

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, PANCHKULA.

Consumer Complaint No	:	684 of 2019
Date of Institution	:	30.12.2019
Date of Decision	:	15.09.2023

Anita Kumari w/o Mangat Ram Garg, H.No.757, B-2, Near Hanumaan Mandir, Vishwakarma Colony, Pinjore, Panchkula.

.....Complainant

Versus

1. M/s Himalayan Express Way Ltd. through its Director/ Managing Director Chandimandir Toll Plaza, N.H.A.I. Panchkula.

2. Managing Director, ICICI Bank Ltd. ICICI Tower, South Tower, West Wing, 2nd Floor, Bandra Kurla Complex, Mumbai-400051.

.....Opposite Parties

COMPLAINT UNDER SECTION 35 OF THE CONSUMER PROTECTION ACT, 2019

Before: Sh. Satpal, President.

Dr. Sushma Garg, Member.

Dr. Barhm Parkash Yadav, Member.

For the Parties: Sh. Sandeep Aggarwal, Advocate for the complainant.

Sh. N.K.Vohra, Authorised representative of OP No.1.

Sh. Ammish Goel, Advocate for the OP No.2.

ORDER

(Satpal, President)

1. Briefly stated, the facts, as alleged in the present complaint, are that the complainant is a resident of Pinjore and used to go to Panchkula to attend her services in the Treasury office, Panchkula prior to her retirement in October 2019 by car bearing no.HR-49-E-4767; the complainant had to cross the Chandimandir toll plaza regularly by her said car; Pinjore being situated within the radius of 10kms from the said toll plaza, she was entitled to a concessional monthly pass to cross the Chandimandir toll plaza by paying a sum of Rs.150/- on monthly basis. It is stated that a fast tag facility was provided by OP No.2 and a sum of Rs.150/- was being deducted per month from her fastag account no.21195030. It is averred that an amount of Rs.930/- was wrongly deducted from the above said account by Ops on 31.10.2019 in lieu of her monthly concessional pass. The Ops were contacted seeking the refund of excess amount, which was charged from her said account in lieu of the concessional monthly pass but she was told to lodge a complaint and accordingly, an online complaint was lodged with ICICI fast tag authority on 02.11.2019. It is alleged that one Ms. Monika Sharma from ICICI bank contacted the complainant from the phone no.0172-5017902 on her Mobile number and she (complainant) was asked to lodge a complaint again and thereafter, wait for 7 days for the resolution of the issue. After the expiry of one week, the complainant did not get the positive response from the said Ms. Monika Sharma when she was contacted by the complainant. Due to the act and conduct of OPs, the complainant has suffered a great deal of financial loss and mental agony, harassment; hence, the present complaint.

2. Upon notice, OP No.1 appeared through counsel and filed the written statement contesting the complaint mentioning therein that the complainant had purchased a RFID enabled Fastag for her vehicle no.HR-49-E-4767 from ICICI Bank (OP No.2) and initial payment was made on 30.10.2018 of Rs.500/- which included Rs.100/- as refundable security. It is admitted that the complainant being resident of 10KM from the toll plaza was entitled to local area concession by paying a sum of Rs.150/- per month. It is submitted that the complainant was getting the fast tag recharge, after the initial purchase, and the recharge was done by her through ICICI Bank (OP No.2) on 12.08.2019 for Rs.1,200/-. It is submitted that she had visited the ICICI Bank outlet at the point of sale office at Toll plaza in connection with the above said recharge on 12.08.2019. It is submitted that, after the purchase of Fastag, the customer gets local area endorsement done at the point of sale outlet at the toll plaza and the said. This endorsement can be done for a period of 12 months at a stretch for ICICI Bank Fastags and for 03 months for Fastags of other banks and thereafter, customer can recharge and extend local area endorsement either through online or in person at the point of sale at Toll Plaza. It is stated that once the local area endorsement has been done, the local area concession fee of Rs.150/- is auto debited on 1st day of each month from the balance in the Fastag account of the customer, which is maintained by the bank, which has issued the tag. Due to a technical glitch in the ICICI Bank portal, an amount of Rs.930/- was auto debited instead of Rs.150/- on 01.11.2019 from the Fastag account of the complainant. This happened with 44 other customers also including the complainant. It is submitted that on noticing this error, the OP No.1 promptly contacted each affected customer including complainant on their mobile number held with it. The customers were requested to have the extra debited amount (Rs.930-150=780) adjusted against the subsequent months and their vehicles would be exempted from toll fee during these months. It is submitted that in the case of complainant, Rs.600/- has been adjusted against the month of February 2020 to May 2020 (04 months @ Rs.150/-p.m.). The complainant had crossed the toll plaza during February 2020, March 2020 and May 2020 duly availing the exemption, for which the amount was adjusted. There was no transaction for her vehicle during April 2020. An amount of Rs.180/- is, thus, due to the complainant and is available with them. This was informed to the complainant by its staff. It is stated that the excess amount to the tune of Rs.600/- thus, stands returned to the complainant and a sum of Rs.180/- is outstanding towards the OP No.1 which it is ready to refund to the complainant or adjust it if the complainant so desires, therefore, there is no deficiency on the part of OP No.1; hence, the complaint is liable to be dismissed.

Upon notice, OPs No.2 appeared through counsel and filed written statement contesting the complaint by raising preliminary objections qua complaint is not maintainable as the complainant has not approached the Commission with clean hands; she has suppressed the material facts in the complaint. The allegations of cheating as alleged in the complaint cannot be decided under the Consumer Protection Act as the adjudication of complicated question of laws and facts are involved; no loss, more so proportionate to the claimed amount is caused to the complainant; no cause of action has accrued in favour of the complainant. It is submitted that the

complainant had applied for a fastag facility with ICICI Bank Ltd. through online mode. Accordingly, fastag serial no.170631108 vide account no.21195030 had been issued to the complainant against vehicle bearing registration no.HR-49E-4767 by the Mumbai office of the OP No.2. Thereafter, the complainant started using the facility of fastag for her vehicle from November, 2018 onwards regularly and used to recharge her fastag account for an amount of Rs.150/- every month. However, only after the recharge of Rs.150/- monthly pass had been issued by OP No.1 to the complainant. It is submitted that in the instant case when the complainant had made a request for issuance of monthly pass against her said vehicle with OP No.1 for the month of November, 2019, her monthly concessional pass was treated as a general pass and thus, an amount of Rs.930/- was debited from her fastag account against the issuance of general pass instead of Rs.150/-; thus, there was an apparent error on the part of OP No.1 as the same had issued the regular pass to the vehicle in question instead of local pass. Therefore, in the entire controversy, the role of OP No.2 is very limited as the same has been acting as a mediator between the complainant from time to time. It is submitted that when OP No.1 had realized their mistake in issuing the general pass to the complainant against her vehicle, the same had offered to refund an excess amount of Rs.780/- to the complainant, but the complainant had intentionally and willfully refused to accept the said payment. Thereafter, in order to compensate the complainant, OP No.1 had unilaterally given the benefit of exemption to the vehicle in question from its toll plaza from February 2020 to May 2020 (wrongly written as 01.01.2023 to 31.05.2020) and during the said period, not even a single penny was charged by OP No.1 from the complainant; thus, there is no deficiency in service and adoption of unfair trade practice at the end of the OP No.2. Furthermore, in case, this Commission comes to the conclusion that there is any kind of deficiency in service and adoption of unfair trade practice, in that event, the present complaint may be allowed by this Commission against OP No.1 only as the same has been collecting the toll from the toll plaza users like the complainant for issuance of monthly toll plaza pass.

3.The complainant has tendered an affidavit as Annexure C-A & C-B along with documents Annexure C-1 to C-10 in evidence and closed the evidence by making a separate statement. On the other, the authorized representative of OP No.1 has tendered affidavit as Annexure R-1/A along with documents as Annexure R-1/1 to R-1/3 and closed the evidence. The learned counsel for OP No.2 has tendered affidavit as Annexure R-2/A along with document as Annexure R-2/1 and closed the evidence..

4.We have heard the learned counsel for the complainant, the authorized representative of OP No.1 as well as the learned counsel for the OP No.2 and gone through the entire record available on file including written arguments filed by the complainant as well as OP No.1 & OP No.2, minutely and carefully.

5.During arguments, the learned counsel for the complainant reiterated the averments as made in the complaint as also in affidavits(Annexure C-A & C-B) and contended that the deduction of sum of Rs.930/- against Rs.150/- qua monthly pass by the OPs from the fast tag account no.21195030 of the complainant was not valid and justified as the same was contrary to the provisions contained in the notification dated 02.04.2012(Annexure C-10), wherein a limit of Rs.150/- for monthly pass under the local traffic category in respect of car jeep was prescribed. It is contended that the OPs had indulged into deficient and unfair trade practice by not refunding the excess amount to the complainant even after the request made by the complainant vide email dated 02.11.2019(Annexure C-1) followed by email dated 11.11.2019 (Annexure C-2) and thus, the complaint is liable to be accepted by granting the relief as claimed for in the complaint.

6.The authorized representative on behalf of the OP No.1, during arguments, reiterated the averments as made in the reply/written statement as also in the affidavit(Annexure R-1/A) and contended that a sum of Rs.930/-, instead of Rs.150/-, was auto debited on 01.11.2019 from the account of the complainant due to a technical glitch in the portal of bank ICICI. It is contended that an excess amount was debited in the same manner due to the said technical glitch of the portal of OP No.2 from the account of 44 other customers. It is further contended that a sum of Rs.600/- has already been adjusted out of the excess amount of Rs.780/- as nothing was charged from the complainant qua the usage of toll plaza by her w.e.f. Feb.2020 to May 2020 and thus, only a sum of Rs.180/- is outstanding; as such, the authorized representative has prayed for dismissal of the complaint being baseless and meritless.

7.The learned counsel on behalf of OP No.2, during arguments, raised the preliminary issues that the complicated question of facts are involved in the adjudication of the present complaint as allegations of cheating

has been leveled in the complaint. In this regard, the learned counsel has placed reliance upon following case laws:-

- i. Safe Home Developers and Contractors Vs. Samata Shakari Bank Ltd. reported in 2012(IV) CPJ 729(NC).
- ii. Satish Mehra Vs. Canara Bank reported in I (1996) CPJ 332(NC).

8.The above objection is not tenable because of admitted factual position qua the deduction of excess amount of Rs.930/- against Rs.150/- qua monthly pass of the complainant in respect of her vehicle no.HR-49E-4767. The above case law as relied upon by OP No.2 is of no help to its case being distinguishable on facts and laws.

9.The learned counsel further took the plea that no loss has been caused to the complainant in the present complaint. Reliance has been placed on the case law laid down by the Hon'ble National Commission in the case titled as Yashpal Vs.SSG Pharma(P) Ltd., reported in IV (2006) CPJ 377(NC).

On merits, the learned counsel has contended that the mistake had occurred, while deducting the sum of Rs. 930/- against Rs.150/- qua monthly pass, at the level of OP No.1, who had treated the monthly pass of the complainant as general pass and thus, no deficiency or unfair trade practice is attributable on the part of OP No.2; hence, the complaint is liable to be dismissed qua OP No.2.

10.As per rival contentions raised on behalf of the learned counsel for the complainant, the authorized representative on behalf of the OP No.1 and the learned counsel for OP No.2, the question which arises for consideration, before us, is, whether the OP's act while auto debiting the fast tag account of the complainant charging a sum of Rs.930/- against Rs.150/- qua monthly pass, was correct, valid and justified.

11.The entitlement of the complainant to the monthly local pass at discounted rates, as Pinjore is situated within the radius of 10kms from the Chandimandir Toll plaza, is not disputed. As per notification dated 02.04.2012(Annexure C-10), the OP No.1 was not authorized to collect the fee from the local traffic i.e. the complainant, in excess of the discounted rate i.e. Rs.150/ for monthly pass for usage of the toll plaza by local traffic and the same is the position as per notification dated 14.11.2019 issued by National Highway Authority of India qua the charging of toll free from the local traffic. It is specifically provided in the said notification that the OP No.1 shall not collect any fee from the local traffic in excess of the discounted rates.

12.Since excess rate was charged by OPs from the fast tag account of the complainant in contravention of the provisions as contained in the said notification, it was binding upon them to refund the excess amount immediately or at any rate after the receipt of the request of the complainant on 02.11.2019(Annexure C-1) followed by 11.11.2019(Annexure C-2) qua the refund of the excess amount. The Ops, instead of refunding the excess amount to the complainant, had opted to adjust the same in future in anticipation that the toll facility would be utilized by the complainant. The retention of the excess amount by the Ops in advance for future usage of toll plaza by the complainant clearly amounts to adoption of unfair trade practice. It is also pertinent to mention here that the present complaint was instituted in the Commission on 30.12.2019, wherein the Ops had appeared in pursuance to the notice issued to them on 25.02.2020. In case, the mistake had occurred bonafiedly due to a technical glitch as alleged, the Ops were expected to refund the excess amount on 25.02.2020 itself when they put appearance before the Commission. As such, the indulgence by the Ops into unfair trade practice is writ large from the above stated factual position. Since the OPs were prohibited from charging any amount from the local area traffic in excess of the prescribed rate, therefore, charging by the Ops in excess of the prescribed amount in violation of the provisions contained in the said notification was clearly invalid and illegal.

13.Regarding the mistake/error, while charging the excess amount from the fast tag of the complainant, the OP No.1 has alleged that the same had occurred due to technical glitch in the portal of ICICI Bank(OP No.2) whereas the OP No.2 i.e. ICICI Bank has alleged that the category of the complainant from local area traffic was

treated as general category pass holder by OP No.1. And thus, it is claimed that no liability can be fastened upon OP No.1.

14.The OP No.2 has not rebutted and controverted the specific averments of OP No.1 qua the occurrence of the technical glitch on its portal, which had led to the deductions of excess amount from 44 other customers excluding the complainant. Further, the complainant had lodged the complaint with OP No.2 on 02.11.2019 and followed by 11.11.2019, which it had failed to resolve by taking up the matter with OP No.1. Therefore, both the OPs i.e. OP No.1 as well as OP No.2 were deficient, while rendering the services to the complainant, for which they are liable to compensate the complainant.

15.Now, adverting to the relief, it is found that the OP No.1 has alleged that a sum of Rs.600/- has already been utilized by the complainant by using the toll plaza w.e.f. February 2020 to May 2020 and thus, a sum of Rs.180/- has remained unutilized, which it is ready to pay to the complainant. In this regard, the contention of the OP No.1 is not found correct as the toll plaza facility was not utilized by the complainant during the entire month of April due to lock-down.

16.It is pertinent to mention here that a consumer as and when uses the toll plaza facility by crossing it in a vehicle without having the validly issued fastag having sufficient fund in it, he/she is made to pay double charges by the OPs. In the present case, the Ops have deducted a sum of Rs.930/- in place of Rs.150/-, in violation of the instructions as contained in the relevant notifications.

17.Since, the OPs have, admittedly, deducted a sum of Rs.780/-(Rs.930-150) unauthorizedly from 44 others consumers excluding the complainant, it would be just, proper and reasonable to burden them with the total compensation of Rs.1,00,000/-(Rs.One Lakh) for adoption of unfair trade practices by them.

18.As a sequel to above discussion, we partly allow the present complaint with the following directions to the OPs No.1 & 2:-

- i. The OP No.1 is directed to pay a sum of Rs.330/-, to the complainant along with interest @ 9% per annum (simple interest) w.e.f. the date of filing of the complaint till its actual realization.
- ii. The OPs No.1 & 2 are burdened with the punitive damages amounting to Rs.1,00,000/-(Rs.One Lakh), on account of adoption of unfair trade practices, out of which Rs.20,000/- shall be paid by them in equal proportion (i.e. Rs.10,000/-each) to the complainant. The remaining amount i.e. Rs.80,000/- shall be deposited by OP No.1 in the account of the Poor Patient Welfare Fund (PPWF) through the Director, Post Graduate Institute of Medical Research & Education, Chandigarh by way of DD/ pay order and accordingly, the OP No.1 is directed to send the DD/Pay order amounting to Rs.80,000/- in favour of the Director, Post Graduate Institute of Medical Research & Education, Chandigarh for deposit of the same in the account of Poor Patient Welfare Fund (PPWF).
- iii. The OP No.1 is directed to pay a sum of Rs.10,000/- to the complainant on account of mental agony and physical harassment suffered by her.
- iv. The OP No.1 is directed to pay a sum of Rs.5,500/- to the complainant as litigation charges.
- v. The OP No.1 as well as OP No.2 are directed to refrain from adoption of such unfair trade practice, in future.

19.The OPs No.1 & 2 shall comply with the directions/orders within a period of 45 days from the date of communication of copy of this order failing which the complainant shall be at liberty to approach this Commission for initiation of proceedings under Section 71/72 of CP Act, against the OPs No.1 & 2. A copy of this order shall be forwarded, free of cost, to the parties to the complaint as well as the Director, Post Graduate Institute of Medical Research & Education, Chandigarh and file be consigned to record room after due compliance.

Announced on: 15.09.2023

Dr.Barhm Parkash Yadav	Dr.Sushma Garg	Satpal
Member	Member	President

Note: Each and every page of this order has been duly signed by me.

Satpal
President