

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION**

**ADDITIONAL DCF, MUMBAI(SUBURBAN)**

**CONSUMER COMPLAINT NO. DC/AB1/483/CC/285/2022**

KAUSHIK LODH

PRESENT ADDRESS - B48 SHRADDHA SOCIETY AMRUT NAGAR GHATKOPAR WEST  
MUMBAI 400086MUMBAI SUBURBAN,MAHARASHTRA.

.....Complainant(s)

Versus

SUKH SAGAR HOTELS PVT LTD

PRESENT ADDRESS - MARINA MENSION S.V.P ROAD CHOWPATTY SEA FACE MUMBAI  
400007MUMBAI SUBURBAN,MAHARASHTRA.

.....Opposite Party(s)

**BEFORE:**

**HON'BLE MR. PRADEEP G. KADU , PRESIDENT**

**HON'BLE MS. GAURI M. KAPSE , MEMBER**

**FOR THE COMPLAINANT:**

KAUSHIK LODH, ADV SIDDHARTH PATIL (Advocate)

**FOR THE OPPOSITE PARTY:**

NONE PRESENT (NO WS)

**DATED: 22/07/2025**

**ORDER**

**Per Mr.Pradeep G. Kadu, Hon'ble President**

This is an action under Section 35 of Consumer Protection Act, 2019. The brief facts of the case and Complainant's contentions in the said case are as follows:-

- 1) The complainant Mr.Kaushik Lodh, with his friend Mr.Sakhare, on 28/9/2022, went to Sukh Sagar Hotel for lunch. In the food they ordered, a massive stone like particle got served to the complainant. This caused massive pain in the tooth of the complainant and his crown of tooth broken. The complainant brought this fact to the notice of the manager of the hotel, who in turn apologized for the unfortunate event. The complainant next day contacted hotel for the damages, however, the hotel management refused to the complainant's request. The aforementioned incident

impacted and damaged an expensive crown on the left side, upper jaw of the Complainant.

- 2) Due to no response by the opposite party, the complainant felt aggrieved and choose to file the present consumer complaint for the said deficiency in service. The complainant in his complaint prayed for the expenses incurred on the medical treatment because of the deficient service by the opposite party.

### **Contentions of the Opposite Party**

- 3) Looking to the facts of the matter, the case was admitted on 04/01/2023. Accordingly, notice was issued to the opposite party. The opposite party appeared before this Commission and submitted their written version. However, the said written version was filed beyond the prescribed time limit of 45 days. Hence, on 21/02/2024, the order has been passed to proceed the matter “No WS” against the opposite party. The opposite party filed their written argument on legal points on 06/03/2024. The opposite party in their written arguments on law points has emphasized on following points in support of their defense.
  - a. This Commission does not have jurisdiction to entertain the present complaint;
  - b. Present complaint is illegal, bad in law and not maintainable;
  - c. The complainant has suppressed material facts;
  - d. The complainant filed the said complaint with ulterior motive and malafide intentions.
- 4) The opposite party had made no submissions on legal points in their written arguments, though such opportunity is given to them.

### **Observations of the facts**

- 5) We have perused all the facts in the said case. The complainant submitted various documents in support of his claim. We carefully examined all the documents produced before us, as mentioned above. After going through all those documents, we have made

following observations:-

- i) On 28/09/2022, the complainant visited the restaurant of the opposite party, named as Sukh Sagar Hotels Pvt. Ltd. It is situated at Marine Mansions, Chowpaty, Mumbai;
- ii) The complainant produced the bill copy of food ordered. The invoice bears date 28/09/2022. The opposite party admits that the complainant had visited their hotel on the said date;
- iii) The complainant in their written submission mentions order of Veg Kolhapuri, however, the invoice mentions Veg Hyderabadi. However, the mere change in name of dish and name of dish mentioned in the complaint has no bearing on the nature of the complaint. Hence, though this was objected by the opposite party during oral argument, we do not find this can be point of dispute as far as the issue involved in the complaint is concerned;
- iv) Complainant's friend Mr.Vaibhav in his affidavit cum statement confirms his presence in hotel with the complainant and also confirms the event of stone in the food ordered in the hotel by the complainant. He also confirmed that the complainant had bite of the stone in the food accidentally and got severe hurt and pain in his mouth.
- v) The complainant visited dental clinic Sabka Dentist on 29/09/2022. In the certificate produced from the Sabka Dentist Clinic, it is mentioned that Mr.Kaushik Lodh attended by them for the dental treatment. It is also mentioned in the letter that there is damage to the crown on tooth due to bite impact and advised new crown. The cost of the crown is shown as Rs.14,500/- and charges for composite filling posterior was of Rs.1,500/-.
- vi) From the opposite party's written argument, it is confirmed that the opposite party denied the incidence, but was ready to compensate the complainant by

paying cost of crown at Rs.14,500/-.

- vii) The complainant further on 20/09/2024 submitted additional evidence, which is taken on record on 23/12/2024. In the said evidence, the complainant claimed some more treatments taken in the year 2024. In the said evidence, the complainant tried to establish further complications in the tooth implants.

### **Conclusions and Findings**

- 6) After going through all the facts, we observe that the incident of hard piece like stone in the food, ordered by the complainant is confirmed with the available facts and evidence. The opposite party admits that the complainant had visited to their hotel on the mentioned date and ordered food. Though, the opposite party denied the incidence of hard stone like particle in food, however, shown willingness to compensate the complainant. This itself is an admission of foreign particle in the food served to the complainant.
- 7) Further, the complainant visited very next day to the dentist, where it has been confirmed that there is a damage to the crown on the implant of the tooth. This has been mentioned as caused by bite impact.
- 8) On the other hand, the opposite party failed in their legal duty to appear before this commission in the time limit prescribed in the Act. Also the written argument on legal points could not establish any legal point involvement in the impugned case.
- 9) Based on above facts and evidence, we confirm the incidence of hard stone like particle in the food ordered by the complainant from the hotel of the opposite party. This can be the most possible cause to the damage to the tooth crown of the complainant, as the complainant on very next day examined the tooth with the dentist. Thus, there is no valid reason to disprove the complainant's claim of damage to the tooth crown, due to the deficient service by the opposite party in their hotel.
- 10) Based on our analysis of the facts, we have following issues to decide:-

Issue No.	Particulars	Findings
1.	Whether there is deficiency in service on the part of the opposite party?	Yes
2.	Whether the complainant is entitled to compensation?	Partly yes.
3.	What order?	As per final order

### Reasoning and findings

#### Issue No. 1: Deficiency in Service

- 11) The presence of a stone particle in the food served by the opposite party, which caused damage to the complainant's tooth crown, clearly establishes negligence and deficiency in service under Section 2 (11) of the Consumer Protection Act, 2019, on the part of the opposite party.
- 12) The service providers, especially those in the food industry, are under a duty of care to ensure that the food served is safe and free from harmful foreign substances. The Hon'ble Supreme Court in the case of ***"Kusum Sharma & Ors. vs. Batra Hospital & Medical Research Centre"***, reported in **(2010) 3 SCC 480**, emphasized the principle that the service providers must maintain a reasonable standard of care.
- 13) The Karnataka State Consumer Commission in the case of ***"K. Damodaran vs. Hotel Saraswathi"***, reported in **III (2007) CPJ 171 (Karnataka SCDRC)**, in similar circumstances where the complainant's tooth was damaged by a stone in the food, held the hotel responsible for deficiency in service and awarded compensation.
- 14) Further, in the case of ***"KFC vs. Pawan Kumar"***, reported in **2012 SCC OnLine NCDRC 3474**, the Hon'ble National Commission held that the presence of any foreign

object in the food, constitutes deficiency in service, irrespective of whether the incident was deliberate or accidental.

- 15) Therefore, the complainant has successfully proved that there was deficiency in service on the part of the opposite party.
- 16) Considering the above facts and analysis, we hold that the present complaint is maintainable and the complainant deserves to get the cost of treatment of the tooth crown. However, further claims of the complainant as per additional evidence are not sufficiently established that these are in connection with the earlier cause of action. Nothing has been brought on record, which can indicate that the further treatment in the year 2024 is the extended part of the earlier treatment. Hence, we are not agree with the complainant's submission made through additional evidence.

### **Issue No.2-Entitlement to the compensation**

- 17) Apart from cost of treatment, the complainant is also entitle to get compensation on account of mental agony and physical harm to the body, as well as also eligible to get cost for legal expenses. We hold that the Opposite Party committed deficiency in service and found guilty for the same.
- 18) The complainant certainly suffered the mental torture, harassment, physical damage to the tooth etc., due to the deficient service rendered by the opposite party, which compelled him to take legal action for redressal of his grievance. Hence, on the said count, the opposite party liable to pay compensation of Rs.10,000/- and cost of Rs.5,000/- towards legal expenses.
- 19) Based on above discussions and conclusions and in the light of above discussed evidence, we proceed to pass the following Order:-

### **ORDER**

1. The Consumer Complaint No.**DC/AB1/483/CC/285/2022** is partly allowed.

2. The Opposite Party is hereby directed to pay Rs.16,000/- towards the cost of tooth treatment along with 6% p.a. interest from 01/10/2022 till actual payment to the complainant.
3. The Opposite Party is further directed to pay compensation Rs.10,000/- for mental torture, harassment, etc., and cost of Rs.5,000/- for legal expenses to the complainant.
4. The Opposite Party shall comply this order within 45 days from the date of receipt of the order.
5. Rest of the prayers of the Complainant are rejected.
6. The copy of order be sent to both the parties free of costs.

.....J  
**PRADEEP G. KADU**  
**PRESIDENT**

.....J  
**GAURI M. KAPSE**  
**MEMBER**