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BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
 COMMISSION – I, HYDERABAD
P r e s e n t

HON'BLE MRS. B. UMA VENKATA SUBBA LAKSHMI, PRESIDENT
 HON'BLE MRS. C. LAKSHMI PRASANNA, MEMBER
 HON'BLE MR. R. NARAYANA REDDY, MEMBER

On this the Friday, the 04th day of August, 2023

C.C.No. 345/2022

Between:-

Mr.Sriharsha KS, S/o Venugopal KS,
 Aged about 29 years, Occ: IT Employee,
 R/o. 402, GK Fortuna Apartments,
 Bharani Colony, Hyderabad T.S – 500094
 Cell No. 8939017892

....Complainant
 AND

1. M/s.MAKE MY TRIP PRIVATE LIMITED
 DLF Building No.5, Tower B,
 DLF Cyber City, Phase 2,
 Sector 25, Gurugram, Haryana – 122 002.
 Rep. by its Authorized signatory.
2. INTERGLOBE AVIATION (INDIGO)
 Office at Upper Ground Floor, Thapar House,
 Western Wing 124, Janpath,
 New Delhi – 110 001.
 Office at Tower C, Level 1-5,
 Global Business park, M.G. Road, Gurgaon,
 Haryana – 122002.

....Opposite Parties

Counsel for the Complainant	: M/s. Gopi Rajesh & Association
Counsel for the Opposite party No.1	: P. Lakshman Goud
Counsel for the Opposite party No.2	: A. Venkatesh

SUOMOTO CORRECTED ORDER U/S 40 OF C.P.ACT

(By HON'BLE MRS. B. UMA VENKATA SUBBA LAKSHMI, PRESIDENT on
 behalf of the bench)

1. The present complaint is filed under Section 35 of the Consumer Protection Act, 2019 alleging deficiency of service and unfair trade practice on the part of opposite parties No. 1 & 2, with a prayer which reads as under:
 - (i) To direct the opposite party to immediately refund the full amount including additional expenses amounting to Rs.

1,06,024/- (Rupees One Lakh Six Thousand and Twenty-Four Only) along with 18% p.a. interest;

- (ii) To direct the opposite party to pay the cost of litigation and other expenses for the sum of Rs. 25,000/- (Rupees Twenty-Five Thousand Only);
- (iii) To direct the opposite party to pay the compensation of Rs. 5,00,000/- (Rupees Five Lakhs Only) for the loss, mental torture and harassment;
- (iv) Any other relief as this Hon'ble Commission may consider fit and proper.

2. The averments in the complaint in brief are as follows:

Trusting the brand name of opposite party No. 1, the complainant booked holiday package of Shimla, Manali and Chandigarh for himself and his wife through "MakeMy Trip". The trip, that included hotels and transfers, was planned from 02.01.2022 to 09.01.2022 vide booking ID-NL2102312860384. An amount of Rs. 44,407/- (Rupees Forty-Four Thousand Four Hundred and Seven Only) towards total package cost was paid by the complainant. On 04.01.2022, the car in which the complainant and his wife were travelling met with an accident (en route Manali near CH Markand). The complainant and his wife suffered serious injuries in the accident and they were rushed to the nearest primary health centre for treatment. The complainant, his wife and the driver of the car were called for interrogation and had to stay overnight in Bilaspur. Post completion of the formalities, the complainant and his wife wanted to return to Hyderabad. Since the opposite party did not cooperate in booking return flight tickets, the complainant and his wife had to stay in a hotel in Changdarh on 05.01.2022. Thereafter, he booked flight tickets for returning to Hyderabad. After returning to Hyderabad, the complainant tried to contact the opposite party for the refund of the financial loss suffered by him. The customer support of the opposite party refunded an amount of Rs. 4,911/- (Rupees Four Thousand Nine Hundred and Eleven Only). It is averred that the complainant had a miserable experience and had to go through severe physical torture and mental agony because of the conduct of the opposite party. It is further averred that all the efforts of the complainant for resolving the refund issue were failed

and the unprofessional attitude of the opposite party had caused losses / expenses and severe mental agony to the complainant. It is submitted that it was the duty of the opposite party to extend all support to the complainant in refunding the full amount (covering the additional expenses) incurred by him after the vehicle in which the complainant and his wife were travelling met with an accident. It is further submitted that the complainant relied on the false promise of the opposite party that they would provide a comfortable and safe journey. Although the opposite party was under an obligation to refund the full amount covering the additional expenses incurred by the complainant, the opposite party failed to do so. Hence, alleging deficiency of service and unfair trade practice on the part of opposite party, the complainant filed the present complaint with a prayer to grant the reliefs as stated above.

3. The complaint is contested by the opposite parties No. 1 & 2 by filing separate written versions denying the allegations made in the complaint except those which are expressly admitted in their respective written versions.
4. In the written version filed by the opposite party No. 1, it is contended that other than the Court of NCR Delhi, no other Court had jurisdiction to entertain the present dispute as per the terms and conditions of the 'user agreement'. It is further contended that the complaint is not maintainable either on merits or as per the law and is liable to be dismissed. It is averred that the complaint is liable to be dismissed in limine with exemplary costs for dragging a reputed and highly acclaimed tour and travel company in unnecessary, unwanted and speculative litigation. It is further averred that the complaint does not fall within the definition of 'consumer dispute', hence, the complaint is liable for rejection. It is stated that the complainant approached the answering opposite party and booked 'Best of Shimla and Manali with Chandigarh from Delhi' package for two persons. It is further stated that the complainant accorded his consent for booking in the said tour package after understanding the details provided by the opposite party. Thereafter, the complainant paid the amount for reserving the seats and rooms in the hotel. When the answering opposite party came to know about the unfortunate road accident, they immediately provided the medical assistance and arranged another

cab to drop the complainant at primary health centre for the initial treatment. Further, as a good will gesture, the answering opposite party provided cab service from Bilaspur (Himachal Pradesh) to Chandigarh as the complainant decided to return to Chandigarh. Since the package booked by the complainant was non-refundable, the opposite party refunded an amount of Rs. 4,911/- (Rupees Four Thousand Nine Hundred and Eleven Only) as compensation and never charged any amount for the travel (cab) provided by the opposite party after the accident. It is submitted that the travel booking of the complainant was governed by the terms of the 'user agreement' agreed between the parties at the time of booking and the terms of the said agreement were binding on the parties. It is further submitted that there was no deficiency of service and unfair trade practice on the part of the answering opposite party. Hence, the opposite party No. 1 prayed the Commission to dismiss the complaint with punitive and exemplary costs.

5. In the written version filed by the opposite party No. 2, it is contended that the answering opposite party has been wrongly arrayed as IndiGo airlines (a non-existing entity) instead of InterGlobe Aviation Limited that is responsible for airline operations in India and certain international destinations. It is further contended that the complainant did not mention the PNR No. and had failed to provide the supporting evidence for establishing the complainant's booking. It is averred that the complaint was bad for mis-joinder and non-joinder of necessary parties. It is further averred that the complainant had failed to prove deficiency of service on the part of the answering opposite party. It is stated that the complainant had not come to the Commission with clean hands and was trying to enrich himself at the cost of the answering opposite party. It is further stated that with regard to the correspondence of the complainant and the answering opposite party regarding the booking of a return flight ticket, the complainant had failed to substantiate his claims with any evidence and in the absence of booking details including PNR No., the answering opposite party was not in a position to verify the same. It is submitted that the statement of the complainant that the answering opposite party had acted deficiently even though there was an obligation on its part and was legally bound to do so was denied. Hence, denying the allegations made in the complaint, the answering opposite party

prayed the Commission to dismiss the complaint with exemplary costs.

6. In the enquiry, the complainant filed evidence affidavit supported by documents at Ex.A1 to Ex.A14. Mr. Puneet Chawla, Deputy Manager-Legal and constituted attorney, filed evidence affidavit on behalf of opposite party No. 1 and got marked their document at Ex B1. Mr. Kartik Bajpai, Senior Legal Counsel, filed evidence affidavit on behalf of opposite party No. 2 and got marked their documents at Ex.B2 to Ex.B7. Thereafter, the parties filed written arguments and the learned counsel of the complainant and opposite party No. 2 advanced oral submissions. The matter was reserved for orders on 19.07.2022.

7. Based on the facts and material brought on record and written / oral arguments of the parties, the following points have emerged for consideration:
 - a) Whether the complainant could make out the case of deficiency of service and unfair trade practice on the part of opposite parties No. 1 & 2?
 - b) Whether the complainant is entitled for the claim / compensation made in the complaint? To what relief?

8. Point 'a':

- 8.1.** It is evident from Ex.A1 and Ex.A2 that 7Nights/8Days (Shimla-2N;Manali-4N;Chandigarh-1N) 'Best of Shimla and Manali with Chandigarh from Delhi' tour was booked vide MakeMy trip booking ID NL2102312860384. The tour, that was scheduled from 02.01.2022 to 09.01.2022, was from New Delhi and the total package cost was Rs. 44,407/- (Rupees Forty Four Thousand Four Hundred and Seven Only) (Ex.A1). It is further evident from 'service confirmation voucher' at Ex.A2 that the vehicle was available as per the itinerary and was provided for the entire journey through MMT partner. It is also evident from E-ticket at Ex.A3 that to and fro (Hyderabad-Delhi and Delhi-Hyderabad) flight tickets were booked in the name of the complainant and his wife through 'Happy EasyGo' on payment of Rs. 11,342/- (Rupees Eleven Thousand Three Hundred and Forty-Two Only). The flight

travel dates were 02.01.2022 for Hyderabad to Delhi (AI-559) and 09.01.2022 for Delhi to Hyderabad (AI-839). It is apparent from the documents at Ex.A4, Ex.A6 (primary health centre-Bilaspur, OPD No. 129 dated 04.01.2022) and Ex.A5 (tax invoice dated 04.01.2022 of medical shop) that the complainant was treated at primary health centre and purchased the medicines as per the advice of the doctors who treated him for the injuries of one hour old.

- 8.2.** The complainant submitted bills of hotels at Bilaspur (Hotel Sagar View dated 05.01.2022, Ex.A7, Ex.A8), at Chandigarh (Hotel Hamilton dated 05.01.2022, Ex. A10) and cab charges (from Hamilton to Chandigarh airport) as documentary evidence in support of his pleadings.
- 8.3.** The oral submissions of the learned counsels for the complainant and opposite party No. 2 were in line with their respective pleadings, averments and contentions.
- 8.4.** It is the case of the complainant that he booked tour package for Rs. 44,407/- (Rupees Forty-Four Thousand Four Hundred and Seven Only) with the opposite party No. 1 through their MMT service. It is also the case of the complainant that it was the bounden duty of the opposite party No. 1 to refund the financial loss occurred to him because the holiday package, that included hotels, transfers and vehicle with driver, was taken from the opposite party No. 1.
- 8.5.** It is the version of the opposite party No. 1 that the package booked by the complainant was non-refundable and the complainant was governed by the terms of the ‘user agreement’. It is also the version of the opposite party No. 1 / the e-commerce travel organizer, that they had limited liability as per the ‘user agreement’ and an amount of Rs. 4,911/- (Rupees Four Thousand Nine Hundred and Eleven Only) was already refunded in the form of compensation.
- 8.6.** It is the version of the opposite party No. 2 that the complaint was bad for mis-joinder and non-joinder of necessary parties and the averments in the complaint were presumed to be directed towards opposite party No. 1. It is also the version of the opposite party No. 2 that the complainant had failed to

substantiate his claims with any evidence in so far as the opposite party No. 2 was concerned.

- 8.7.** It is the contention of the complainant that he was never shown any agreement by the opposite party No. 1 and he had not signed any agreement at any point of time.
- 8.8.** Per contra, it is contended by the opposite party No. 1 that they had not adopted any unfair trade practice and / or committed deficiency in service. It is further contended by the opposite party No. 1 that the details of the said tour package were informed to the complainant and the package booked by the complainant was non-refundable. It is also contended by the opposite party No. 1 that the parties were bound by the terms of 'user agreement' (Ex.B1) and as per the terms, the role of the opposite party No. 1 was limited.
- 8.9.** In the oral submissions, the learned counsel of the complainant submitted that the opposite party No. 2 was a pro-forma party since the return journey flight tickets were booked by the complainant in the flight operated by them (Ex.B5, Ex.B6 and Ex.B7).
- 8.10.** The occurrence of the accident (Ex.A13, photograph of the accident site) was not denied / disputed by the opposite party No. 1.
- 8.11.** It is seen that the opposite party No. 1 is in the business of providing wide-ranging tour and travel service / holiday packages, which inter alia include hotel bookings and travels during the tour dates. Undisputedly, the opposite party No. 1 is selling or service provider platform. Therefore, it was the bounden duty and responsibility of the opposite party No. 2 to see and assist the complainant and provide him best facilities throughout the journey during the tour. In the case at hand, the opposite party No. 1 failed to provide due service to the complainant.
- 8.12.** It is pertinent to mention here that a service provider who sells their services, is duty bound to ensure the services of their

partners and if the partners are deficient in rendering service, then the service provider shall be vicariously liable for the loss caused to the purchaser.

- 8.13.** In the present case, admittedly, the opposite party No. 1 is the service provider and the tour package is prepared by them and the itinerary has been issued by them. The vehicle was made available to the complainant as per the itinerary and the vehicle was provided by the MMT partner. As such, it cannot escape from its liability and take benefit by merely saying that their (MMT) liability is limited as per ‘user agreement’ between the user and MakeMy Trip. Moreover, there is no documentary evidence to establish and prove that the complainant was made aware of ‘user agreement’ anytime before reporting the unfortunate incident of accident that had occurred during the tour. Also, there is no documentary evidence to show that the ‘user agreement’ was executed and signed by the parties. It is nowhere on the record that the access to the ‘user agreement’ was provided to the complainant before accepting the payment from the complainant for the package. Therefore, the opposite party No. 1 would be both responsive as well as responsible for the loss suffered to the complainant during the tour.
- 8.14.** In the instant case, accepting the full payment of total package cost of Rs. 44,407/- (Rupees Forty-Four Thousand Four Hundred and Seven Only) in advance, not honouring the commitment to provide the promised package tour services and not addressing the complainant’s righteous hardships and requests (during the tour) promptly and dutifully, amounts to commission of deficiency in service and adoption of unfair trade practice by the opposite party No.1. Hence, point ‘a’ is answered in affirmative.
- 9.** Except bald averments with regard to lack of territorial jurisdiction by the Commission and the dispute not being ‘consumer dispute’, nothing is placed on the record to substantiate the same. The opposite party being a service provider and the complainant being consumer, the dispute is very much within the definition of

'consumer dispute' as provided in the Consumer Protection Act, 2019. It is settled law that the Commission has jurisdiction as per Section 34 (2) of the Consumer Protection Act, 2019.

10. Point 'b':

10.1. People book the services of travel organizers to avoid inconvenience in tours, therefore, it is obligatory on the part of travel organizers to give best service at all times.

10.2. When any person undertakes a tour package, it is quite obvious that he wants to take home many happy memories of the vacation (as stated by the opposite party No.1 in their itinerary at Ex.A2) and if any kind of deficiency or inadequacy or imperfection or shortcoming in the performance of tour occurs at the commencement of the tour, the mental agony, emotional sufferings, physical discomfort suffered by the complainant has to be adequately compensated.

10.3. It is also seen from the record and contentions of the complainant that the complainant was constrained to borne the expenses which were not anticipated. In our view, when a person goes on vacation with his family, his aim is to take home many happy memories of the vacation as life time remembrance.

10.4. In the case at hand, the pleasure trip that was taken by the newly married couple turned into a misery trip and the complainant had suffered mental agony and physical hardships due to deficient services of the opposite party No.1. Hence, the complainant is entitled for compensation for every element of his suffering.

10.5. In view of the above discussion and findings, the complaint is allowed in part and the opposite party No. 1 is directed to

- (i) Pay the amount of **Rs. 85,984/- (Rupees Eighty Five Thousand Nine Hundred and Eighty Four Only)** (in place of Rs. 86,204/-) (as mentioned in e-mail dated 06.01.2022, Ex.A14)

Sr. No.	Compensation Description	Amount (in Rs.)
1.	Package Amount	44,407
2.	Medical bill	500
3.	Air India Fare	11,800
4.	Sagar View Hotel	1,904
5.	Hotel Hamilton	1,708
6.	Indigo fare	16,852
7.	Himachal Road tax	1,500
8.	Hotel food bill	1,513
9.	Chandigarh Airport	800
10.	Dental Estimated charges	5,000
	Total	85,984/- (in place of Rs. 86,204)

- (ii) Pay an amount of Rs. 25,000/- (Rupees Twenty-Five Thousand Only) towards compensation for the mental agony suffered by the complainant;
- (iii) Pay an amount of Rs. 15,000/- (Rupees Fifteen Thousand Only) towards costs.

11. The complaint against opposite party No. 2 is dismissed as there is no evidence of deficiency of service and unfair trade practice on their part.

12. Time for compliance: 45 days from the date of receipt of the order. In case of non-compliance, the amount mentioned under Sr. No. (i) & (ii) shall attract an interest @6% p.a. from the date of the order till its actual payment.

Dictated to steno, transcribed and typed by him, pronounced by us on this the 04th day of August, 2023.

MEMBER

MEMBER

PRESIDENT

APPENDIX OF EVIDENCE

WITNESS EXAMINED FOR THE COMPLAINANT:

(PW1) Sri.Sriharsha KS, S/o Venugopal KS.

WITNESS EXAMINED FOR THE OPPOSITE PARTY Nos. 1 & 2

(DW1) Puneet Chawla S/o Mr. SB Chawla, Deputy Manager – Legal of Make My Trip Pvt Ltd.

(DW2) Kartik Bajpai S/o Sh. Rahu Bajpai, Senior Legal Counsel at InterGlobe Aviation Limited

EXHIBITS FILED ON BEHALF OF THE COMPLAINANT:

- Ex.A1 Copy of screenshot of booking confirmation dated 02.01.2022.
- Ex.A2 Copy of Makemy Trip package confirmation voucher dated 25.11.2022.
- Ex.A3 Copy of flight ticket (HYD -DEL & DEL – HYD) dated 02.01.2022.
- Ex.A4 Copy of Bilaspur Hospital (Markand) dated 04.01.2022.
- Ex.A5 Copy of bill of Bilaspur Hospital medicines dated 04.01.2022.
- Ex.A6 Copy of bill of Bilaspur Hospital (Initial Diagnosis (ENT) dated 04.01.2022.
- Ex.A7 Copy of Stay bill at Hotel Sagar view dated 05.01.2022.
- Ex.A8 Copy of Food Bill of Hotel Sagar View dated 05.01.2022.
- Ex.A9 Copy of Stay bill of Hote Hariton dated 05.01.2022.
- Ex.A10 Copy of Food bill of Hotel Hariton dated 05.01.2022.
- Ex.A11 Copy of flight ticket (Chandigarh- Hyderabad) dated 06.01.2022.
- Ex.A12 Copy of Hotel Hamilton to Chandigarh Can (Airport) dated 06.01.2022.
- Ex.A13 Copy of Photograph of accident site dated 04.01.2022.
- Ex.A14 Copy of E-mail with make my trip dated 19.01.2022.

EXHIBITS FILED ON BEHALF OF THE OPPOSITE PARTY NO-1

- Ex.B1 Copy of terms and conditions of user agreement and Makemytrip.

EXHIBITS FILED ON BEHALF OF THE OPPOSITE PARTY NO-2

- Ex.B2 Copy of Letter of authorization dated 22.06.2022.
- Ex.B3 Copy of Certificate of Incorporation.
- Ex.B4 Copy of Board of Resolution dated 30.08.2018.
- Ex.B5 Copy of screenshot reflecting the web check-in
- Ex.B6 Copy of screenshot of History.
- Ex.B7 Copy of screenshot to the successful travel of the complainant and accompanying passenger under PNR No. RNCE4G.

MEMBER

MEMBER

PRESIDENT