

BEFORE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION SHIMLA (H.P.)

Complaint No.: 63/2020
Presented on: 21.07.2020
Decided on: 01.12.2023

Sh.Vatsal Agarwal son of late Sh. Vinod Agarwal, Occupation
Marine Engineer 3G, Rohal Village Sector-1, Lane-III, New
Shimla, HP.

....Complainant

Versus

1. Make My Trip India Pvt. Ltd., Office: 18th Floor Tower, A, B &
19th Floor, A,B,C, Building No.5. DLF Cyber City, Phase-III,
Gurgaon, Haryana, through its Manager.
2. Ms. Dipti Relationship Manager, Office: 18th Floor Tower & 19th
Floor A, B, C, Epitome Building No.5. DLF Cyber City, Phase-III,
Gurgaon, Haryana.
3. Make My Trip India, Pvt. Ltd. Office B-36, Ist Floor Pusa Road,
New Delhi, 11005 through its Manager.

....Opposite Parties

Coram :

Dr.Baldev Singh, President.

Ms.Yogita Dutta, Member.

For the Complainant: Mr. Sandeep Dutta, Advocate.

For the Opposite Parties: Mr.Attar Sumindkar, vice Mr.Manoj
Thakur, Advocate.

ORDER:

Present complaint has been filed by Mr. Vatsal Agarwal
(hereinafter referred to as the complainant) under Section 35of the
Consumer Protection Act, 2019 (hereinafter referred to as the Act)
against Make My Trip India Pvt. Ltd. & Ors. (hereinafter referred to
as the OPs), on account of deficiency in service and unfair trade
practice, seeking relief therein that the OPs be directed to pay an
amount of Rs.1,69,677/- alongwith interest 18% per annum, to pay

compensation amounting to Rs.2,00,000/- on account of mental agony and harassment and Rs.15,000/- as litigation charges etc.

2. The case of the complainant in brief is that the complainant during his annual leave in the month of February, 2020 planned the holiday tour with his parents to Andaman-Nicobar. It is stated that to perform the tour, he contacted the OPs for holiday packages of three persons and the OPs agreed to provide the same to the complainant for Rs.1,69,677/- for six days including "To and Fro" booking via Vistara Airlines. It is stated that the complainant transferred an amount of Rs.1,69,677/- to the account of OPs on different dates stated in para No.2 of the complaint. It is further stated that the complainant received booking voucher including schedule booking and air tickets for transportation from the OPs. It is further stated that on 14.03.2020 about 10:48 P.M., the complainant received Whatsapp message from the OP No.2 about the cancellation of tour on account of spread of Corona Virus Covid-19 Pandemic. It is further stated that after receipt of the said message from the OPs, the complainant requested the OPs to refund the amount deposited by him and in this regard exchanged Whatsapp messages with the OPs. It is also stated that the complainant waited for the response of the OPs and on 16.04.2020 through e-mail was informed by the OPs that Rs.99,679/- will be forfeited as penalty and for remaining amount, the OPs will provide gift voucher to the complainant. It is further stated that subsequently, gift voucher's amount was increased to Rs.89,000/-. The offer of the OP was not acceptable to the complainant and the complainant insisted for refund of entire amount, but the OPs have not accepted the request of the complainant. In this regard, the complainant also issued legal notice to the OPs which was of no avail. Hence, the present complaint and it may be allowed.

3. After admission of complaint, notices were issued to the OPs. Firstly, the OPs were not served for long time and after putting appearing, the OPs took time for conciliation, but the

conciliation was not effected and subsequently an affidavit was filed instead of reply. However, the stipulated time was elapsed when the affidavit was filed. In the affidavit, allegations levelled by the complainant were denied and it is stated that the present complaint has been filed by the complainant by suppressing the material facts just to mislead this Commission and the same is abuse of process of law. It is further submitted that upon receiving the notices of the complaint, the present matter was settled between the parties and as per the settlement the OPs made the payment amounting to Rs.1,69,677/- to the complainant. It is further stated that vide e-mail dated 08.09.2020, the OPs informed the complainant about the settlement and requested to withdraw the complaint as was agreed between the parties at the time of the settlement. In the affidavit, it is nowhere stated that on which date the amount was paid by the OPs to the complainant. It is prayed that the complaint may be dismissed.

4. The parties adduced evidence in support of their contentions. Complainant filed his own affidavit in support of his pleadings and also filed some documents in support of his contentions. On behalf of the OPs, affidavit of S.Sreesh, Assistant Manager of the OPs was tendered in evidence and also filed some documents in support of its contentions.

5. We have heard learned counsels for the parties and have also gone through the entire record, carefully.

6. After hearing the submissions made by Ld. Counsels for the parties and perusing the entire record carefully including pleadings and evidence on record, it is clear that the complainant has booked trip to Andaman-Nicobar with the OPs and made the payment of Rs.1,69,677/- in the month of February, 2020. It is further clear that on 14.03.2020, the complainant received message from the OPs about the cancellation of tour on account of spread of Corona Virus Covid-19 Pandemic. It is further clear that on receipt

of such message, the complainant asked the OPs to refund the amount of money which he has deposited with the OPs for performing the tour to Andaman-Nicobar. The plea of the complainant is that the OPs gave different offers and refused to make the refund of the amount and has also not replied the legal notice. The plea of the OPs, on the other hand, is that the matter was settled between the parties to the complaint, when the OPs received the notice of the complaint from this Commission.

7. Hence, it is very much clear from the record that the OPs have not disputed the fact that the complainant has deposited Rs.1,69,677/- with the OPs for performance of the tour and it is also not disputed that the amount was not refunded prior to filing of this complaint. However, the stand of the OPs is that when the notice of the complaint was received from this Commission, then the matter was settled and the entire amount was refund but the OP has not filed any document to prove the settlement and the date on which the amount was refunded. However, the counsels present for the parties, during the arguments submitted that the amount has been refunded and the Ld. counsel of the complainant also submitted that the amount was refunded during the pendency of this complaint and not prior to that. Meaning thereby, that withholding of the amount without any justification by the OPs itself amounts to deficiency in service and unfair trade practice on the part of the OPs and for the same the OPs are liable to be indemnify the complainant. Hence the complaint of the complainant deserves to be allowed partly.

8. In view of the foregoing discussion and reasons assigned therein the complaint is ordered to be allowed partly, as the claimed amount has already been refunded to the complainant by the OPs. However, the OPs are liable to compensate the complainant on account of mental agony and harassment and cost of litigation, as such the OPs are directed to pay a sum of Rs.10,000/- to the complainant as compensation on account of mental agony and harassment and sum of Rs.5,000/- as costs of

litigation. The OPs are directed to comply this order within 45 days from the date of passing of the order. Pending application(s), if any, shall also stands disposed of. Copy of this order be supplied to the parties free of cost as per rule. The file after its due completion be consigned to the Record Room.

Announced on this the 1st day of December, 2023.

(Dr. Baldev Singh)
President

(Yogita Dutta)
Member

Veena