAGI, PRESIDENT**

//JUDGMENT//

1. This complaint is filed by the complainant under Section 35 of the Consumer Protection Act, 2019, (hereinafter referred as the Act) against the opposite parties for the following reliefs;

- a) To pay compensatory damages of Rs.50,000/- for deficiency of service, negligence and distress, pain, agony, trauma etc.,
- b) To pay costs of Rs.50,000/- towards filing this complaint,
- c) To pass such other further relief as may deem fit.

2. The case of the complainant in brief is as under;

On 14.04.2022 at 8:46 PM the complainant placed a dinner meal for Amritsari Chole Thali Meal of the respondent No.3 through respondent No.1 platform for



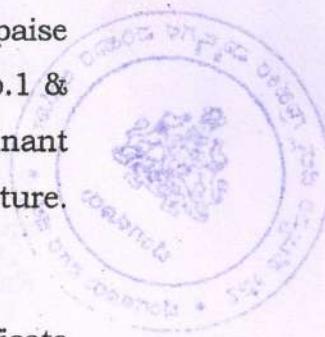
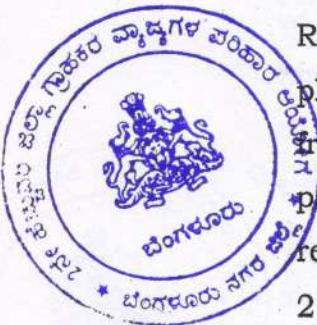
filed 31/12/2022

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sum of Rs.256.10 paise. But he could not receive the delivery. There was no sign of delivery of food till 9:45 P.M. Despite his best efforts, he could not get the food. This non supply of food amounts to deficiency of service on the part of the opposite parties. Hence, this complaint.

3. In response to the notice, the opposite parties No.1 & 2 only appeared and filed version. Despite service of notice, the opposite party No.3 failed to appear before this Commission. Therefore, opposite party No.3 has been placed Ex parte.
4. The opposite parties No.1 & 2 are only intermediary and non supply of food of the opposite party No.3 does not amount to deficiency on the part of opposite parties No.1 & 2. The complainant duly agreed to user agreement of the opposite parties No.1 & 2. The opposite parties No.1 & 2 does not guarantee the quality of Goods, the prices listed in menus or the availability of all menu items at any Restaurant/Merchant. The opposite party No.2 admits placing a dinner order by the complainant to get the dinner from opposite party No.3 through platform of opposite parties No.1 & 2. In fact, an amount of Rs.256.10 paise returned to the complainant. The opposite parties No.1 & 2 have offered a coupon of Rs.1,000/- to the complainant for use for a period of 1 year as a goodwill of gesture. Therefore, they request to dismiss the complaint.
5. The complainant files his affidavit evidence with certificate and 8 documents. The affidavit evidence of Authorized Representative of opposite parties No.1 & 2 has been filed

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31/12*



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with 3 documents. Heard the arguments and perused the records.

6. The following points do arise for our consideration;

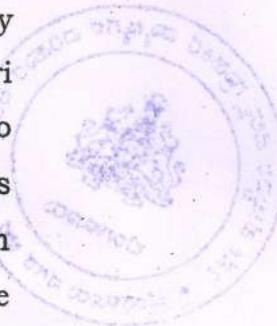
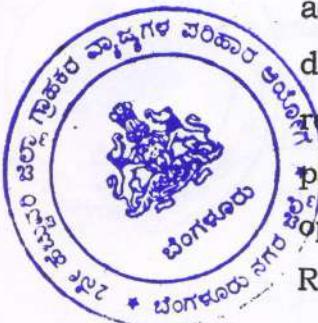
1. Whether the complainant proves the deficiency of service on the part of the opposite parties?
2. Whether the complainant is entitled to the reliefs claimed in the complaint?
3. What order?

7. Our findings on the above points are as under;

- i) **POINTS NO.1 & 2:** Affirmative in Part;
- ii) **POINT NO.3:** As per final order for the following;

REASONS

8. **POINTS NO.1 & 2:-** Even though contesting opposite parties No.1 & 2 denies deficiency of service on their part, but it is admitted fact that on 14.04.2022 the complainant placed an order for dinner through opposite party No.2 by paying Rs.256.10 paise to get the dinner meal of Amritsari Chole Thali Meal of opposite party No.3. It is also admitted fact that the complainant could not get his dinner on 14.04.2022. The complainant does not claim refund of amount paid by him. It means, the opposite parties No.1 & 2 have refunded Rs.256.10 paise. In fact opposite parties No.1 & 2 tried to give coupon for Rs.1,000/- as a Goodwill Gesture to the complainant, but complainant was not happy with this proposal. The documents produced by the complainant are not in dispute. There were exchange of notices between the



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complainant and opposite party No.2. The opposite party No.2 not only expressed apology for the delay, but offered Rs.1,000/- worth coupon in the form of Zomato wallet for a period of 365 days. Even though opposite parties No.1 & 2 contend that the opposite party No.2 is only platform and there is no direct noxious for delay in supply of dinner. It is true that the complainant placed an order by utilizing the platform of opposite party No.2 to get dinner meal of opposite party No.3 by paying the consideration. Admittedly, no dinner was supplied to the complainant on 14.04.2022. Even though Ex.R1 is terms and conditions are not in dispute. The opposite party No.2 cannot shirk its responsibility. The refund of Rs.256.10 paise is a clear indication that the opposite party No.2 had received the amount with an intention to provide dinner meal to the complainant by picking the same from the restaurant of opposite party No.3. The non supply of food by opposite party No.3 also equally deficiency of service of opposite party No.2. The opposite party No.1 is not a necessary and proper party.

9. The complainant relies on the following decisions;
 1. Consumer Protection (E-Commerce) Rules, 2020,
 2. Ajay Kumar Sharma vs. Zomato Pvt. and Anr.,
 3. Arun G Krishnan vs. Deepinder Goyal and Anr.,
 4. News Article on Zomato food pricing- Business Insider,
 5. News Article and CCI Probe into Zomato.
10. Whereas, the opposite parties rely on the following decisions;

*W.L.P
B.I.V*



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1. Decision of Supreme Court of India in the matter between Bharathi Knitting Co., vs. DHL Worldwide Express Courier Division of Airfreight Ltd.,
2. Decision of High Court of Karnataka at Bengaluru in the matter between Kunal Bahl and Ors., vs. Stae of Karnataka,
3. Decision of Supreme Court of India in the matter between Charan Singh vs. Healint Touch Hospital and Ors.,

11. We carefully perused the above decisions and article. There is no need to go into details about these decisions as the complainant *prima facie* establishes the deficiency of service on the part of the opposite parties No.2 & 3.

12. The complainant proves deficiency of service on the part of opposite parties No.2 & 3 only. The complainant claims Rs.50,000/- as compensation and Rs.50,000/- as cost of litigation expenses. Admittedly, the complainant has not paid any Court fee. This claim is too exorbitant and without any basis. Under such circumstances, it is proper to award Rs.2,000/- as compensation and Rs.1,000/- as cost of litigation expenses. Hence, we answer the above Points No.1 and 2 partly in the Affirmative.

13. **POINT NO. 3:** In view of the discussion referred above, the complaint against opposite party No.1 requires to be dismissed. The complaint against opposite parties No.2 & 3 requires to be allowed in part. The opposite parties No.2 & 3 are liable to pay Rs.2,000/- as compensation and Rs.1,000/- as cost of litigation expenses to the complainant. We proceed to pass the following;

Ketan Bahl



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ORDER

The complaint against opposite party No.1 is dismissed. The complaint against opposite parties No.2 & 3 is allowed in part.

The opposite parties No.2 & 3 are directed to pay Rs.2,000/- (Rupees Two Thousand only) towards compensation and Rs.1,000/- (Rupees One Thousand only) towards cost of litigation expenses to the complainant.

The opposite parties No.2 & 3 are directed to comply this order within 30 days from this date.

Supply free copy of this order to the parties.

Return spare copies of the pleading and evidence to the parties.

(Dictated to the Steno, typed by her, transcript corrected, Revised and then pronounced by the open Commission on **31st day of DECEMBER 2022**).



V.A.ells
 (V.ANURADHA)
 MEMBER

W. Dinesh
 (B.DEVARAJU)
 MEMBER

K. S. BILAGI
 PRESIDENT

//ANNEXURE//

SWORN TO BE TRUE COPY (FREE)

Witness examined for the complainant's side:

Mr. Abhishek.M.R, who being the complainant has filed his affidavit.

Asst. Registrar-Cum-Asst.
 Administrative Officer-II A
 Consumer Disputes
 Redressal Commission

Place... B... Dated 4/1/2023

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List of documents filed by the complainant:

1. Certificate under Section 65B of Indian Evidence Act,
2. Web extract of the account held by complainant with opposite party No.1,
3. Web extract of the summary and receipt dated 14.04.2022,
4. Web extract/mobile screenshots of the delivery status and chat with support executives,
5. Web extract of review posted by another user,
6. Web extract of grievance mail dated 16.04.2022,
7. Web extract of complaint as attachment to mail dated 16.04.2022,
8. Web extract of reply mail dated 19.04.2022

Witness examined on behalf of the Opposite Parties:

Mr.Hari Sutha, who being the Authorized Representative in the opposite parties No.1 & 2 Company has filed his affidavit.

List of documents filed by the Opposite Party:

1. Ex.R1: Copy of the Terms of service from page Nos.24-104,
2. Copy of the CD,
3. Ex.R2: Certificate under Section 65B of Indian Evidence Act.

V.A. 31/12/22
 (V.ANURADHA)
 MEMBER

W.D.J. 31/12/22
 (B.DEVARAJU)
 MEMBER

K.S.BILAGI 31/12/22
 (K.S.BILAGI)
 PRESIDENT

CERTIFIED TO BE TRUE COPY (FREE)

Asst. Registrar-Cum-Asst.
 Administrative Officer-II A
 District Consumer Disputes
 & Redressal Commission

Place: B.I.O.C. Dated 4.1.2023

