

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-VI
(NEW DELHI), 'M' BLOCK, 1ST FLOOR, VIKAS BHAWAN,
I.P.ESTATE, NEW DELHI-110002.**

Case No.777/2014

IN THE MATTER OF:

Mahesh Singh Rana
R/o 215/1, Railway Colony,
Kishan Ganj, Delhi.

...Complainant

VERSUS

- 1. Manager,**
Punjab National Bank,
Sitar Ganj Branch,
Distt. Uddham Singh Nagar,
Uttarakhand.

- 2. Chief Manager,**
Punjab National Bank,
Branch K-Block,
Connaught Place, New Delhi.

...Opposite Parties

Quorum:

Ms. Poonam Chaudhry, President
Mr. Bariq Ahmad, Member
Mr. Shekhar Chandra, Member

Date of Institution:- 09.10.2014

Date of Order : - 12.10.2023

ORDER

SHEKHAR CHANDRA, MEMBER

1. The present complainant has been filed under Section 12(A) of Consumer Protection Act 1986, (in short CP Act) against the Opposite Party (in short OP) alleging deficiency of services.
2. The brief facts of the case in hand are that the complainant is a consumer of Punjab National Bank /OPs bearing Account No. 0129000100473061 at Block-K, Connaught Place Branch, New Delhi. The complainant has also got issued an ATM card.
3. In month of December, 2013 complainant went to his parental place Sitarganj, Distt. Uddham Singh Nagar (Uttarakhand). On 15.12.2013, complainant went for withdrawing an amount of Rs.10,000/- from Punjab National Bank Branch ATM, Kichha Road, Sitarganj, Uttarakhand at about 4.11 pm. There he found that neither any type of security is provided nor any security guard is posted at the Bank ATM. When the complainant entered in ATM cabin for withdrawing the amount of Rs.10,000/-, three unknown persons also entered in the cabin and stood at the back of the complainant but the complainant could not give any attention to them. The Complainant withdrew the money from ATM

While counting the amount, they cheated with him and changed his ATM card as they noticed the pin code of ATM of the complainant. The complainant failed to pay attention to their activities due to fear. The complainant kept money in his pocket purse.

4. It is stated in the complaint that on the same day the complainant found a message on his mobile phone at 4.43 p.m. that two amounts i.e. Rs.10,000/- and Rs.5,000/- have been withdrawn from his account. He immediately complained through helpline but by that time a sum of Rs.40,000/- had been withdrawn from complainant's account. The complainant again visited the ATM and found that his card was not being accepted by the machine and shown as invalid.
5. The complainant on next day lodged a complaint with Police Station Sitarganj, Uttarakhand. The complainant approached the Branch Manager, Punjab National Bank Sitar Ganj, Distt. Uddham Singh Nagar, Uttarakhand and produced the card with a copy of FIR. There the Manager checked it and told the complainant that Rs.25,000/- have been transferred in A/c No. 6814000100072261 which is of one Arvind Kumar S/o Sh. Bahadur, Mohalla Saini Nagar, Dhanora, Distt. J.P. Nagar (U.P.) However, no action was taken by the OPs.

6. The complainant made another application to OPs raising his grievances. An application was submitted by the complainant to issue new ATM card with a request to take action against the culprit/cheaters. The OP No. 2 issued new ATM, but neither any action was taken against the person who committed the crime nor the money was refunded to the complainant.
7. The complainant served a legal notice asking the OPs to refund his money and taken action within 20 days positively. The OPs replied to the said legal notice and denied all allegations of the negligence and deficiency in services. However, the complainant submits that the OPs admitted security lapse at the ATM.
8. Since the complainant's grievances were not resolved by the OPs, the complainant has approached this Commission with the prayers that a direction be issued to the OPs to refund the amount of Rs.40,000/- with the interest @ 18% per month. It is also prayed that the OPs be directed to pay Rs.1,50,000/- as litigation expenses and Rs.1,50,000/- for harassment and mental agony caused to the complainant.
9. Notice of the complaint was issued to OPs, upon which OP entered appearance and filed written statement contesting the case on various

grounds inter alia that the amount was withdrawn by the complainant from the ATM, therefore, the officials of the Bank/OPs have no role in withdrawal and transfer of money and the occurrence has taken place due to negligence and carelessness of the complainant. It is thus, pleaded by the OPs that there was no negligence or deficiency in services on the part of the OP. As such the complainant has no cause of action against the answering OP.

10. It is further pleaded by the OPs that since the money was withdrawn from the ATM of Sitarganj Branch of the OPs, therefore, this Commission has no territorial jurisdiction to deal with the present complaint case. It is further pleaded by the OPs that since the complainant has alleged in his complaint that he was cheated by changing the ATM card which amounts to crime under section 419/420 IPC, therefore, a descriptive enquiry has to be conducted for which evidence is required to be recorded which is triable by a Criminal Court as provided by law. As such, it is pleaded that this Commission has no jurisdiction to hear and decide the present complaint.
11. It is further pleaded by the OPs that since the complainant has complained that a sum of Rs.25,000/- have been transferred to an account

NO.6814000100072261 in the name of one Arvind Kumar S/o Sh. Bahadur R/o. Mohalla Saini Nagar, Dhanora, District J.P. Nagar, U.P. but the said Arvind Kumar has not been impleaded as party in the present complaint, therefore, the complaint is bad for non-joinder of the necessary party. The OPs submit that the complainant has been utmost careless and negligent with regard to use of his A.T.M. Card and has violated and dis-regarded all the precautions and warnings issued by the Bank to all its valuable customers at the time of issuance of A.T.M. Card. It is further pleaded that the complainant was so negligent that he did not object or oppose the entry of unknown persons in the A.T.M. Booth while he was operating the A.T.M. Machine. The OPs state that complainant freely, willingly and voluntarily handed over his A.T.M. Card to the strangers and parted with the possession of the A.T.M. Card by violating the express guidelines of the Bank.

12. We have heard the arguments and gone through the record of the case in hand. As regard the precautions to be taken by the Complainant while operating his account through ATM machine, we agree to the arguments of the OP that the Complainant has failed to take due care. But the moot question is whether the OP was obliged to provide due security and smooth operation of the ATM machine without any hassle and fear at the

Booth. Secondly, the OP admits in paragraph 6 of its written statement/reply that Rs. 25,000/- was shown to have been credited/transferred to another account holder which fact was told by the Manager of the Bank/OP to the Complainant but the OP did not take any action to recover the said amount of the Complainant. This shows serious lapse and lethargic approach on the part of the Manager of the Bank/OP. Certainly this falls in the category of deficiency in services and the OP cannot be allowed to escape from its duty to protect the funds of its customer.

13. We are, therefore, of the view that the Complainant is entitled to recover the lost amount for two reasons – (1) the OP failed to provide adequate security at the ATM machine and (2) when it was within the knowledge of the OP that Rs. 25,000/- has wrongly gone to someone else account, the OP just slept over the matter instead of taking action to recover the amount lost by the Complainant.
14. This Commission, therefore, directs the OPs to refund the amount of Rs. 40,000/- lost by the Complainant with interest @ 6% per annum. The amount must be reimbursed/refunded to the Complainant within six weeks from the date of receipt of this order, failing which the

Complainant shall be entitled to interest at the enhanced rate of 12% per annum from the date of debit of the amount from Complainant's account till realization. However, we do not award any compensation to the Complainant as we are of the view that there was some lapse on the part of the Complainant to while operating his account. Parties are directed to bear their own costs.

The complaint is accordingly disposed of. The Registry to upload the order on the website of this Commission. A copy of this order be supplied to the parties free of cost.

File be consigned to the record room.

[Poonam Chaudhry]
President

[Bariq Ahmad]
Member

[Shekhar Chandra]
Member