

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, ERNAKULAM**  
**Dated this the 29<sup>th</sup> day of October 2025**

**Filed on: 17.02.2025**

**PRESENT**

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

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

**C.C No. 233 of 2025**

**COMPLAINANT:**

Heloyis Manuel, aged 22 Yrs, S/o Mani. K.J, Karikkatt (H), Kolakkad.P.O, Kannur-970673.  
(Adv. M. J . Johnson, E.M.S Road, Kambiveli, Kakkanad.P.O, Ernakulam-682030.)

**Vs.**

**OPPOSITE PARTIES:**

1. B.M.Tours & Travels, Little Flower Church, North Kaloor, Kochi-682017, Kerala  
Represented by its Proprietor Sam Joseph.
2. Sam Joseph, Proprietor, B. M Tours & Travels, Kaloor, Kochi-682017, Kerala.

**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 35 of the Consumer Protection Act, 2019. The Complainant, a B.Sc. (Physics) student of Sacred Heart College, Thevara, Ernakulam , along with 37 classmates and three teachers, engaged Opposite Party Nos. 1 and 2 (tour operators) in January 2023 for a study tour to Goa and Dandeli scheduled from 22-26 February 2023. The Opposite Parties (OPs) issued a detailed tour plan to Dr Jimmy Sebastian, Assistant Professor, covering

accommodation, food and local travel. The total tour cost for 41 persons was ₹2,07,000/-, calculated at ₹5,450/- per student, with the OPs agreeing to take the three teachers free of cost. In part-performance, the Complainant remitted a total advance of ₹1,00,000/- to the OPs' Indian Bank, Elamakkara account, in three instalments on 31.01.2023 (₹50,000/-), 03.02.2023 (₹30,000/-) and 04.02.2023 (₹20,000/-).

The students booked train tickets at their own expense. The trip was later cancelled when the Indian Railways cancelled the booked trains, and no alternative tickets were available. The OPs agreed to refund the advance by June 2023, but failed to do so despite repeated requests from the Complainant and parents. A lawyer's notice dated 30.11.2024 was served on the OPs, acknowledged via postal ADs, yet no refund or reply ensued. The Complainant seeks a refund of ₹1,00,000/- with 12% p.a. interest from 31.01.2023, and compensation and costs.

## **2. NOTICE:**

Notices were issued to Opposite Party Nos. 1 and 2 on 08.04.2025 to their recorded addresses. Both postal covers were returned with the endorsement "Unclaimed". In law, such endorsement constitutes deemed service. Despite service, the Opposite Parties did not enter an appearance or file their written version within the statutory period of 30 days, extendable by a maximum of 15 days under Section 38(2)(a) of the Consumer Protection Act, 2019. Accordingly, the Opposite Parties were set ex parte.

## **3. EVIDENCE:**

The complainant filed a proof affidavit and produced seven documents in support of the complaint, which were marked as **Exhibits A1 to A7**.

- **Exbt. A1:** Photocopy of the agreement for the Dandeli-Goa college tour dated 23.01.2023, issued to Dr Jimmi Sebastian, Assistant Professor, Department of Physics, S.H. College, Thevara, Ernakulam (6 pages).
- **Exbt. A2:** Photocopy of transaction details dated 31.01.2023 evidencing remittance of ₹50,000/- to the Opposite Parties.
- **Exbt. A3:** Photocopy of transaction details dated 03.02.2023 evidencing remittance of ₹30,000/- to the Opposite Parties.
- **Exbt. A4:** Photocopy of transaction details dated 04.02.2023, evidencing remittance of ₹20,000/- to the Opposite Parties.
- **Exbt. A5:** Photocopy of the lawyer's notice dated 30.11.2024.
- **Exbt. A6:** Copies of Postal Acknowledgement Cards (2 Nos.) signed by the Opposite Parties.
- **Exbt. A7:** series: Copies of the Complainant's statement of account issued by Canara Bank dated 29.08.2025.

#### 4. **POINTS FOR CONSIDERATION:**

- i) Whether the complaint is maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice by the opposite parties?
- iii) If so, whether the complainant is entitled to any relief?
- iv) Costs of the proceedings, if any?

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

The complainant's argument notes were first filed on 21.08.2025. By order in I.A. No. 1680/2025, this Commission reopened the complainant's evidence and accepted the statement of bank account as **Exbt. A7 (series)**.

- a. The complainant, a B.Sc. (Physics) student of S.H. College, Thevara, Ernakulam (AY 2020–2023), along with classmates, engaged the Opposite Parties (OPs) for a study tour to Goa and Dandeli scheduled 22–26 February 2023. The OPs issued a detailed tour plan covering accommodation, food and local travel for 41 persons, with teachers to be taken free of cost (**Exbt. A1**).
- b. In part-performance, the complainant paid a total advance of ₹1,00,000/- to the OPs' Indian Bank, Elamakkara A/c No. 623238573, in three instalments: ₹50,000/- on 31.01.2023 (**Exbt. A2**), ₹30,000/- on 03.02.2023 (**Exbt. A3**), and ₹20,000/- on 04.02.2023 (**Exbt. A4**). These remittances are corroborated by the complainant's bank statement now on record as **Exbt. A7 (series)**.
- c. Thus, ₹1,00,000/- stood transferred from the complainant's account to the OPs (**Exbt. A2–A4; A7 series**).
- d. Students booked onward and return train tickets at their own expense (Train No. 22633, Hazrat Nizamuddin Superfast Express). The tour was cancelled when the booked trains were cancelled by Indian Railways and no alternate tickets were available. The OPs agreed to refund ₹1,00,000/- by June 2023 but failed to honour this commitment despite repeated requests from the complainant and parents.
- e. The OPs' failure to refund is arbitrary and unjust, constituting deficiency in service, unfair trade practice, restrictive trade practice and negligence, and has caused monetary loss and mental agony to the complainant.
- f. A lawyer notice dated 30.11.2024 was issued to the OPs (**Exbt. A5**) and duly served, evidenced by two Postal Acknowledgement Cards (**Exbt. A6**). No reply or refund ensued.

g. The cause of action is continuing; there is no delay in instituting the complaint. The cause of action also arose within Ernakulam jurisdiction, inter alia, on 04.02.2023 (final instalment paid, **Exbt. A4**) and 30.11.2024 (issue of notice, **Exbt. A5**).

The complainant prays that the OPs be directed jointly and severally to refund ₹1,00,000/- with 12% p.a. interest from 31.01.2023 (first remittance), and to pay ₹50,000/- as compensation and ₹50,000/- as costs.

We note that notices were issued by this Commission to the Opposite Parties; however, they did not file their written version within the statutory period and were, therefore, set ex parte. The Complainant has produced and proved **Exhibits A1 to A7 (series)**, all of which support the case. Despite the deemed service, the Opposite Parties did not attempt to appear, participate in the proceedings, or move to set aside the ex parte order. Such conscious non-participation warrants an adverse inference and leaves the Complainant's evidence unrebutted. In these circumstances, we find no reason to disbelieve the Complainant's version, and the Opposite Parties' conduct amounts to a deficiency in service and unfair trade practice, causing mental agony and hardship to the Complainant. While non-filing of a written version does not, in every case, ipso facto constitute admission, where—as here—the pleadings and proof affidavit with **Exhibits A1–A7** stand unchallenged, the Commission may proceed to accept the unrebutted evidence; see, inter alia, **2017 (4) CPR 590 (NC)**.

We have carefully considered the submissions of the learned counsel for the complainant and meticulously perused the pleadings, proof affidavit and **Exhibits A1–A7 (series)**, together with the written argument notes on record. The Opposite Parties, who stand set ex parte upon deemed service, have neither filed a

written version nor submitted argument notes or otherwise participated in the proceedings. The complainant's evidence thus remains unrebutted. We proceed to decide the complaint on the basis of the materials available on record.

**6. (i) Maintainability.**

The Complainant is a "consumer" availing the "services" of a tour operator. The dispute concerns failure to refund consideration when the contracted trip could not be performed and a refund was promised. The grievance squarely falls within Sections 2(7), 2(42) & 2(11) CPA 2019. The complainant hired tour-organising services for consideration and is therefore a "consumer"; the activity is "service" under the Consumer Protection Act, 2019. Territorial jurisdiction lies with this Commission as the Opposite Parties carry on business at Kaloor/Elamakkara, Ernakulam, and part of the cause of action arose here, including the remittances. The pecuniary value involved is ₹1,00,000, (Exbt. A7 (series) well within the District Commission's limit. Filed on 17.02.2025, the complaint is within the two-year limitation computed from the June 2023 refund default and the continuing cause of action. The complaint is maintainable.

**(ii) Deficiency in service / unfair trade practice/negligence.**

Failure to refund promised sums after cancellation constitutes a deficiency in service under Section 2(11) CPA 2019. When performance becomes impossible and the service provider undertakes to refund, non-refund without justification is a service shortcoming.

**Additional Ex-Parte Proof Affidavit (Taken on Record):**

The complainant, filed an additional ex-parte proof affidavit affirming familiarity with the facts and explaining that the bank statement could not be

produced earlier. A four-page copy of the complainant's bank account statement is now produced ( **Exbt. A7 (series)**).The record (**Exbt. A2-A4; A7 series**) proves payment of ₹1,00,000/-. **Exbt. A5-A6** show demand and service. The Opposite Parties themselves agreed to refund by June 2023, but defaulted. Their conduct also bears the imprint of unfair trade practice (Section 2(47)) by withholding consumers' money after acknowledged non-performance.

To the extent any standard-form terms are relied upon to forfeit monies, such one-sided clauses are discountenanced as unfair contracts (Section 2(46)); cf. **Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan**, (2019) 5 SCC 725 (courts will not enforce unconscionable, one-sided terms against consumers).

The Opposite Parties chose not to contest. In such a situation, unrebutted, cogent evidence can be accepted: **2017 (4) CPR 590 (NC)** (non-filing of version; complaint can be decided on unrebutted record).

Finding: Yes, deficiency in service and unfair practice are established.

(iii and iv) Reliefs & quantum.

Under Section 39(1)(d) CPA 2019, this Commission may order a refund, compensation for mental agony/harassment, and costs.

The prolonged withholding despite a specific promise to refund and even after legal notice justifies compensation for mental agony and harassment.

*This case is a reminder that behind every "consumer dispute" lies a human story. A group of students planned an educational tour with trust and excitement; when the trip collapsed due to train cancellations, the Opposite Parties' simple, immediate duty was to return the money they had taken. Instead, prolonged silence*

*and non-participation forced a young complainant to litigate for what was plainly due. The record—including **Exhibits A1-A7**—speaks coherently and remains unrebutted. Fair dealing and prompt refunds are not acts of benevolence but legal obligations. Our directions, therefore, aim not only to compensate a specific loss but to affirm that dignity, transparency, and accountability are the minimum owed to consumers.*

Issues (i) to (iv) are answered in the affirmative and in favour of the complainant. On the unrebutted record, the Opposite Parties' conduct amounts to a deficiency in service under Section 2(11) and unfair trade practice under Section 2(47) of the Consumer Protection Act, 2019, besides negligence. The complainant has consequently suffered inconvenience, mental distress, hardship and pecuniary loss attributable to the Opposite Parties. In these facts and circumstances, the Opposite Parties are held jointly and severally liable to compensate the complainant, along with appropriate refund, interest, compensation and costs as awarded.

**Hence the prayer is partly allowed as follows:**

- I. The opposite parties shall refund **₹1,00,000/-** (Rupees One Lakh) to the complainant as per **Exbt. A7 (series)**.
- II. The Opposite Parties shall, pay the Complainant **₹20,000/-** (Rupees Twenty Thousand only) as compensation for mental agony, physical hardship, inconvenience, and attendant financial loss, the same being awarded on account of the deficiency in service and unfair trade practice established in this case.
- III. The Opposite Parties shall, pay the Complainant **₹5,000/-** (Rupees Five Thousand only) towards the costs of these proceedings.

The Opposite Parties are jointly and severally liable for compliance with **Points I to III**. They shall comply within forty-five (45) days from the date of receipt of this order. In default of payment under **Points I and II** within the said period, the amounts awarded therein shall carry interest at 9% (nine per cent) per annum from 17.02.2025 (date of filing of the complaint) until realisation.

**Pronounced in the Open Commission on this the 29<sup>th</sup> day of October, 2025.**

Sd/-  
**D.B. Binu**  
President

Sd/-  
**V. Ramachandran**  
Member

Sd/-  
**Sreevidhia T.N**  
Member

Forwarded/By Order

Assistant Registrar

## **APPENDIX**

### **Complainant's Evidence:**

- **Exbt. A1:** Photocopy of the agreement for the Dandeli-Goa college tour dated 23.01.2023, issued to Dr Jimmi Sebastian, Assistant Professor, Department of Physics, S.H. College, Thevara, Ernakulam (6 pages).
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### **Opposite party's Evidence:-**

Despatch date:

By hand:

By post

Br/-