

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
AMBALA.**

Complaint case no. : 179 of 2021
Date of Institution : 01.06.2021
Date of decision : 12.04.2024

Jasbir Kaur w/o Sh. Naib Singh r/o House no.286/L, Railway Colony, Ambala Cantt., District
Ambala, Haryana.

..... Complainant.

Versus

1. IDFC First Bank No.535 B, Ground Floor, Geeta Gopal Rd, Jagadhari Road, Ambala Cantt., Ambala-133001 through its authorized signatory/Manager/Dealing Person.
2. Ebix Travels Pvt. Ltd. Bangalore-560001, INDIA through its authorized signatory/Manager/Dealing Person

..... Opposite Parties.

Before: Smt. Neena Sandhu, President.

Smt. Ruby Sharma, Member,

Shri Vinod Kumar Sharma, Member.

Present: Ms. Priya Sharma, Advocate, counsel for the complainant.

Shri Puneet Sirpaul, Advocate, counsel for the OP No.1.

Shri Shubham Aggarwal, Advocate, counsel for the OP No.2.

Order: Smt. Neena Sandhu, President.

1. Complainant has filed this complaint under Section 35 of the Consumer Protection Act, 2019 (hereinafter referred to as 'the Act') against the Opposite Parties (hereinafter referred to as 'OPs') praying for issuance of following directions to them:-

1. To return/reverse the amount deducted from the credit card of the complainant along with interest @18% per annum.
2. To return/reverse all the extra charges deducted and charged from the SBI Bank account of

complainant in the name of availing the service of credit card

3. To stop the deductions in future with regard to the loan facility of booking tickets
4. To pay Rs. 2,00,000/- as compensation for the mental agony and physical harassment suffered by the complainant.
5. To pay Rs.50,000/- as litigation expenses.
6. Grant any other relief which this Hon'ble Commission may deems fit.

2. Brief facts of the case are that the complainant is a customer of OP no.1. At the time of opening the bank account, the OP no.1 insisted the complainant for availing the service of credit card and assured that the services provided to the complainant would be satisfactory. She was provided Credit card number-5182343817 for the sanctioned amount of Rs.1,85,000/-. After utilizing the facility of credit card the complainant had got booked 2 tickets with the OP no.2 in the name of Passengers namely Mr. Lakhwinderpal Singh(adult) (son of complainant) and Mrs. Sobha Michelle Singh (adult) (daughter in law of complainant) online, to travel from Dublin Airport to Delhi Round Trip vide Booking Id no FMNLF3757WMMF on 13-10-2019, under Booking Request reference Number as FMNLF3755ZQ87. The complainant paid an amount of Rs.1,07,112.95 for the said tickets vide transaction ID 921972075, through the said credit card. However, it showed that the transaction amount is not captured from OP no.1 by OP no.2 so the booking of tickets was cancelled. At the same time, OP no.1 showed that the amount of Rs.1,07,112.95 with interest is deducted from the balance of credit card of complainant in lieu of which Rs.20,234/- was got deducted from the bank account of State Bank of India pertaining to the account of the complainant. On reporting the matter, the OPs initially convinced the complainant that OP no.1 would return the amount which is actually deducted from her credit card account and the amount deducted from her bank account but to no avail. However, again the amount of installments on interest of loan of credit for the utilization of tickets from the bank account of the complainant at State Bank of India, Sec 9, Huda, Ambala city A/c Number [65259668946](#) continued to be deducted. Number of requests made by the complainant to the OPs did not yield any result. Till date, OP no.1 is continuously and automatically deducting the installments of credit card and other expenses from the bank account of the complainant in an illegal manner. Legal notice served by the counsel of complainant upon the OPs on 10-06-2020 and 25-02-2021 also did not yield any result. Hence this complaint.

3. Upon notice, OP No.1 appeared and filed written version and raised preliminary objections to the effect that this Commission did not vest with territorial jurisdiction to entertain this complaint; the complainant is not a consumer; the present complaint is not maintainable for want of joinder and mis-joinder of the necessary parties; the present complaint is time barred; the relationship between the complainant and OP No.1 is pursuant to the contract entered into between the parties hereto and as such this consumer complaint is not maintainable; the present complaint is baseless and fragrant abuse of process of law; the present complaint is filed by the complainant just to evade her legal liability due towards the OP No.1; the complainant has not approached this Commission

with clean hands etc. On merits, it has been stated that the complainant had availed the facility of flex money through which she had booked the tickets through OP.No.2. The complainant had applied online by using the services provided by the OP's through booking Id:FMNLF3757WMMF on 13-10-2019 under booking reference no.FMNLF3755ZQ87 for the payment of Rs.1,07,112.95 (transaction ID: 921972075). The complainant availed the facility of finance from OP No.1 for Rs.1,07,621/-. The complainant thereafter did not pay any installment of the above said amount till date and therefore an amount of Rs.1,50,041.96 is pending against the complainant and the complainant now just to avoid her liability to pay the amount came with the false story. Rest of the averments of the complainant were denied by the OP No.1 and prayed for dismissal of the present complaint with costs.

4. Upon notice, OP No.2 appeared and filed written version wherein it raised preliminary objections to the effect that the complainant has not approached this Commission with clean hands, and has suppressed the true and correct facts; the users of OP No.2 are bound by the terms and conditions of the Terms of Use (herein referred to as "Agreement") which they accept at the time of using the website; OP No.2 is merely a service facilitator and not a service provider and hence acts as an intermediary between a customer and a service provider; in 'Liability Clause' of the Agreement it has been clearly stated that Ebix provides intermediary services and is not a Supplier and hence it is not liable for any lack or deficiency of services provided by any Suppliers; as per the contents of the agreement, OP No.2 shall have no liability in the delay, cancellation, overbooking, strike, force majeure or other causes beyond its control etc. On merits, it has been stated that in accordance with booking, the complainant had initiated three transactions through the OP No.2 to travel from Dublin to Delhi Airport. The complainant initiated 1st transaction (transaction id 921915180) for Rs.1,07,620.45. Against the first transaction, booking was successfully confirmed and the same was also informed to the complainant via e-mail on 13.10.2019. The complainant again initiated 2nd (transaction id 921935705) and 3rd (transaction id 921972075) transactions, both for the amount of Rs.1,07,112.95 which were cancelled at the bank's end of the complainant. OP No.2 never received any payment credit for the said 2nd and 3rd transactions and OP No.2 has not received any email from the complainant in this regard. OP No.2 always acted with bonafide intention to deliver customer satisfaction and as a matter of fact the interest charged and any other additional amount deducted from the account of the complainant, is the responsibility of the bank and not in any way can the OP No.2 be held liable for the same. The Hon'ble Supreme Court in the case of **State Of Orissa vs Klockner And Company & Ors JT 1996 (4) held** that- "It is not specifically pleaded by the applicant that the plaint does not disclose any cause of action. The learned trial Judge has also not recorded any specific finding to this effect. From the discussions in the order it appears that the learned trial Judge has not maintained the distinction between the plea that there was no cause of action to the suit and the plea that the plaint does not disclose a cause of action". Rest of the averments of the complainant were denied by OP No.2 and prayed for dismissal of the present complaint with heavy costs.
5. Learned counsel for the complainant tendered affidavit of complainant as Annexure

CW-1/A alongwith documents as Annexure A-1 to A-25 and closed the evidence on behalf of the complainant. On the other hand, learned counsel for the OP No.1 tendered affidavit of Savinder Singh, POA, IDFC Bank Magma Fincrop, Ambala as Annexure OP-1/A alongwith documents Annexures OP-1 to OP-3 and closed evidence on behalf of OP No.1. Learned counsel for the OP No.2 tendered affidavit of OP-2 -M/s Ebix Travels Pvt. Ltd. as Annexure RW1/A alongwith documents Annexure R-1, R-2, R2/A, R-3 to R-6 and closed evidence on behalf of OP No.2.

6. We have heard the learned counsel for the parties and have also carefully gone through the case file.
7. Learned counsel for the complainant submitted that by availing the facility of credit card complainant got booked two tickets online with the OP No.2 for which an amount of Rs.1,07,112.95 was charged, which was shown as confirmed but later on it showed that transaction amount is not captured from OP No.1 by the OP No.2 and the booking of the tickets got cancelled but at the same time OP No.1 deducted the said amount along with interest from the account of the complainant under the garb of the said credit card. The said act and conduct of the OPs amounts to deficiency in service.
8. On the other hand, learned counsel for OP No.1 while reiterating the objection raised in the written version submitted that the complainant had applied online by using the services provided by the OP's through booking Id:FMNLF3757WMMF on 13-10-2019 under booking reference no as FMNLF3755ZQ87 for the payment of Rs.1,07,112.95/- (id transaction Id: 921972075). He further submitted that the complainant availed the facility of finance from OP No.1 for Rs.1,07,621/- and thereafter did not pay any installment of the above said amount and therefore an amount of Rs.1,50,041.96/- is pending against the complainant and the complainant now just to avoid her liability to pay the amount came with the false complaint.
9. Learned counsel for OP No.2 while reiterating the objection raised in the written version submitted that the complainant initiated 1st transaction (transaction id 921915180) for Rs.1,07,620.45. He further submitted that against the first transaction, booking was successfully confirmed and the same was also informed to the complainant via e-mail on 13.10.2019. He further submitted that the complainant again initiated 2nd (transaction id 921935705) and 3rd (transaction id 921972075) transactions, both for the amount of Rs.1,07,112.95 which were cancelled at the bank's end of the complainant. OP No.2 never received any payment credit for the said 2nd and 3rd transactions and OP No.2 has not received any email from the complainant in this regard.
10. It may be stated here that perusal of record and also from the arguments of the addressed by the parties, it is coming out that they are leveling allegations against each other, yet, no cogent and convincing evidence has been placed on record by them, to prove their case. The complainant is leveling allegations that the first ticket which was booked by her was shown as confirmed but later on, it showed that the transaction amount is not captured from OP No.1 by OP No.2 and the booking of tickets were cancelled. However, on the other hand, OP No.2 vehemently contended that the complainant had initiated three transactions to travel from Dublin to Delhi Airport and the first transaction against ID921915180 for Rs.107620.45 was successfully confirmed and the same was informed to

the complainant vide email dated 13.10.2019. OP No.2 further submitted that 2nd and 3rd transaction bearing ID No.921935705 and 921972075 for amount of Rs.107112.95 were cancelled at the banks'/OP No.1 end. However, OP No.1 specifically denied this fact and stated totally contrary to the effect that the complainant availed the facility of finance from OP No.1 for Rs.1,07,621/- and thereafter did not pay any installment of the above said amount and therefore an amount of Rs.1,50,041.96/- is pending against the complainant. However, though lot of submissions and contentions have been made by the parties, yet, none of them have been able to prove their case by placing on record any reliable evidence. Thus, from the sequence of events narrated above, we are of the considered view, that to ascertain as to whether, there was any deficiency in providing service on the part of the OPs in the matter or not, has become a complicated issue, which will need voluminous evidences and witnesses of all the persons involved in the transactions in question, which cannot be done before this Commission in summary proceedings. The Hon'ble Supreme Court in **TRAI Foods Ltd. Vs. National Insurance Company & Ors., III (2012) CPJ 17 (SC)**, under similar circumstance has also observed:

"6. The only question to be decided is, when should this jurisdiction be exercised by the Commission. In our view the Commission should address itself to the quantity of the claim, the nature of the claim, the nature of the evidence which would be required to be submitted both in respect of the claim and the damages suffered and the nature of the legal issues before deciding that the matter ought to be decided by the Civil Courts in the regular course. It is not disputed that the Consumer Forum has been set up to grant speedy remedy. The Consumer Forums have been given the responsibility of achieving this object. They were not meant to duplicate the Civil Court, and subject the litigants to delays which have become endemic in the Civil Courts.

7. Although the reason given in the impugned order of the Commission for referring the present matter to the Civil Court is cryptic, we have been through the records filed before us and are satisfied that the Commission's decision was correct. There is no doubt having regard to the nature of the claim, the large amount of damages claimed, and the extensive inquiry into the evidence which would be necessary in order to resolve the disputes between the parties that this is not a matter to be decided summarily at all"

11. Since, this complaint involves complicated questions of facts and law, as such, voluminous evidence would be required to reach to any conclusion and the same is not possible before this Commission where proceedings are essentially summary in nature. Accordingly, the present complaint is dismissed being not maintainable before this Commission. However, complainant is at liberty to seek remedy before the appropriate court of law, if so desires and may seek condonation of delay under Section 14 of the Limitation Act, 1963, for the time spent before this Commission. Certified copy of the order be supplied to the parties concerned, forthwith, free of cost as permissible under Rules. File be indexed and consigned to the Record Room.

Announced:- 12.04.2024.

(Vinod Kumar Sharma)
Member

(Ruby Sharma)
Member

(Neena Sandhu)
President