

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM
ERNAKULAM**

**Complaint Case No. CC/19/47
(Date of Filing : 22 Jan 2019)**

1. JIJO JOHN K

[Redacted]

.....Complainant(s)

Versus

1. M/S MAKE MY TRIP INDIA P LTD

[Redacted]

2 GURUGRAM HARYANA

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. D.B BINU PRESIDENT
HON'BLE MR. RAMACHANDRAN .V MEMBER
HON'BLE MRS. SREEVIDHIA T.N MEMBER**

PRESENT:

Dated : 26 Apr 2023

Final Order / Judgement

IN THE CONSUMER DISPUTES REDRESSAL COMMISSION, ERNAKULAM

Date of filing : 06.06.2015

Date of order :26.04.2023

Shri.D.B.Binu

President

V.Ramachandran

Member

Smt. Sreevidhia T.N

Member

C.C.No.47/2019

COMPLAINANT

1. Jijo John, [Redacted]

2. Nimiya Rose Joshuva, [Redacted]
[Redacted]

Vs.

OPPOSITE PARTIES

1. Mr.Sushil Verma, Sr.Vice President-Holidays, Make My Trip India Pvt. Ltd., [REDACTED]

2. Mr.Rakesh Raushan, Executive-Operations, Make My Trip India Pvt. Ltd., [REDACTED]

(Op rep. by Adv.Babu Jose, M/s.C.C.Thomas & Co., Waxwall Lane, Chittoor Road,
Kacheripady, Kochi-18)

FINAL ORDER

Sreevidhia T.N., Member

1) A brief history of the complaint is as stated below:

The complainant and wife planned to go on a trip to Athens ,Greece from 25 Aug to 2 Sep 2018.The complainants had taken help from the travel company 'Make my trip India, Pvt Ltd to arrange the travel package excluding flight tickets. The name of the package was 'best of Greece 2018 (without air)'. The duration of package was 7 nights and 8 days and cost INR. 1,44,879/- (Rupees One lakh forty-four thousand eight hundred and seventy-nine only). As per the package booking terms, the whole payment was to be paid in two instalments, Rs.78,000+ Rs.66,879/-. The booking was done on 26th July 2018 (Booking ID: NL2206371370707) by remitting the first instalment of Rs.78,000/- (Rupees Seventy eight thousand only) via online transfer, after which MakeMyTrip provided the Hotel Confirmation Voucher (for accommodation at Greece) which was necessary to apply for the Greece VISA. The application for VISA was submitted on 31st July 2018 along with all the necessary documents (including the Hotel Confirmation Voucher provided by MakeMyTrip) to Global Visa Center (VFS Global, Kochi), with the help of the travel agency, 'Riya Travel & Tours India Pvt Ltd.'" The second instalment of Rs.66,879/- to 'MakeMyTrip India Pvt. Ltd.' was paid via online transfer on 4th August 2018, before the due date (5th of August 2018).The response for VISA application was received on 9th August 2018 by post, which stated that 'After examination of the VISA Application by the Embassy of Greece in New Delhi Consular Office, the VISA has been refused due to the reason that, "the information submitted regarding the justification for the purpose and conditions of the intended stay was not reliable." The appeal against the decision to refuse VISA was practically not possible as there was not enough time to complete the stipulated procedure for the same, before the scheduled date of departure, 25th August 2018. Hence the trip had to be cancelled. Since the VISA was refused due to the inadmissibility of the travel package and hotel booking confirmation voucher provided by MakeMyTrip, a request was filed for refund against the travel package booking amount of Rs. 1,44,879/-. However, MakeMyTrip displayed no intention to pay any refund amount, even after repeated requests and enquiries for over three months. Hence the complainant approached this Commission seeking orders from this Commission directing the opposite parties to award an amount of Rs.2,36,249/- to the complainant by the opposite party as the net loss of entire trip along with 10% interest. The complainant also seeks Rs. 50000/- as compensation towards the physical strain and mental agony suffered by the complainant.

2. **Notice**

Notices were issued to the opposite parties from this Commission on 09.01.2020 the opposite parties appeared and filed their version along with three documents.

3. Version of the opposite parties

The present complaint, filed by the Complainants, is absolutely frivolous, misconceived and mala fide. Hence, it is an abuse of the process of law. The directors or the employees of the company i.e. MakeMyTrip (India) Pvt Ltd. cannot be made personally liable for any act, omission, or conduct of the company. The Opposite Party, provides all the travel related unblemished services and information to its customers but not limited to air ticketing, railways ticketing, bus booking, hotel bookings at very competitive prices. The Opposite Party merely acts as a facilitator for booking the confirmed air tickets/hotel bookings on behalf of its customers with the concerned service providers. That the Opposite Party, upon receiving the request from its customer, forwards the same to the concerned service providers through softwares embedded on its web-portal. That upon receiving the confirmation from concerned service providers, the Booking ID is generated and confirmed bookings/tickets is shared with the Customer. For availing the services of the Opposite Party, the intended traveller has to enter into an E-contract with the Opposite Party by consenting to the terms and conditions of the Opposite Party, by clicking on the "I Agree" pop up or button. Hence, the customers are bound by the terms and condition of the User Agreement of the Opposite Party. In the present case, the Complainants booked the Best of Greece 2018 7 Nights/8 Days, for a total consideration amount of Rs. 1,44,879/- (Rupees One Lakh, Forty-Four Thousand, Eight Hundred & Seventy-Nine Only) which includes, hotel charges including breakfast and other services. That the Opposite Party, in furtherance to the request of the Complainants booked the tour package and issued Booking ID No. NL2206371370707 (hereinafter to be referred as "Tour Package") to the Complainants. The Opposite Party in the capacity of a facilitator merely provides for confirmed bookings of air travel, hotels and meals for any International Tour booked by its users. Further, the Opposite Party duly informs the intended travellers that they are liable to procure/obtain the mandatory VISA/Transit VISA. International bookings made through MMT are subject to the requirements of visa including but not limited to transit visa, OK TO BOARD which are to be obtained by the User as per the requirement of their travel bookings and the requirements of the countries the User intends to visit or transit through. MMT is not responsible for any issues, including inability to travel, arising out of such visa requirements and is also not liable to refund any amount to the User. The acceptance/rejection of VISA Application is the sole prerogative of the concerned embassy which is dependent on a lot of factors, such as the information provided by User, current or previous nationality, place of application of VISA, residence, gender, age, profession, recent travel, outspread of a disease etc. The Complainants themselves have admitted in the Complaint that they hired the services of a travel agency namely, 'Riya Travel & Tours India Pvt Ltd' to submit their VISA Application to VFS Global, Kochi to be processed by the concerned embassy, both of which have malafidely not been impleaded as necessary parties to the present case. Hence, the Opposite Party cannot be made liable for the rejection of the VISA Application by the concerned embassy. The Opposite Party had duly mentioned all the relevant details including the cancellation policy of the Opposite Party in the Tour Package itinerary sent to the Complainants via an email. The Opposite Party had already made payment towards the confirmed booking for accommodation and travel on behalf of the Complainants, and duly issued the same to the Complainants. The same is evident from the receipts of the payment made towards the booking of the Hotel Tickets. Hence, the Opposite Party cannot be made liable for any refund. It is the sole responsibility of the Complainants to obtain the VISA for their intended travel and hence the Opposite Party cannot be held liable for any cancellation of tour or inability to travel due to rejection/stay of VISA Application by the concerned embassy as the same is not the prerogative of the opposite party. The Complainants themselves have admitted that they hired the services of a travel agency namely, 'Riya Travel & Tours India Pvt Ltd' to submit their VISA Application to VFS Global, Kochi to be processed by the concerned embassy, both of which have malafidely not been impleaded as necessary parties to the present case. It is pertinent to mention here that once the confirmed tickets are shared, the Opposite Party is discharged from all the obligations and liabilities qua the said bookings. The Complainant is bound by the terms and conditions duly agreed and consented to prior making the said booking with the Opposite Party wherein it was specifically mentioned that in case of cancellation of the bookings within 20 days or less, no refund will be made to the complainant. The packaged booked by the Complainant was scheduled for 25.08.2018 and the Complainant admittedly requested for cancellation on 07.08.2018, hence no refund is

applicable in the present case. There has no territorial jurisdiction to entertain the present Complaint, the Complainants have miserably failed to establish any cause of action against the Opposite Parties and further made averments against the Opposite Parties for the Tour Package in Greece which is not within the jurisdiction of this Hon'ble Commission. It is pertinent to mention here that the registered office of the Opposite Party is also situated in New Delhi and also works for gain in New Delhi. Therefore, the Consumer Commissions at Greece or New Delhi have the Territorial Jurisdiction to entertain the present complaint. The complainants were well aware of the cancellation policy of op qua respective the tour package even before the said bookings and payment is made. 50% of the package cost will be refunded upon cancellation done 21-35 days before departure. Cancellation stage: 20 days or less before departure. No refund will be provided upon the cancellation done 20 days before departure. The Complainant themselves in the preceding paragraphs admitted the fact that the Opposite Party has duly issued the confirmed booking vouchers of the Hotel which were duly selected by them; therefore, the Opposite Party cannot be made liable for any deficiency in service. It is vehemently denied that the Opposite Party is liable for any loss of Rs.2,36,249/- to the Complainant. It is submitted that the Complainant themselves after being satisfied by the services offered by the Opposite Party and duly consenting to the terms and conditions stipulated in the User Agreement along with the itinerary shared, has made the booking with the Opposite Party. It is submitted that the entire grievance of the Complainants is with respect to the rejection of the VISA by the concerned Embassy which was submitted by the Complainant through 'Riya Travel & Tours India Pvt Ltd without impleading the Riya Travel & Tours India Pvt Ltd as the party in the present case. Complainant themselves have mentioned in the tabular description for the flight booking amounting to Rs.1,28,336/- and out of which they have received Rs.50886/- as refund. However, the Complainant despite not receiving the entire amount from the Airlines failed to file any case against the Airlines, which itself proves that the Complainants are trying to take the benefits of its own wrong. It is vehemently denied that the VISA Application was solely rejected due to the inadmissibility of the travel package and hotel booking vouchers. It is submitted that the acceptance/rejection of VISA Application is the sole prerogative of the concerned embassy which is dependent on a lot of factors, such as the information provided by User, current or previous nationality, place of application of VISA, residence, gender, age, profession, recent travel, outspread of a disease etc. Furthermore, admittedly the package booked by the Complainant was scheduled for 25.08.2018 and the Complainant raised the request for the cancellation of the package on 10.08.2018, which is less than 20 days, hence no refund is applicable on the said booking as per the cancellation policy. The representatives of the Opposite Party upon being contacted by the complainant, has time and again, assisted the complainant and informed them about the cancellation policy which was duly accepted and consented to prior making the said booking and payment. Despite the same the complainant under the garb of beneficial legislation, has filed the present false and frivolous complaint against the Opposite Party.

4. **Evidence**

Evidence in this case consists of the proof affidavit filed by the complainant and the documentary evidence filed by the complainant which are marked as Exbt A1 to A13. The opposite party has not filed any evidence eventhough the Commission has granted ample chances to the opposite parties. Hence we consider the three documents filed by the opposite parties for consideration.

5. **The issues came up for- consideration in this case are as follows:**

- 1) Whether the complaint is maintainable before this Commission?
- 2) Whether any deficiency in service or unfair trade practice or negligence is proved from side of opposite parties towards the complainant?
- 3) If so reliefs and costs?

For the sake of convenience we have considered point No.1,2 & 3 together.

The complaint is maintainable before this Commission. In Spice Jet Ltd. Vs. Ranju Aery on February 2017, the State Commission at Chandigarh taken a view that as far the issue of territorial jurisdiction is

concerned with booking of the flights on the internet the acceptance of contract was received by the complainants through internet of his place of business/residence. The complainants booked e-tickets through their agent Make My Trip India Pvt. Ltd. In this case the consideration paid to the opposite party Rs.144879/- was paid through the account of the 1st complainant which is maintained at HDFC Bank, Palarivattom Branch, Kochi via online transfer. Hence a part of cause of action occurred at the jurisdiction of this Commission.

The case of the complainants are that they had taken help from an online travel company 'Make My Trip India Pvt.Ltd' to arrange the travel package excluding the flight tickets for a trip to Athens, Greece from 25th August to 2nd September 2018. The booking was done on 26th July 2018 vide booking ID NL2206371370707 by remitting the 1st instalment of rs.78,000/- (Rupees Seventy Eight only) via online transfer to the opposite party, after which the opposite party provided the Hotel confirmation voucher which was necessary to apply for the Greece Visa. But the visa was refused due to the inadmissibility of the travel package and hotel booking confirmation voucher provided by Make My Trip. A request was filed by the complainant for refund against the travel booking amount of Rs.1,44,879/-. Even after repeated requests, no refund was received to the complainants by the opposite parties. Exbt.A1 is the copy of tour package, Best of Greece 2018. The complainant had paid Rs.78,000/- to the opposite party on 26.06.2018 at 4.00 pm via online transfer as booking charge of the tour package (Exbt.A2) The whole payment was to be made in two instalments. The complainant had made the 2nd instalment Rs.66879/- to the opposite party via online transfer on 4th August 2018 as proved by Exbt.A5, after which Make My Trip provided the Hotel confirmation voucher (for accommodation at Greece) which was necessary to apply for the Greece visa. The copy of Hotel confirmation voucher is produced and marked as ExbtA3. Exbt.A4 is the copy of the visa application service payment slip of Jijo John dated 31.07.2018. Complainant has paid Rs.6,960/- as visa processing charges. Exbt.A6 is the visa rejection letter of Jijo John and Nimya Rose from the Embassy of Greece in New Delhi Consular Office stating the reason that 'the information submitted regarding the justification for the purpose and conditions of the intended stay was not reliable'. Exbt.A7 is the account statement of the complainant's account which is maintained at HDFC Bank Palarivattom Junction, Kochi. As per Exbt.A7, an amount of Rs.78000/- was paid to Make My Trip India vide reference No.0000820712020078. On 04.08.2018 Rs.66,879/- was transferred to Make My Trip from the complainant's account. Exbt.A8 is the supporting bank account statement of the Nimya Rose Joshuva for her account at Kotal Mahindra Bank, Poonithura, Pettah, Kochi. On 26.07.2018, an amount of Rs.70,220/- debited from the 2nd complainant's account as flight booking charges for the flight tickets of the two complainants for the journey from Kochi- Bangalore –New Delhi-Abudhabi-Athens. On 27.07.2018 an amount of Rs.40,868/- also debited from the 2nd complainant's account for the flight tickets for the journey from Athens to Kiev (Dubai). On 27.07.2018 an amount of Rs.17248/- also debited from Nimya Rose's account as flight tickets charges for the complainant's journey from Dubai-Mumbai-Kochi. Exbt.A9 is the supporting bank account statement regarding the refund of the flight cancellation charges Rs.50,886/-received from the complainant, Nimya Rose Joshuva. On account of the flight cancellation since the visa of the complainants are refused by the Embassy of Greece in New Delhi Consular office. As per Exbt.A10 complainants had paid Rs.13,920/- as Visa processing fees.

From the available documents and evidence in this case it is proved that deficiency in service occurred from side of the opposite party towards the complainant. It is admitted by the opposite party that they had already made payment towards the confirmed booking for accommodation and travel on behalf of the complainants.

The opposite party in their version states that 'The opposite party provides all the travel related unblemished services and information to its customers but not limited to air ticketing, railway ticketing, bus booking, and hotel booking at very competitive prices.

The opposite party also states in their version that they merely acts as a facilitator for booking the confirmed air tickets/hotel bookings on behalf of its customers with the concerned service providers. The opposite party's contention is that they have acted only as a facilitator. The tour of the complainants was cancelled due to the rejection of the visa of the complainants. As per Exbt.A6, the visa of the complainants is rejected due to the reason that information regarding the justification for the purpose and conditions of the intended stay was not reliable.

The opposite parties have not provided proper service to the complainants as agreed. As per Exbt.A7, complainant have paid Rs.1,44,879/- (Rs78000/- +66879/-) to the opposite parties for the tour package to travel for 2 travellers. Due to the refusal of visa complainant has to cancel the tour programme. Visa application fees (6960 +6960) = Rs.13,920/- was also paid to the opposite parties. The complainants had taken flight tickets for the journey. Flight booking charges amount to Rs.1,28,336/- as per Exbt.A8 (Rs.70220 + 40869 + 17248). Due to the rejection of the visa complainants had cancelled the flight tickets. The complainants had received an amount of Rs.50,886/- as flight cancellation charges.

Since the visa was refused due to the deficiency in service of the opposite party, the opposite parties are liable to refund the entire loss suffered by the complainant. The complainants had to suffer huge mental agony, pain and other hardships due to the deficient action of the opposite parties. Hence the opposite parties are liable to compensate the complainants for the deficiency in service. Hence point Nos. (1) and (2) are found in favour of the complainant.

In the result, the complaint is allowed and the following orders are passed.

1. The opposite parties shall refund Rs.1,44,879/- to the complainant.
2. The opposite parties also refund Rs.13926/- to the complainant towards the visa processing charges.
3. The opposite parties shall pay an amount of Rs.50,000/- as compensation for the deficiency in service.
4. The opposite parties shall also pay an amount of Rs.5000/- as cost of the proceedings to the complainant.
5. The liability of the opposite parties shall be jointly and severally.

The above order shall be complied with within 30 days from the date of receipt of a copy of this order. If the order is not complied within 30 days, the amount ordered vide order (1) and (2) above shall attract interest at the rate of 5.5% p.a. from the date of order till the date of realization.

Pronounced in the open Commission on this the 26th day of April 2023

Sd/-

Sreevidhia T.N., Member

Sd/-

D.B.Binu, President

Sd/-

V.Ramachandran, Member

Forwarded by Order

Assistant Registrar

APPENDIX

Complainants Exhibits

Ext. A1	::	Copy of travel package booking receipt 1 for first instalment of Rs.78,000/-
Exbt. A2	::	Copy of travel package booking receipt 2 for second instalment of rs.66,879/-
Exbt.A3	::	Copy of supporting bank statement for the travel package booking
Exbt.A4	::	Copy of detailed itinerary
Exbt.A5		Copy of flight ticket Kochi to Athens
Exbt.A6	:	Copy of flight ticket Athens –Dubai
Exbt.A7		Copy of Flight ticket Dubai- Kochi
Exbt.A8		Copy of supporting bank statement for the flight booking charges and the refund received against cancellation of flight.
Exbt.A9		Copy of Hotel confirmation voucher provided by Make My trip India Pvt. Ltd.
Exbt.A10		Copy of visa application fees receipt for Jijo John K
Exbt.A11		Copy of visa application fees receipt for Nimiya Rose Joshuva
Exbt.A12		Copy of visa rejection letter of Jijo John K from Embassy of Greece in New Delhi
Exbt.A13		Copy of visa rejection letter of Nimiya Rode Joshuva from Embassy of Greece in New Delhi

Opposite party's Exhibits : Nil

**[HON'BLE MR. D.B BINU]
PRESIDENT**

**[HON'BLE MR. RAMACHANDRAN .V]
MEMBER**

**[HON'BLE MRS. SREEVIDHIA T.N]
MEMBER**