

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
GURGAON-122001.**

Consumer Complaint No.214 of 2020

Date of Institution: 20.07.2020

Date of Decision: 16.11.2023

Virender Singh Yadav, aged 66 Years, son of Udey Ram Yadav, resident of House No.119, Sector-22A, Near Rotary Public School, Gurugram, Haryana.

.....Complainant

Versus

1. State Bank of India through its Branch Manager, Branch Palam Vihar, Gurgaon, Haryana.
2. Regional Manager, State Bank of India.
3. General Manager (AC & PS), State Bank of India, Ground Floor, B-wing, Sector-11, CBD Belapur, Navi Mumbai-400614.
4. Nodal Officer, State Bank of India.
5. Principal Nodal Officer, State Bank of India, General Manager (NBG-Coordination), State Bank of India, Corporate Centre, "State Bank Bhawan", Madam Cama Road, Mumbai-400021.
6. State Bank of India, through its Chairman/CEO, Corporate Centre, "State Bank Bhawan", Madam Cama Road, Mumbai-400021.

.....Opposite parties

Complaint under Section 35 of Consumer Protection Act, 2019.

**BEFORE: SHRI SANJEEV JINDAL, PRESIDENT.
MS. JYOTI SIWACH, MEMBER.
MS. KHUSHWINDER KAUR, MEMBER.**

Present: Shri Triloke Mani Yadav, Advocate for the complainant.
Shri Anil Yadav, Advocate for the OPs.

ORDER KHUSHWINDER KAUR, MEMBER.

Heard on the complaint in question. The record placed on the present case file has been perused, carefully.

2. Shorn off unnecessary details, briefly stated, it is the case of the complainant that in the intervening night of 27-28.02.2019, when he was sleeping in his house, he received a message on his registered mobile bearing number 783800540, from State Bank of India (OP No.1), that "*you have entered wrong PIN and transaction was declined*". Before the aforesaid message, no OTP had come on the complainant's mobile. Since the ATM card was also with the complainant, so, the complainant ignored the aforesaid message with an idea that the message in question had been sent on his mobile phone by mistake wrongly and incorrectly. However, the complainant came to know on 28.02.2019 at 13:24 P.M & 13:26 P.M., and, then, on 01-03-2019 at 7:00 A.M. that the amounts of Rs.20,000/- through transaction no. "**Txn#4204**" on 28.02.2019 at 13:24 PM, Rs. 20,000/- through transaction no. "**Txn#4205**" on 28.02.2019 at 13:26 PM & Rs.12,000/- through transaction no. "**Txn#6613**" on 01.03.2019 at 00:07 AM, that is to say in total to the tune of Rs.52000/- had since been deducted from his account. (The photocopies of screenshots of the said messages annexed as **Annexure- A1, A2, & A3**).

After reading the aforesaid messages, the complainant in utter shock, immediately contacted the bank officials of the OPs on customer care number and narrated the whole story regarding the aforesaid unauthorized/ fraudulent transactions, in response to which, the customer care officials told the complainant that all the above mentioned transactions relating to the withdrawal of Rs.52,000/- had been made at Jharkhand, whereas, the complainant on 01.03.2019 was very well present in his home i.e. in Gurugram. The complaint made by the complainant regarding the aforesaid fraud/illegal

withdrawals/transactions, in concerned bank's customer care cell stands registered vide reference No.5303062194, 5303062251 & 5303065644, coupled with the ticket number of the said complaints as UA429251977797, UA429251977762, UA429251977763. (Photocopies of the said complaints ticket number annexed as **Annexure-A4 & A5**).

Earlier, the OPs had also issued two ATM cards bearing No. 459200*****7710 on dated 21-Feb-2018 and Second ATM Card bearing No.459200*****1338 on dated 27-Mar-2018 to the complainant, whereas, the complainant had never raised any such request to the OPs for providing him the new ATM cards aforesaid. It was also very shocking and surprising that the OPs had issued the aforesaid new ATM Cards just within a period of only 34 days, after issuance of Old ATM Card to the complainant, whereas, as per paragraph no. II sub para no. 7 of the Master Circular no. RBI/2014-15/58, dated July 1, 2014, it had been stipulated that *"No bank shall dispatch a card to a customer unsolicited, except in case where the card was replacement for the card already held by the customer"* with the further stipulation that *"The Bank shall ensure full security of the debit card and any losses incurred by the customer due to breach of security shall be borne by the bank only"*.

The complainant had also submitted police complaint in PS Palam Vihar, Gurugram, pursuant to which, an FIR No.120/01.03.2019 under Section 420/379 IPC had since been registered regarding the unauthorized/fraudulent transactions in question (copy of the said police complaint annexed as **Annexure A7**). Since, the debit card in question had not been used by the complainant and the unauthorized/fraudulent transactions in question totalling to the

amount of Rs.52,000/- had occurred on account of the security lapses on the part of the OPs-bank, so, the complainant requested the OPs-bank several times to refund him the aforesaid amount of Rs.52,000/-, but to no avail. Hence, this complaint.

In the end, the complainant prayed that the OPs-bank be directed to pay the amount of Rs.52,000/- which had been debited from his aforesaid account along-with interest @ 24% p.a. from the date of withdrawal till realization, coupled with the direction to pay Rs.1,00,000/- as compensation for causing mental harassment and financial loss to the complainant. Any other relief which deemed fit by this Court, has also been prayed for.

3. The OPs in their joint written statement while taking the preliminary objections with respect to maintainability and cause of action, controverted all the material assertions of the complainant and pleaded, inter-alia, that it was the complainant who himself had been negligent in safe keeping his crucial banking information which resulted in the subject financial loss to him, and, hence, the transactions in question mentioned by the complainant were not binding on the bank. If the complainant had not ignored the earlier subject received messages or had contacted the bank in that regard on its customer care immediately, then, the alleged unauthorized/fraudulent transactions would not have taken place. All the three disputed transactions had been done by way of using the card No. 459200014277710. The disputed card had been issued as a renewal card against the expiry card in the month of May,2018 by the bank to the complainant only in accordance with the instructions as contained in circular No.IT/GLOBALIT-CMD/5/2016-17 dated 08.06.2016 of the opposite

parties. In the end, the OPs prayed that since they had nothing to do with the impugned transactions nor the aforesaid fraudulent/unauthorized transactions had occurred on account of any lapse on their part, so, the complaint in question be dismissed.

4. Rejoinder to the aforesaid written statement/reply submitted by the OPs was also filed by the complainant, in which, the averments made in the complaint were reiterated and that of made in the written statement were denied.

5. We have heard the counsel for the parties and have also gone through the entire record placed on this file, carefully.

6. In order to prove and corroborate his arguments, the complainant has placed on the record of this file in his evidence a number of documents including the documents i.e. **Annexures A1, A2 & A3** which are the screenshots of the messages, **Annexures A4 & A5** which are the complaint ticket number, **Annexure A-6** which is the copy of status of cards and **Annexure A-7** which is the copy of police complaint. All these documents further confirm the aforesaid averments/submissions/assertions made by the complainant regarding the deficiency in service committed by the OPs in the instant case.

7. Even otherwise, every credence has to be accorded to the aforesaid documents as the contents thereof, admittedly, go unrebutted for the simple reason that the OPs have failed to place on the record of this file even an iota of evidence which may rebut the credibility of the contents of the aforesaid documents or which may prove anything contrary.

8. Though, the OPs in their written statement, especially para 3 & 6 thereof, on merits, have invariably taken up the plea that the complainant had been negligent in safe keeping his crucial banking information which resulted in the financial loss in question to him but the OPs have failed to place on the record of this file even an iota of evidence worth its name which may establish any alleged negligence on the part of the complainant nor it is the case of the OPs that the complainant had ever shared his OTP or CVV number or his PIN or password with anyone.

The plea taken by the OPs in para 7 on merits in their written statement to the effect that they had issued the disputed card as a renewal card against the expiry card of month May,2018 in accordance with the instructions as contained in circular No.IT/GLOBALIT-CMD/5/2016-17 dated 08.06.2016, also cannot be held sustainable in view of the fact that it has been clearly stated/ stipulated in paragraph no. II sub para no. 7 of the Master Circular no. RBI/2014-15/58, dated July 1, 2014 to the effect that "*No bank shall dispatch a card to a customer unsolicited, except in case where the card was replacement for the card already held by the customer*". Needless to say, that it goes undisputed on the record of this file that the complainant had not made any such request either verbal or in writing to the OPs to issue the new subject ATM Card, which again clearly establishes that the OPs have no case to stand at all.

9. The instructions contained in para no. II sub-para no. 9 of the Master Circular of RBI also clearly laid down that the "*The Bank shall ensure full security of the debit card and any losses incurred by the customer due to breach of security shall be borne by the bank only*".

Since, the bank in the instant case has not been able to establish any negligence whatsoever on the part of the complainant with regard to the unauthorized/ fraudulent transactions in question in total to the tune of Rs.52,000/-, so, in these circumstances, it has to be held that the OPs-bank had failed to ensure full security of the debit card in question, and, thus, the OPs-bank will have to be held guilty of providing deficient services to the complainant in view of the well settled law that the concerned bank shall be responsible for any online fraud/loss and not the customer if it is not proved that the fraudulent transaction had taken place due to fault of the account holders. This Commission is supported in its aforesaid views from the ratio of law laid down by the ***Hon'ble National Consumer Disputes Redressal Commission, New Delhi in a case titled as HDFC Bank Limited Vs. Jesna Jose decided on 21.12.2020***, wherein, similar views were expressed by the Hon'ble Court.

Needless to say, that the ratio of law laid down in the aforesaid citation by the ***Hon'ble National Consumer Disputes Redressal Commission, New Delhi*** is fully applicable to the facts of the instant case, as like the cited case, in the present case also, the OPs have failed to prove any fault or mistake or lapse on the part of the complainant in respect of the disputed unauthorized/fraudulent transactions in question.

10. Thus, in view of our aforesaid observations, the present complaint is accepted with costs. Therefore, we direct the OPs, jointly and severally, to pay the amount of Rs.52,000/- to the complainant which had been illegally and unauthorizedly deducted from his account, apparently, by some unknown hackers along-with interest @ 9% per annum from the date of institution of the

present complaint i.e. w.e.f. 20.07.2020 till the actual realization. Besides, the complainant is also hereby held entitled to compensation for suffering harassment and mental agony to the tune of Rs.30,000/-as well as litigation expenses to the tune of Rs.11,000/-. The opposite parties shall make the compliance of this order within 45 days from the date of receipt of the copy of this order failing which the penal interest @ 12% per annum shall be paid by the OP to the complainant on the above awarded amount, for the same period, till realization.

If the order of this Commission is not complied with, then the complainant shall also be entitled to file the execution petition under Section 71(1) of the Consumer Protection Act, 2019 and in that eventuality, the OP may also be held liable for prosecution under Section 72 of the said act which envisages punishment with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than Rs.25,000/-, but which may extend to Rs.1,00,000/-, or with both. The copy of the order be supplied to the parties free of cost as per the rules. The Order be promptly uploaded on the website of this Commission. File be consigned to the record room, after due compliance.

Announced.
16.11.2023

(Jyoti Siwach)
Member

(Khushwinder Kaur)
Member

(Sanjeev Jindal)
President,
District Consumer Disputes
Redressal Commission, Gurgaon