

**BEFORE THE BANGALORE URBAN II ADDITIONAL
DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
SHANTHINAGAR, BANGALORE - 560027**

DATED THIS THE 30th DAY OF AUGUST 2023

CONSUMER COMPLAINT NO.741/2020

PRESENT:

**SRI B.DEVARAJU, B.A.L., LL.B., PGDCLP., (NLSIU) ... MEMBER-
CUM- I/C PRESIDENT**

SMT.V.ANURADHA, B.A., LL.B., ... MEMBER

COMPLAINANT:

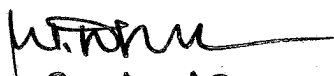
Sri.Satish.T.N,
Son of Late Sri.Nanjunda Swamy.T.G.,
Aged about 47 years,
Residing at No.603, 6th Block,
6th 'G' Cross, 17th A Main,
Koramangala,
Bengaluru - 560 095.

(Complainant is Rep. by Adv. Sri Venkatesh Prasad.R)

V/s

OPPOSITE PARTIES:

1. HDFC Bank,
RVS Paradise Branch,
Jayanagar 4th T Block,
Bengaluru - 560 041,
Represented by its
Manager (Customer Services).
2. Kotak Mahindra Bank,
Parel, Mumbai - 400 012,
Represented by its
Branch Manager.
3. Mr.A.S.So V,
Residing at Nungou Aze, Nungou,
Shongshak,Ukhrul Central Sub-Division,


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Ukhrul, Manipur – 795 145,
India.

(OP No.1 is Rep. by Adv. Sri.Shilpasharad Shrikhande)
(OP No.2 is Rep. by Adv. Sri.Avinash Balakrishna)
(OP No.3 is Exparte)

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Author **SRI.B.DEVARAJU, MEMBER-CUM- I/C PRESIDENT**

// JUDGMENT //

1. This complaint has been filed by the Complainant under Section 35 of the Consumer Protection Act, 2019, (hereinafter referred as the Act) seeking direction against the opposite parties to pay Rs.50,000/- jointly and severally, with interest at 18% p.a. from the date of pilferage of his account till date of refund, to pay compensation of Rs.2,50,000/- and for other reliefs.
2. The case of the complainant in brief is as under;

The complainant is the account holder of Savings Bank Account No.50100046754072 with opposite party No.1 Bank which was being used for his day to day transactions. On 27.08.2018 at around 2:00 A.M some unknown had hacked his account and withdrawn money of Rs.50,000/- in three transactions and have transferred to a bank account in opposite party No.2 Branch. The complainant was at Ahmadabad at that point of time and when he woke up in the morning he noticed text messages on his mobile and realized the transactions illegally by opening a fake account by misusing his PAN and Aadhaar. The miscreant has also

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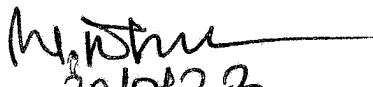
generated few numbers of OTP which shows the complainant's mobile phone number 9845347376 was hacked and created a fake bank account in complainant's name and transacted by transferring money illegally. The complainant informed the customer care of opposite party No.1 and sought for blocking his HDFC S.B. Account and also to their nearest branch at Ahmadabad. A police complaint was also lodged in this regard against the opposite party No.2 informing of the fraud and negligence on their part. Thereafter, the complainant contacted the opposite party No.1 and discussed about the issue and on the police complaint on the Cyber Crime. Upon investigation, the Ahmadabad police zeroed in on the culprit who was responsible for the purloined of the money and had laundered it to his own ICICI Bank Account No.016901642186 showing the account holder name as Assov, Nungou Aze, Nungou, Shongshak, Ukhrul, Central Sub-Division, Ukhrul, Manipur-795 145. The Ahmadabad police, acting on the complaint filed by the complainant had also asked the opposite party No.1 to refund the money subjected under the unauthorized transaction.

3. The Circular issued by the RBI/2017-18 DBR.No. Leg.BC.78/09.07.005/2017-18 as per which the customers are secured to zero liability in the event of fraud on their part. The opposite parties who are well aware of the said circular of the RBI have not bothered to settle the claims of the complainant. Though several representations were made, the opposite party No.1 has not obliged to refund the

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money siphoned off by the culprits on the online fraud which clearly amounts to deficiency of service. The opposite party No.2 has acted negligently in opening a bank account impersonating the complainant's name by online without following KYC verification based on UIDAI. The complainant had undertaken travel by Air to Mumbai to visit the opposite party No.2 more than 5 travels to Bangalore meeting various bank officials and Cyber Crime Police. The opposite party No.3 is the ultimate beneficiary of the crime committed in the fraud involving the illegal transactions by hacking the bank account of the complainant. The act of the opposite parties amounts to deficiency of service. Hence, this complaint.

4. After service of notice, the opposite party Nos. 1 & 2 entered appearance by filing version opposing the claim of the complainant. The opposite party No.3 was impleaded subsequent to filing of the complaint by virtue of order dated 04.09.2021 passed by this Commission. Though notice was ordered, the opposite party No.3 who is none other than the person benefited by the scam remained absent as notice issued on him remained as await.
5. The opposite party No.1 contends that the complaint is not maintainable. The complaint is infructuous for non-joinder of necessary parties. The complainant is no more the customer of opposite party No.1. The complainant had voluntarily closed his S.B Account on 20.05.2021 prior to which he was holding credit card and other banking facilities. On 27.08.2018 the complainant called this

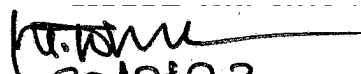

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opposite party and registered a complaint that three fraudulent fund transfers have taken place from his Account number ending with xx4072 through net banking through his account held at Jayanagar, R.V.S Paradise Branch, Bengaluru of HDFC Bank Ltd. and immediately an issue was raised with the internal team of Ombudsman. On verifying the facts, it was confirmed that all the three transactions are made to and by the same name account holder and amounts were transferred by following correct procedure, correct passwords and correct OTP to his own other bank accounts. This opposite party has accepted all commands of the account holder which was accurate and remitted the account held with opposite party No.2. Before these transactions took place, the complainant added his own account as beneficiary in third party transfer following each step.

6. On 27.08.2018 there were three third party fund transfer for total amount of Rs.50,000/- as follows:-

Txn Date	Description	Amount
27/08/2018 02:35	IMPS-823902116842- SATISH T N-KKBK- xxxxxx7933-HJ	4,000.00
27/08/2018 02:36	IMPS-823902117283- SATISH T N-KKBK- xxxxxx7933-HJ2	21,000.00
27/08/2018 02:44	NEFT DR-KKBK0000640- SATISH T N - NETBANK, MUM-N239180616230841- HJ3	25,000.00

OTP came to be generated and sent to the registered mobile number of the customer which needs to be inputted as an additional authentication mechanism. The complainant is


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claiming that his mobile is hacked. This Commission cannot try criminal cases where the issue of mobile hacking is involved. There are many questions which are not answered by the complainant as to how the hacker knew his IPIN which keeps on changing as per customer's privilege. As part of security control, a beneficiary is activated only post cooling period of 30 minutes of addition and for new beneficiary addition all transactions are mandatorily to be authenticated with OTP for first two days. Post activation of a beneficiary for NEFT/within bank transactions a maximum of Rs.50,000/- can be transferred and for IMPS P2A transactions a maximum of Rs.25,000/- can be transferred to each beneficiary within 24 hours and that all transactions alerts were sent and delivered on the registered mobile number of the complainant. There is no breach of confidential information on the part of the opposite party. On receiving complaint this opposite party has blocked his account and raised the dispute with the other banks for blocking the funds in the beneficiary account. It is admitted that the complainant has lodged FIR relating to the offence. This opposite party is not liable for any deficiency of service and hence seeks for dismissal of the complaint.

7. The opposite party No.2 contends that the complaint is not maintainable. There is no specific allegation against this opposite party except that a fake account was opened in the name of the complainant without any physical verification or complete KYC. The person who opened the

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said account provided all necessary documents required for opening account with the aid of Aadhaar number etc. A onetime password sent to the complainant's mobile number was also entered by the person who created the account. The fraudster had entered all details requiring for opening an account. Since, the nature of account did not require full KYC no physical verification was required. There is no breach or lapse or negligence on the part of this opposite party. There is no customer relationship with the complainant who has not availed any services or paid any consideration. The account in the name of complainant was opened with the details of the account holder by name Satish.T.N, A/c No.9313337933 along with customer relation number, PAN, Aadhaar, e-mail and mobile number 9845347376. On the day of opening the account Rs.25,000/-, Rs.21,000/- and Rs.4,000/- came to be credited and thereafter Rs.25,000/- and Rs.25,000/- were debited to account holder by name SoviAssov. There were no other transactions except the above and the same was closed on 02.09.2020. This opposite party is not liable for deficiency of service and hence seeks dismissal of the complaint.

8. The complainant filed evidence by way of affidavit and relies on 18 documents. The opposite party No.1, represented by its Branch Manager filed evidence by way of affidavit and relies on 8 documents marked as Ex.R1 to R8. The opposite party No.2, represented by its Vice President-Legal filed evidence by way of affidavit and relies on 5 documents

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marked as Ex.R9 to R13. Heard arguments on both sides.
We perused the records.

9. The following points do arise for our consideration;


1. **Whether the complainant proves the deficiency of service on the part of the opposite parties?**
2. **Whether the complainant is entitled to the relief claimed in the complaint?**
3. **What order?**

10. Our findings on the above points are as under;

1. **POINT NO.1:** In the Affirmative;
2. **POINT NO.2:** Partly in the Affirmative;
3. **POINT NO.3:** As per final order;

REASONS

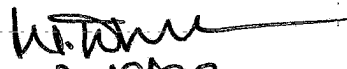
11. **POINTS NO.1 & 2:** The fact that the complainant was holding bank account with the opposite party No.1 is not in dispute. The complainant's grievance is that on 27.08.2018 at around 2:00 A.M Rs.50,000/- came to be siphoned off from his bank account by three online transactions and had transferred the money to the bank account of opposite party No.3. The fraudsters seems to have hacked the mobile phone number registered with the said bank account and have created a fake account by online and got the transfer of money from the complainant's bank account held with opposite party No.1 bank and thereafter the money so siphoned off was transferred from the opposite party No.2 bank to the bank


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account of opposite party No.3. The contention of the complainant is that he has not shared any of the confidential information with anyone. We have perused the documents submitted by the complainant. Copy of the bank statement of the complainant with opposite party No.1 bank shows a debit of Rs.50,000/- in three transactions on 27.08.2018. The copy of the letter dated 02.01.2019 and the FIR dated 02.01.2019 shows that the complainant had lodged complaint against the fraudulent transaction to the Inspector of Police, Bhopal. The complainant also wrote a letter dated 27.09.2018 to the opposite party No.2 bank complaining about the fraudulent transfer of money from his account from opposite party No.1 bank and seeking to restore the money so siphoned off. The copy of the SMS Screenshots shows that the transactions have taken place on 27.08.2018 between 1:34 hrs to 1:48 hrs. Further, the SMS copy shows that the opposite party No.2 bank sent messages relating to the request to activate Kotak Mobile App on device and thereafter on successful activation the funds were transferred by generating OTP which the complainant claims not delivered to his registered mobile number due to hacking. The complainant has also produced e-mail communications with the bank relating to the fraudulent transactions.

12. The Circular issued by the RBI on 06.07.2017 on the customer protection limiting liability of customers in unauthorized electronic banking transactions. Under the


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limited liability a customer is entitled for zero liability where the unauthorized transaction occurs due to contributory fraud/negligence/deficiency on the part of the bank (irrespective of whether or not the transaction is reported by the customer). Further, third party breach where the deficiency lies neither with the bank nor with the customer but lies elsewhere in the system, and the customer notifies the bank within 3 working days of receiving the communication from the bank regarding the unauthorized transaction. The Reversal Timeline for Zero Liability of customer prescribes that on being notified by the customer, the bank shall credit (shadow reversal) the amount involved in the unauthorized electronic transaction to the customer's account within working days from the date of such notification by the customer (without waiting for settlement of insurance claim, if any). Banks may also at their discretion decide to waive off any customer liability in case of unauthorized electronic banking transactions even in cases of customer negligence. The credit shall be value dated to be as of the date of the unauthorized transaction. The Burden of Proving the Customer Liability in case of unauthorized electronic banking transaction shall lie on the bank as per the circular issued by the RBI.

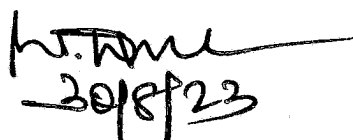
13. Ex.R2 to R6 being the e-mail communications shows about the dispute being brought to the notice of the bank officials. Ex.R7 is the letter dated 10.07.2019 issued by the Bhopal Police Station calling upon the opposite party

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No.1 bank to refund the money involved in the fraudulent transaction. The opposite party No.1 replied on 26.07.2019 to the Bhopal Police Station that the whole transactions were OTP based with the aid of IPin and requested the said police and the complainant to seek for freezing the money from the ultimate beneficiary, who is the opposite party No.3 herein. Ex.R8 is the statement of bank account issued by the opposite party No.1 in the name of the complainant.

14. On careful consideration, it is evidently clear that the opposite party Nos.1 & 2 are to be held responsible for the fraudulent transactions. The opposite party No.3 is the ultimate beneficiary of the fraudulent transfer of money and law has to take its own course against him and this Commission cannot go into the aspect of the criminal proceedings which is beyond its purview. The complainant has established deficiency of service on the part of the opposite parties No.1 & 2. The complainant is entitled to the claim amount of Rs.50,000/- from the opposite parties No.1 & 2. The complainant is also entitled for compensation of Rs.25,000/- and Rs.5,000/- towards cost of litigation expenses from the opposite parties No.1 & 2. Hence, we answer the above point No.1 in the Affirmative & 2 Partly in the Affirmative.

15. **POINT NO. 3:** In view of the discussion referred above, the complaint requires to be allowed in part. The opposite parties No.1 & 2 are liable to pay Rs.50,000/- with compensation of Rs.25,000/- and Rs.5,000/- as cost of


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litigation expenses to the complainant. We proceed to pass the following;

ORDER

The complaint is allowed in part.

The opposite parties No.1 & 2 are directed to pay Rs.50,000/- (Rupees Fifty Thousand only) to the complainant.


The opposite parties No.1 & 2 are also directed to pay Rs.25,000/- (Rupees Twenty Five Thousand only) towards compensation and Rs.5,000/- (Rupees Five Thousand only) towards cost of litigation expenses to the complainant.


The opposite parties No.1 & 2 shall comply the order within 60 days, failing which interest at 9% p.a. be calculated on the amount of Rs.50,000/- (Rupees Fifty Thousand only) thereafter till realization.

Supply free copy of this order to the parties.

Return spare copies of the pleading and evidence to the parties.

(Dictated to the Steno, typed by her, transcript corrected, Revised and then pronounced by the open Commission on 30th day of AUGUST 2023).


(V.ANURADHA) 30/08/2023
MEMBER


(B.DEVARAJU) 30/8/23
MEMBER-CUM-I/C PRESIDENT

//ANNEXURE//**Witness examined for the complainant's side:**

Mr.Satish.T.N, who being the complainant has filed his affidavit.

List of documents filed by the complainant:

1. Copy of the Bank Statement for the period 20.08.2018 to 19.09.2018 with respect to the account maintained with the opposite party No.1,
2. Photocopy of the complaint and the FIR dated 02.01.2019 in FIR No.I/2/2019 filed before the Bhopal, Police Station (Ahmadabad, Gujarat),
3. Photocopy of the news paper article,
4. Photocopy of the Police Complaint filed before the ACP, Cyber Crime Branch, Ahmadabad, Gujarat,
5. Photocopy of the complaint dated 27.08.2018,
6. Printout of the complaint dated 27.08.2018,
7. Photocopy of the Acknowledgement in GSC No.PO2200180602787 dated 21.09.2018 issued by the Cyber Crime Police Station, Bengaluru City,
8. Photocopy of the e-mail dated 10.07.2019 written by the Police Sub Inspector, Bhopal Police Station to the Manager HDFC Bank, Jayanagar, Bengaluru,
9. Printout of the SMS alerts dated 27.08.2018 received by the complainant from VK-ADHAAR & TM-KOTAKB,
10. Printout of the complaint dated 10.09.2018,
11. Printout of the e-mail correspondence dated 16.07.2019, 21.09.2018, 29.09.2018 & 27.09.2018 by the complainant and the Grievance Redressal Cell, HDFC Bank,
12. Printout of the e-mail dated 25.07.2019 addressed to the complainant by the Customer Service Manager (Chairman & MD Cell) HDFC Bank,

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13. Printout of the complaint dated 10.09.2018, filed before the Banking Ombudsman Reserve Bank of India, Mumbai,
14. Printout of the email correspondence dated 24.10.2018 & 26.10.2018 between the complainant and the Nodal Desk, Kotak Mahindra Bank Ltd.,
15. Printout of the email dated 25.01.2019 addressed to the complainant by the Banking Ombudsman, Bengaluru,
16. Printout of details of Fraudster's Bank account maintained with the ICICI Bank with the statement of transactions for the period 14.08.2018 to 15.09.2018,
17. Printout of the Bank Statement for the period 27.08.2018 to 14.09.2018,
18. Printout of the RBI Notification dated 06.07.2017,
19. Certificate under Section 65B of Indian Evidence Act.

Witness examined on behalf of the Opposite Party
Nos.1 & 2:

Mr.Praveen.H.S, who being the Branch Manager of the opposite party No.1 has filed his affidavit.

Mr.Guruprasad Nayak, who being the Vice President-Legal and Authorized Representative of the opposite parties No.2 has filed his affidavit.

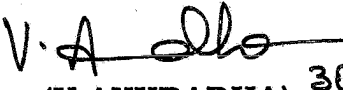
List of documents filed by the Opposite Parties:

1. Ex.R1: Certificate under Section 65B of Indian Evidence Act,
2. Ex.R2: Copy of the Revert from online banking team to the complainant as on 10.09.2018,
3. Ex.R3: Copy of the Revert from Grievance Redressal Cell to complainant as on 27.09.2018,

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4. Ex.R4: Copy of the Revert from HDFC Bank Nodal Officer to the Banking Ombudsman dated 28.12.2018,
5. Ex.R5: Copy of the Additional information regards SMS dump Report and Pattern of late night transactions in the past few months sent by the HDFC Bank Nodal Officer to the Banking Ombudsman dated 10.01.2019,
6. Ex.R6: Copy of the Banking Ombudsman response to the complainant dated 25.01.2019,
7. Ex.R7: Copy of the Receipt of Bhopal Police complaint at the branch as on 19.07.2019 (letter dated 10.07.2019) and followed by our response to the police as on 26.07.2019 through registered post,
8. Ex.R8: Copy of the complainant's bank statement from account opening to closure,
9. Ex.R9: Certificate under Section 65B of Indian Evidence Act,
10. Ex.R10: Copy of the RBI Circular in 3 pages,
11. Ex.R11: Copy of the Digital Account opening form,
12. Ex.R12: Certificate under Section 65B of Indian Evidence Act,
13. Ex.R13: Excel Sheet in respect of OTP.


(V.ANURADHA) 30/08/2023
MEMBER


(B.DEVARAJU) 30/8/23
MEMBER-CUM-I/C PRESIDENT