

Date of Complaint Filed: 25.11.2022

Date of Reservation : 17.07.2023

Date of Order : 26.07.2023

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,

CHENNAI (SOUTH), CHENNAI-3.

PRESENT: TMT. B. JIJAA, M.L., : PRESIDENT

THIRU. T.R. SIVAKUMHAR, B.A., B.L., : MEMBER I

THIRU. S. NANDAGOPALAN., B.Sc., MBA., : MEMBER II

CONSUMER COMPLAINT No.407/2022

WEDNESDAY, THE 26th DAY OF JULY 2023

Mr. K. Balakesari,

S/o. of T.M.B. Nedungadi,

Flat No.3/1, Ramskesari Kuteeram,

Wescott Road,

Royapetah,

Chennai 600 014.

.. Complainant.

-Vs-

M/s. Holiday4U,

Rep. by its Authorized Representative,

Mr. P. Rajesh,

No.1, M.G. Road,

Shastri Nagar,

Adyar, Chennai 600 041.

.. Opposite Party.

* * * * *

**Counsel for the Complainant: M/s. Govind Chandrasekhar, Sharath Chandran, Praveen Purohit,
T.M. Mano, Harikrishnan.R**

Counsel for Opposite Party : Exparte on 27.01.2023

On perusal of records and upon hearing the oral arguments of the counsel for Complainant and this Commission delivered the following:

ORDER

Pronounced by the Member-I, Thiru.T.R.Sivakumhar.B.A,B.L,

(i) The Complainant has filed this complaint as against the Opposite Party under section 35 of the Consumer Protection Act, 2019 and prays to repay the balance sum of Rs.2,75,000/- illegally retained by its together with interest of 18% from March 2020 till the date of realization along with cost of the complaint.

I. The averments of Complaint in brief are as follows:-

1. The Complainant submitted that he is a retired senior citizen. On 21.12.2019 he had a paid a sum of Rs.3,00,000/- vide two cheques bearing No.323251 and 328301, towards a “South African Magic Package”, which was an 8 night package tour organised by the Opposite Party covering the cities of Johannesburg, Sun City, Cape Town etc. But, on account of the onset of the COVID-19 pandemic, the tour was cancelled in March 2020.
2. The Complainant submitted that on 9th March, 2020 he wrote to the Opposite Party requesting for a full refund of the aforesaid sums paid in view of the cancellation of the tour and the Opposite Party had accepted for full refund by an e-mail dated 10.03.2020. As the tourism sector was badly affected with the onset of the first and second waves of the pandemic, he did not insisted on repayment of the tour fare for more than a year, i.e, from mid2020 to mid 2021, thereafter he started following up with the Opposite Party periodically over telephone towards the latter part of 2021.
3. The Complainant submitted that as the Opposite Party had not kept its words, he was once again constrained to write to the opposite Party on 29.11.2021 requesting refund of the aforesaid sum without any further delay, in Pursuant to the aforesaid e-mail a sum of Rs.25,000/- was paid by the Opposite Party on 25.12.2021. As no further payments were forthcoming he once again wrote to opposite Party on 11.02.2022 and on 02.03.2022 reiterating the earlier demands, for which the Opposite Party by an email dated 02.03.2022 had stated that “As discussed during our last conversation, we will do more payments this month.”
4. The Complainant submitted that despite the aforesaid assurances he has not received a single rupee till date. In these circumstances, he is convinced that the Opposite Party representations were not bonafide and that it had no intention to honour the Commitment to refund the balance of Rs.2,75,000/-. The Opposite Party has unfairly retained this money for over two years as this sum ought to have been refunded in March 2020 itself.
5. The Complainant submitted that the conduct of the Opposite Party is ex-facie unethical and exploitative, as is clearly evident from its act of illegally retaining the balance amount payable to the Complainant. The Opposite Party has caused loss and untold suffering to the Complainant which subsists as on date. Hence the complaint.

II. The Opposite Party was set exparte:

Notice was sent to the Opposite Party and was duly served to the Opposite Party. Despite the notice being served to the Opposite Parties they failed to appear before this Commission either in person or by Advocate on the hearing date and not filed any written version on their side. Hence the Opposite Party are called absent and set ex-parte. Subsequently, the case was proceeded to be heard on merits.

III. The Complainant has filed his proof affidavit, in support of his claim in the complaint and has filed documents which are marked as Ex.A1 to A9. Written argument of Complainant was filed.

IV. Points for Consideration:-

1. Whether there is Unfair Trade Practice committed by the Opposite Party?
2. Whether the Complainant is entitled for reliefs claimed?
3. To what other reliefs the Complainant is entitled to?

POINT NO. 1 :-

6. The contentions of the Complainant are that he is a retired senior citizen. On 21.12.2019 he had a paid a sum of Rs.3,00,000/- vide two cheques bearing No.323251 and 328301, towards a “South African Magic Package”, which was an 8 night package tour organised by the Opposite Party covering the cities of Johannesburg, Sun City, Cape Town etc. Due to COVID-19 pandemic, the tour was cancelled in March 2020.
7. Further contended that on 9th March, 2020 he wrote to the Opposite Party requesting for a full refund of the aforesaid sums paid in view of the cancellation of the tour and the Opposite Party had accepted for full refund by an e-mail dated 10.03.2020. As the Opposite Party had assured for full refund of the booking amount, he did not insisted on repayment of the tour fare for more than a year, i.e, from mid2020 to mid 2021, as the tourism sector was badly affected with the onset of the first and second waves of the pandemic, thereafter latter part of 2021 he started following up periodically with the Opposite Party over telephone.
8. Further contended that as the Opposite Party had not kept its words, he was once again constrained to write to the opposite Party on 29.11.2021 requesting refund of the aforesaid sum without any further delay, only thereafter a sum of Rs.25,000/- was paid by the Opposite Party on 25.12.2021, but had failed to refund the balance amount of Rs.2,75,000/-which constrained send mails to opposite Party on 11.02.2022 and on 02.03.2022 reiterating the earlier demands, for which the Opposite Party by an email dated 02.03.2022 they had assured to make more payments that month. Despite the said assurances he has not received a single rupee till date, as the Opposite Party representations were not bonafide and that it had no intention to honour the Commitment to refund the balance of Rs.2,75,000/-.
9. Further contended that the Opposite Party had unfairly retained the amounts for over two years as the same should have been refunded in March 2020 itself. The conduct of the Opposite Party is ex-facie unethical and exploitative, as is clearly evident from its act of illegally retaining the balance amount payable to the Complainant and had caused loss and untold suffering to the Complainant.
10. On discussions made above and on perusal records, it is evident from Ex.A-1 Payment Receipt dated 21.12.2019 issued by the Opposite Party, the Complainant had paid a sum of Rs.3,00,000/-by way of two cheques bearing No.343251 and 348301 to the Opposite Party towards 8 nights package tour package organised by the Opposite Party by name “South African Magic Package”covering Johannesburg, Sun City, Knysna, Oudshoorn, Aquila Game Reserve & Cape Town. From Ex.A-2 Mail dated 09.03.2020 sent by the Complainant to the Opposite party, wherein the Complainant had sought for entire refund of Invoice amount of Rs.3,00,000/- and had expressed his inability to undertake rescheduled tour to be started on 28.04.2020 due to uncertain conditions of COVID-19 pandemic and it is also evident that the tour originally scheduled was cancelled in March 2020.

11. As per Ex.A-3 Mail dated 10.03.2020 the Opposite Party had accepted for full refund of Rs.3,00,000/- before 28.04.2020. From Ex.A-4 Mail dated 29.11.2021 the Complainant had requested the Opposite Party to refund a sum of Rs.3,00,000/-, which was paid by him 2 years back without any further delay. From Ex.A-5 Mail dated 11.02.2022 sent by the Complainant to the Opposite Party it is evident that a sum of Rs.25,000/- alone out of Rs.3,00,000/- was paid by the Opposite Party on 25.12.2021, hence had sought for refund of balance amount of Rs.2,75,000/- before 31.03.2022. As the Complainant has not received any acknowledgement for Ex.A-5 was constrained to send another Mail dated 02.03.2022, Ex.A-6, wherein he had expressed that the Opposite Party seem to deliberately attempting to delay the balance payment of Rs.2,75,000/- by avoiding his phone calls or responding to his mails and in response to Ex.A-6, the Opposite Party had sent a Reply Mail dated 02.03.2022 assuring to make more payments in the month of March,2022. From Ex.A-8 Mail dated 16.05.2022 sent by the Complainant to the Opposite Party, it is evident that the Opposite Party had failed to refund the balance amount of Rs.2,75,000/- and the Complainant had sought for refund of the said sum before 31.05.2022. As the balance payment is not forthcoming from the Opposite Party the Complainant was constrained to send a Legal Notice dated 08.06.2022 to the Opposite Party, Ex.A-8, claiming the balance amount of Rs.2,75,000/-, in spite of receipt of the said Legal Notice, there was no response from the Opposite Party.

12. In the given facts and circumstances of the case, it is clear that in spite of the assurances made by the Opposite Party to refund the entire amount of Rs.3,00,000/- before 28.04.2020, the Opposite Party had refunded only a sum of Rs.25,000/- that too only on 25.12.2021 and thereafter had failed and neglected to refund the balance amount of Rs.2,75,000/- to the Complainant, in spite of the assurance made under Ex.A-7 and the Opposite Party failed to respond the legal demand of the balance amount of Rs.2,75,000/- clearly evidencing that the said amount has been illegally retained by the Opposite Party and thereby had caused loss and untold suffering to the Complainant. Hence, the said lethargic and negligent act of the Opposite Party amounts to Unfair Trade Practice. Therefore, this Commission is of the considered view that the Opposite Party had committed Unfair Trade Practice. Accordingly Point No.1 is answered.

POINTS NO 2 & 3:-

13. As discussed and decided in Point No.1 against the Opposite Party, the Opposite Party is liable to refund a sum of Rs.2,75,000/- together with interest @9% p.a from 10.03.2020 till the date of realisation, along with cost of Rs.5,000/-. Accordingly, Point Nos.2 and 3 are answered.

In the result, the complaint is allowed in part. The Opposite Party is directed to refund a sum of Rs.2,75,000/- (Rupees Two Lakh Seventy Five Thousand Only) together with interest @9% p.a from 10.03.2020 till the date of realisation, along with cost of Rs.5,000/- (Rupees Five Thousand Only) to the Complainant, within 8 weeks from the date of the order.

Dictated to Steno-Typist, transcribed and typed by her, corrected and pronounced by us in the Open Commission, on 26th July 2023.

S. NANDAGOPALAN

T.R. SIVAKUMHAR

B.JIJAA

MEMBER II

MEMBER I

PRESIDENT

List of documents filed on the side of the Complainant:-

| | | |
|--------|------------|--|
| EX A-1 | 12.12.2019 | Payment receipt |
| EX A-2 | 09.03.2020 | Email communication from Complainant to Opposite Party |
| EX A-3 | 03.10.2020 | Email communication from Opposite Party to Complainant undertaking to refund the entire amount |

| | | |
|--------|------------|---|
| EX A-4 | 29.11.2021 | Email communication from Complainant to Opposite Party requesting for refund at the earliest |
| EX A-5 | 11.02.2022 | Email communication from Complainant to Opposite Party requesting to repay the balance amount |
| Ex.A-6 | 02.03.2022 | Email communication from Complainant to Opposite Party requesting to repay the balance amount |
| Ex.A-7 | 02.03.2022 | Email communication from the Opposite Party to the Complainant undertaking to repay the balance amount |
| Ex.A-8 | 16.05.2022 | Email communication from Complainant to Opposite Party requesting to repay the balance amount at the earliest |
| Ex-A-9 | 08.06.2022 | Lawyer notice to the Opposite Party along with tracking report |

List of documents filed on the side of the Opposite Party:-

NIL

S. NANDAGOPALAN

T.R. SIVAKUMHAR

B.JIJAA

**MEMBER II
PRESIDENT**

MEMBER I