

**CONSUMER DISPUTES REDRESSAL FORUM -II UDYOG SADAN C C 22 23
QUTUB INSTITUTIONAL AREA BEHIND QUTUB HOTEL NEW DELHI 110016**

**Complaint Case No. CC/230/2011
(Date of Filing : 15 Jul 2011)**

1. KHUSHAL KOLWAR
1017 SECTOR-XII, R K PURAM NEW DELHI 110022Complainant(s)

Versus

1. FIIT JEE LTD
FIITJEE HOUSE 29-A KALU SARAI SARVAPRIYA
VIHAR NEW DELHI 110016Opp.Party(s)

BEFORE:

**HON'BLE MS. R S BAGRI PRESIDENT
KIRAN KAUSHAL MEMBER
NAINA BAKSHI MEMBER**

**For the
Complainant:** None

**For the Opp.
Party:** None

Dated : 15 Nov 2018

Final Order / Judgement

**DISTRICT CONSUMER DISPUTES REDRESSAL
FORUM-II**

Udyog Sadan, C-22 & 23, Qutub Institutional Area

(Behind Qutub Hotel), New Delhi-110016

Case No.230/2011

Kushal Kolwar (Minor)

Through his Father &

Natural Guardian Sh. Suresh Chandra

R/o 1017, Sector-XII,

R. K. Puram, New Delhi-110022

....Complainant

Versus

M/s FIIT JEE Ltd.

(through its CMD)

FIIT JEE House,

Kalu Sarai, Sarvapriya Vihar,

(Near Hauz Khas Bus Terminal)

New Delhi-110016

....Opposite Party

15.11.18 Date of Institution : 15.07.11 Date of Order :

Coram:

Sh. R.S. Bagri, President

Ms. Naina Bakshi , Member

Ms. Kiran Kaushal, Member

ORDER

Member - Kiran Kaushal

Brief facts of the complaint as stated are:-

1. The complainant joined a course SDER 911 A-1 conducted by M/s FIIT JEE Ltd. hereinafter referred to as OP which commenced with effect from 03.10.09. The complainant paid a sum of Rs.87,000/- towards fee for the full course.
2. The complainant attended the classes for 15 days and after not being satisfied with the course the complainant discontinued the course. It is stated that the father of the complainant requested for refund of the fee paid after deducting the proportionate amount

of tuition fee for 15 days. When refund was not forthcoming the complainant alongwith his father met the official of OP and requested to refund the fee. The official of OP advised them to contact the faculty and persuaded the complainant to attend the classes. Accordingly, father of the complainant persuaded the complainant to attend the classes, thereafter the complainant attended classes for further two days however he was still not satisfied and finally decided to discontinue the course. Thereafter the complainant requested to refund the proportionate fee amount but his request was not acted upon. Finally the complainant served a notice of demand dated 22.03.10 to the OP. Despite service of notice the OP neither refunded the balance fee nor replied to the aforesaid notice. Aggrieved by the act of the OP the complainant approached this Forum with the following prayer:-

- i. Direct the OP to refund a sum of Rs.70,000/- after deducting the fee/cost of material –first package;
- ii. Direct the OP to pay a sum of Rs.50,000/- as damages towards mental agonies and unnecessary harassment caused to the complainant;
- iii. Direct the OP to pay a sum of Rs.22,000/- as cost towards proceeding.
- iv. Direct the OP to pay interest @ 14% p.a. on the aforesaid amount stated in para (i), (ii) and (iii) w.e.f. 22.03.10.

2. OP resisted the complaint inter-alia making preliminary objection stating that the complainant had agreed upon and accepted the Arbitration clause forming the part of declaration attached to the Enrollment Form. Hence, the complaint is barred by the Arbitration Agreement and the matter in case of any dispute should be referred to the sole arbitrator. Another objection taken by the OP is that while seeking admission the complainant and his guardian had read, understood and thereafter accorded their consent to the said terms and conditions as contained in the admission form, without any coercion or undue influence. Thus, while signing those declarations they are bound by them as per law.

2.1 The OP submits that the complainant got registered in the one year extended classroom programme and appeared in the admission test conducted by the OP. The complainant was declared successful in the admission test and consequently got enrolled in the aforesaid course. It is further submitted that OP to ensure quality education and uniform teaching standard and also keeping in mind the students interest does not fill the vacancy created against any student who leaves the course midway. It is next averred that most of the expenditure made by the OP is incurred in advance and is also fixed in nature. The OP has to bear expenditures like lease rent of the premises, salary of faculty members and non faculty staff, electricity and other allied expenditures, preparation and printing of study material etc. irrespective of number of students and batches. Further total fee includes taxes as applicable and cost of study material supplied to the students.

2.2 It is alleged by the OP that the complainant for the reason best known to him and for no fault of the OP voluntarily discontinued from the aforesaid course. Therefore the complainant is not entitled to the reliefs sought. It is prayed that the complaint be dismissed.

3. Complainant has filed rejoinder controverting the allegations contained in the written statement and reiterating the averments made in the complaint.

4. Father of the complainant has filed his affidavit by way of evidence. Evidence by way of affidavit of Sh. Ashish Kumar Aggarwal, Authorized Representative of the FIIT JEE Ltd. has been filed.
5. Written arguments have been filed on behalf of the parties.
 6. We have gone through entire evidence and heard the arguments addressed by the learned counsel of the parties.
 7. Before we go into the merits of the case let us first address preliminary objection raised by the OP. It is contended by the OP that since the agreement between the parties contained Arbitration clause that arbitration and not a complaint before this Forum is the appropriate remedy. Forum finds no merit in this objections as Section 3 of the Consumer Protection Act, 1986 (CPA) provides that the provision of this Act is in addition to the other remedy available to the consumer. Therefore availability of arbitration as a remedy does not debar the complainant from approaching a consumer forum in a case of deficiency rendered to him/her. For the sake of clarity Section 3 of the Consumer Protection Act, 1986 is reproduced as under:-

“Act not in derogation of any other law—the provision of this Act shall be in addition to and not in derogation to the provision of any other law for the time being in force.”

1. The next objection of the OP is that while seeking admission/registration the complainant and his father had accorded their consent to the terms and conditions as contained in the admission form, without any coercion or undue influence. Thus, by signing those declarations the complainant has accorded his unconditional and free consent and is thus bound by those conditions as per law. To substantiate his objection, OP has relied on various judgments. Ratio of all the judgments is that the parties cannot go beyond the terms and conditions agreed upon by them.
2. On perusal of the agreement it is observed that no exit clause has been provided in the agreement in case the student finds the service of the OP unsatisfactory and wishes to withdraw from the institute. Therefore absence of exit clause makes the agreement unconscionable as it is one sided. Similar views are taken in Brilliant Tutorials V/s Rahul Das, Appeal No.509/2006, decided on 09.01.17 wherein the view of State Commission was that “any such term of contract between the parties which allows the provider of service to forfeit the amount of service which he has not provided is against the public policy and good conscious, unjust and unconscionable as the provider of service has the right to charge consideration only if it provides the services.”
10. Further the condition in the enrollment form that:

Para-6 : “I understand that if I leave the institution midway before completing the full course for any reason whatsoever, including transfer of Parents/Guardians/ill health of

self or any other member of the family or my admission in any institute/ engineering college etc., or my studentship is cancelled because of misconduct etc. I or my parents/guardian shall have no claim for refund of fees.”

Above condition on bare reading is absolutely arbitrary and unreasonable. OP cannot draw any benefit from the consent of the complainant as it is one sided. Therefore, this clause of agreement is unjust, unconscious and unconscionable

11. Now on the facts of the case. Admittedly the complainant took admission in OP’s institute for a one year extended classroom programme which commenced w.e.f. 03.10.09 and paid a sum of Rs.87,000/- towards the fee for the full course. However, the complainant attended classes only for 15 days and as he was not satisfied with the course, he discontinued the course and the father of the complainant requested for refund of proportionate fee after deducting reasonable amount paid. The complainant alongwith his father met the officials of OP and requested for refund of the fee. On visiting the OP’s institute the father of the complainant was advised by the officials to contact the faculty and persuaded the complainant to attend the classes. As advised the complainant was persuaded by his father to attend the classes again and the complainant attended classes for two more days but found the services of the OP to be substandard and non-yielding, hence finally decided to discontinue the course. Thereafter, the complainant requested for refund of the fee paid after deducting the proportionate amount of tuition fee for 15 days. Complainant had written a letter to the OP to refund the fee which is disputed by the OP.

12. The contention of the OP is that the complainant cannot back out after according consent to the terms and conditions duly signed by the complainant and his father. This contention has been dealt with in Para No. 9 above. OP further contended that that the seat left vacant by the student remained unfilled for the remaining period of the batch. Hence, OP cannot allow this practice by the student to leave the course midway. As claimed OP is self financed and self managed institute and runs from the fees collected from the students. Most of the expenditure is incurred in advance and also is of fixed nature. OP further states that the institute will suffer a irreparable loss if the complaint is allowed.

13. Complainant after taking classes for 15 days found the services of the OP to be deficient and unsatisfactory and hence decided to discontinue with the course. The complainant’s intention to study in OP’s institute was clear as he gave another try and attended classes for two more days as advised by the official of the OP. Thereafter, he found the services to be substandard and non-yielding and that he finally decided to discontinue the course. In similar facts Hon’ble NCDRC in Jaipreet Singh Kaushal Vs. FIIT JEE and Anr. has allowed the complaint and directed refund of part fee which was upheld by the Hon’ble Supreme Court of India as the SLP filed by OP was dismissed.

13. Keeping in view the above facts and circumstances of the case we allow the complaint permitting the OP to retain the balance amount of Rs.37,000/- towards administrative charges and tuition fees for seventeen days and direct the OP to refund Rs.50,000/- in lumpsum to the complainant Rs.10,000/- is awarded to the complainant by way of compensation towards mental agony and litigation expenses within 45 days of receipt of copy of this order. Failing which OP shall become liable to pay interest @ 6% p.a. on the amount of Rs.50,000/- from the date of the filing of the complaint till realization.

Let a copy of this order be sent to the parties as per regulation 21 of the Consumer Protection Regulations. Thereafter file be consigned to record room.

Announced on 15.11.2018

**[HON'BLE MS. R S BAGRI]
PRESIDENT**

**[KIRAN KAUSHAL]
MEMBER**

**[NAINA BAKSHI]
MEMBER**