

**DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-III: WEST
GOVT. OF NCT OF DELHI
C-BLOCK, COMMUNITY CENTRE, PANKHA ROAD, JANAK PURI
NEW DELHI**

COMPLAINT CASE NO 694/2015

IN THE MATTER OF

RAJIV RAIZADA

R/O 314 VIRAT APARTMENTS,
PASHCHIM VIHAR, ROHATAK ROAD,
NEW DELHI-110 087

PETITIONER/COMPLAINANT

VERSUS

**1. SHRI HARIT NAGPAL, CHIEF EXECUTIVE,
TATA Play Limited
(formerly Tata Sky Ltd),
3rd floor, C-1,
Wadia International Centre(Bombay Dyeing),
Pandurang Budhkar Marg, Worli,
MUMBAI-400 025**

**2. Shri Ankur Jain, Manager,
Tata Play Limited, Regional Office**

OPPOSITE PARTY'S

**DATE OF INSTITUTION: 01.10.2015
JUDGMENT RESERVED ON: 25.10.2023
DATE OF DECISION: 01.12.2023**

CORAM

**Ms. Sonica Mehrotra, President
Ms. Richa Jindal, Member
Mr. Anil Kumar Koushal, Member**

**Present: Complainant in person
None for OPs.**

ORDER

Brief Facts of the present complaint are narrated hereunder:

1. According to complainant he had, for personal use, taken OPs' DTH connection in August 2009 when posted in Chennai. This connection was given ID No.1035692563. In January 2010, the complainant was transferred to Delhi. Accordingly, he had contacted OPs' helpline on or around 21.01.2010 for disconnection and packing of the dish for safe transportation to Delhi when he was asked to do it himself as they were short of technicians. It took two months for the complainant to settle down in Delhi and somewhere in the third week of March 2010, OPs were contacted to re-install the dish at his current address. The reinstallation was carried out by the OPs around 21.03.2010. Even though the complainant did not avail their DTH service for 2 months, he was still charged for the period under the plea that though the complainant had asked for disconnection and packing of the dish, he had not instructed them to keep the service suspended pending relocation.

2. According to complainant, right from the beginning, he was paying subscription for packs on "annual" basis to take advantage of the associated discount. It was normal practice of OPs to charge for 10 months in case the subscription was paid on annual basis. He used to frequently get messages through set top box as well as his registered mobile about the balance in his account and the date by which he should renew the subscription. A number of times, these messages were found to be not true. The

contradicting statements would also be received from the OPs sometimes about cost and validity of pack subscribed. For example, vide their email dated 05.04.2012, Rs. 1925/- was apportioned towards Annual Dhamaal Mix Pack with end date 28.03.2013. Cost of pack was hiked to Rs.2200/- in their email dated 29.09.2012. In their next mail dated 30.09.2012, the cost for the pack was brought back to Rs.1925/- but its end date was preponed to 28.03.2012 from 28.03.2013.

3. According to complainant, on 29.3.2011, he paid to the OPs Rs.2575/- and on 28.3.2012, Rs.2100/-. These amounts were paid for one year subscription for ANNUAL DHAMAAL and ENGLISH MOVIE packs after telephonic confirmation with the call centre. Service to the English Movie pack was, however, discontinued by the OPs in January 2013 itself. His complaint with their call centre [ID 1-19545272500], however, was not resolved to his satisfaction. On 31.03.2013, the complainant again paid through net Rs.2920/- to the OPs towards subscription for (a) Annual Dhamaal (Rs.2200/- @ 200 per month) and (b) English Movie (Rs.720/- @60 per month) packs, based on the rates informed by their call centre. However, at the time when the complainant was going through the transaction on the net, there was an offer on their website to the effect that if he pays for eleven months, he gets subscription for 13 months. Accordingly, the subscription for Annual Dhamaal package should have been valid up to 30.4.2014 and that of English Movie up to 30.05.2014. Surprisingly, the message through the set top box indicated the validity till 30.03.2014 only. The complainant brought the above issues to the notice of OPs through email dated 31.03.2013. While agreeing in their mail dated 04.04.2013 that effective end date for Annual Dhamaal Mix Pack is

29.04.2014, the end date was not revised in respect of English Movie pack, for which they maintained that the validity was only up to 31.03.2014.

4. Complainant further submits that again in the later part of 2013 (Oct - Nov onwards) and early part of 2014 (Jan-Feb), it was observed by him that he was not able to see certain channels. On enquiry, it was informed that OPs are carrying out technical upgradation because of which people were not able to view the channels as the set top box also needed to be upgraded. It was surprising inasmuch as it should have been their responsibility to replace the old set top box by a set top box compatible with the upgraded technology. Accordingly, the complainant once again approached their call centre for replacement of set top box. OPs deputed their technicians for replacing the old set top box with new compatible set top box. During this exercise, it was confirmed by the technicians that the complainant was entitled to a free replacement of old set top box for the normal services (SD) that he was subscribing. The OPs, however advised that he should go for an HD set top box as in future, all services may come on HD platform alone. They also informed of two other points favouring HD set top box, the first being that the HD box was presently being offered at a concessional rate and the second that as per the present promotional offer, all HD channels will be free on complainant's connection for one month. The complainant, therefore decided to go for the HD set top box at an additional cost of Rs. 990/- . He had paid Rs.3000/- to the OPs through net on 29.03.2014 and was given bonus of Rs. 15/-. This way with Rs.990/- for set top box, Rs. 720/- for English Movie pack and Rs. 1200/- for the Dhamaal pack, it would have left a balance of Rs. 105/- in his account

(3000- 990-720-1200=105). However, as usual, the assurance/promise made while selling the HD box that all HD channels will be free for one month was not fulfilled. As the complainant was not able to view a number of HD channels, he filed a complaint with the OPs vide mail dated 30.03.2014 urging them to fulfill their promise and make available for view all HD channels for one month. However, to his surprise, after some time, the message on the set top box showed a balance of less than Rs. 10/- in his account, as against minimum of Rs.105/- as detailed above. Once again the complainant registered his complaint with the call centre of OPs. This complaint was assigned reference number 1-29275240189. The excess amount charged illegally was, however, not credited back in his account by the OPs in spite of his email dated 27.05.2014.

5. According to complainant, however, once again, in the end of March 2015, messages were received indicating that OPs' services may get disconnected after 31.03.2015 unless the account is recharged. In spite of the past experience, the complainant didn't doubt the correctness of message and recharged his account with Rs.3410/- on 31.03.2015 towards one year subscription of DHAMAL MIX (Rs.2640/-) and ENGLISH MOVIE (Rs.770/-) Surprisingly, message on his registered mobile phone showed his account balance as Rs. 3407/- and not Rs.3410/-. The complainant immediately questioned this through his email sent on the same day. In response, the following clarification was tendered by Tata Sky vide their mail dated 31/03/2015.

“The existing packs in your account are:

<u>Package</u>	<u>Price</u>
1. Annual Dhamaal Mix Pack -	Rs. 240.00

- | | |
|---------------------------------|------------|
| 2. Annual English Movies Pack - | Rs. 125.00 |
| 3. Punjabi Regional Free Pack - | Rs. 000.00 |
| 4. Hindi Regional Free pack - | Rs. 000.00 |

and your account balance is Rs. 2,945.90 available as on 31.03.2015. you need to renew it by 20.08.2016.”

Thereafter, in response to the email dated 31.03.2015 of the complainant, he received a telephone call from the OPs between April 1 to April 4, 2015, when the lady who called on phone informed that Dhamaal pack was not due and payment for English Movie was only required. Unable to understand why, in such a situation, amount of Rs.465/- (3410–2945 + 465) was debited from his account, the complainant had sent an email to OPs on 04.04.2015, seeking reasons as to why Rs. 465/- was debited and asking them to refund the excess amount of Rs. 2945.80, since next renewal was due by 20.08.2016 as per their email of 31.03.2015. To this, the OPs vide their reply dated 05.04.2015 once again confirmed “account balance is Rs. 2,945.90 available as on 05.04.2015. you need to renew it by 20.08.2016” but remained silent on his request for refund of excess amount. Thereafter a call was also received from the OPs when the calling lady informed that it is not possible to refund the balance amount. She went on to suggest that the complainant will have to first pay the amount of Rs.465/- and thereafter, the amount of Rs. 3410/- originally paid by him will be refunded to him. The complainant replied back to the OPs vide his email dated 05.04.2015 to refund the excess amount paid by him failing which he may be forced to approach the consumer forum.

6. Complainant submits that in the whole process, OPs have been treating his subscription on monthly basis thereby denying him the benefit of bonus months

associated with the annual payments. This is explicitly mentioned in the email dated 09.06.2014 of OPs. He further submits that the Dhamaal Mix pack currently subscribed by him includes 10 HD Channels and 1(one) 4K service at a cost of Rs.240 per month /Rs.1,360 semi- annually/Rs.2,640 per annum. The complainant, however is unable to view these 10 HD channels or take the 4K service. On enquiry, it was stated by the OPs that he will have to shell out additional amount of Rs. 125/- per month to view the HD channels and 4K service. The following reliefs are claimed by the complainant:

A. To allow the 10 HD channels and 1(one) 4K service included in the Dhamaal Mix pack without any extra charge;

B. To credit the cost of 10 HD channels and 1 4K service - that he was not allowed to view in spite of their being a part of the Dhamaal Mix pack and in spite of having paid for them to his account along with interest @24% till the time these channels/services are actually made available to him;

C. To credit the excess amount charged from his account as above along with interest @24% till the date of such credit;

D. Not to treat complainant's subscription on monthly basis and allow the bonus as available to subscriptions on annual /semi-annual basis;

E. To pay interest @ 24% on the excess amount of Rs 2945.90 retained by the OP till this amount is actually consumed;

F. To pay adequate compensation, as decided by this Commission for deficiency in their services;

G. To pay costs of Rs. 25,000/- to the complainant and;

H. To pass any other orders or relief as this Commission may deem fit and proper considering the facts and circumstances of the present case in favour of complainant and against the OP.

7. Complainant attached the following documents with his complaint:

1. Copy of mail dated 29.09.2012 received from OP in response to complainant's

- email dated 23.09.2012 (acknowledged as Service Request No. 1 – 16487336987)- ANNEXURE.C/1;
2. Copies of OP's mails dated 05.04.2012 and 30.09.2012- ANNEXURE.C/2 ;
 3. Copy of OP mail dated 04.04.2013 and complainant's email dated 31.03.2013 - ANNEXURE.C/3;
 4. Copy of email dated 30.03.2014 - ANNEXURE.C/4;
 5. Copy of email dated 27.05.2014- ANNEXURE.C/5;
 6. Copy of mail dated 31.03.2015 - ANNEXURE.C/6;
 7. Copy of OP's email dated 31.03.2015 -Annexure C/7;
 8. Copy of email dated 04.04.2015- Annexure C/8;
 9. Copy of OP's email dated 05.04.2015- Annexure C/9;
 10. Copy of email dated 05.04.2015- Annexure C/10;
 11. Copy of OP's mail dated 09.06.2014 -ANNEXURE.C/11.

8. On admission of the complaint on 0810.2015, notice was issued to the OPs. Upon service, OPs filed their written statement. OPs submitted that the instant Complaint is false, malicious, incorrect and mala fide and is nothing but an abuse of the process of the law and it is an attempt to avail undue advantage. The complaint lacks cause of action. There has been no negligence, deficiency in service or unfair trade practice whatsoever, on the part of OPs in dealing with the concerned service.

9. OPs submitted that the Complainant had taken DTH connection from it on 21.08.2009 vide subscription ID No.1035692563. The Complainant had shifted from Chennai to Delhi in the year 2010 and he had requested for reinstallation of the Tata Sky DTH connection. The relocation work order was raised on 20.03.2010 and was closed on 23.03.2010. An amount of Rs.350/- was debited from the Complainant's subscription account as relocation charges and Rs.100/- was also debited towards Non-

Standard Installation Charges. There was no request for suspension of services from the Complainant for the period between January 2010 and March 2010 and hence, the charges were rightly debited from the account of the Complainant for that period. Further, the Complainant had subscribed for the Annual Dhamaal Mix Pack on 28.03.2012 upon recharge of Rs.1925/-. The English Movie pack was on monthly mode of subscription and the subscription account of the Complainant was debited on a daily basis for English movie pack. The English movie pack got discontinued from 28.08.2012 as there was no balance in the complainant's subscription account for the English movie pack, which was on monthly mode of subscription. OPs regretted that due to some inadvertent human error, the amount of 2200/- was wrongly mentioned in their e-mail dated 29.09.2012. Further, there was a recharge of an amount of Rs.2920/- in the Complainant's subscription on 31.03.2013. At that point of time, the charges for Annual Dhamaal mix pack were Rs.2200/- and charges for Annual English movie pack were Rs.720/-. Hence, an amount of Rs.2200/- was debited towards Annual Dhamaal mix pack and Rs.720/- towards Annual English Movies Pack. Due to an offer prevalent at the relevant point of time, the Complainant was provided the Dhamaal Mix pack subscription for 13 months, i.e., till 29.04.2014 (i.e., one additional month instead of 12 months). The Complainant requested for High Definition (HD) upgradation and in furtherance to his consent, his set top box (STB) was replaced with a HD STB on 30.03.2014. An amount of Rs.3,000/- was recharged by the complainant in his subscription account on 29.03.2014. A Bonus of Rs.15/- was also credited in the subscription account of the complainant, on the same day. An amount of Rs.990/- was

debited towards HD upgradation. On 30.03.2014, 1 (one) Month Free HD Access was activated in the subscription account of the complainant. Upon the expiry of 1 (one) month free HD access, the subscription account of the Complainant started getting debited on a daily basis towards HD access fee. The Complainant was only eligible to get those HD channels which were part of the Dhamaal mix pack, which was active in his subscription account. All HD channels which were part of the pack opted by the Complainant were provided to him. Further, a sum of Rs.720/- was debited towards English movies annual pack on 31.03.2014. It is further submitted that on 30.04.2014 when the Dhamaal mix pack of the Complainant was due for renewal, there was a balance of Rs.1301.14/- in the Complainant's subscription account. This amount was not sufficient for renewal of the Annual Dhamaal mix pack. Hence, the Dhamaal mix pack of the Complainant's subscription account moved to monthly mode of payment on 30.04.2014. The Complainant requested for activation of the semi-annual Dhamaal mix pack on 10.05.2014 and in furtherance to that an amount of Rs.1200/- was debited from his account and accordingly the semi-annual Dhamaal mix pack was activated in his account. After the expiry of the semi-annual dhamaal mix pack activated on 10.05.2014, the annual dhamaal mix pack was activated in the Complainant's account on 06.11.2014 for a period of one year till 05.11.2015. The annual English movie pack which was earlier activated on 31.03.2014, expired on 30.03.2015. On 31.03.2015, upon a recharge of Rs.3410/- in the Complainant's subscription account, English movie pack was renewed on 31.03.2015 upon a debit of Rs.464.11 with validity date upto 05.11.2015 (which date coincides with the validity date of the annual dhamaal mix

pack). OPs stated that by this time, it had come up with a policy that the validity date of all packs active in the account will be same. Hence, only Rs.464.11 was debited from the Complainant's subscription account towards Annual English movie pack and it was to be valid only till 05.11.2015.

10. OPs through the table below, inter alia, have provided details of the debits from the Complainant's subscription account and the packs activated thereof:

DATE	OPENING BALANCE OF THE MONTH (IN RS.)	RECHARGE (IN RS.)	BONUS (IN RS.)	DEBIT (IN RS.)	PACK
28.03.2012	5.13/-	2100/-	15/-	1925/- per annum 1.97/- per day	Annual Dhamaal Mix pack English Movie Pack
31.03.2013	1.90/-	2920/-	NA	2200/- per annum	Dhamaal Mix Pack for thirteen months, i.e. upto 29.04.2014 (under an offer Annual pack for 12 months + 1 month under an offer) Annual English

10.05.2014	1301.14/-	No recharge	Na	1200/- for semi-annual pack 4.11/- per day	Semi-annual dhamaal mix pack on 10.05.2014 Towards HD access fee 9from 01.05.2014 to 11.05.2014 Annual English movie pack which got renewed on 31.03.2014 was continuing
06.11.2014	6.61/-	2300/-	15/-	2300/-	Annual dhamaal mix pack (from 06.11.2014 till 05.11.2015) Annual English movie pack which got renewed on 31.03.2014 was continuing.
31.03.2015	2.41/-	3410/-	NA	464.11/-	English movie pack (from 31.03.2015 to 05.11.2015)

According to OPs, it is abundantly clear that there have been no discrepancies in the amounts charged from the Complainant for the various packs active in his subscription

account. The bill statements of the Complainant's subscription account since March 2012 till December 2015 clearly reflect the amounts rightly debited from the Complainant's subscription account towards the various packs active in his account. The annual packs and the semi-annual packs have been activated/renewed in the Complainant's subscription account as and when he had the requisite balance in his account for such activation/renewal. It is further submitted that the OPs do not follow any fixed practice of charging for 10 months in case the subscription is on annual basis. However, the annual packs are on discounted rates as compared to the corresponding monthly mode of subscription.

11. OPs submitted that against the balance of Rs.105/- as alleged by the complainant lying to his credit, Rs.7.23 were debited towards Dhamaal mix pack on 30.04.2014, further an amount of Rs.8.22 was debited towards HD access fee for two days and then from 01.05.2014 to 09.05.2014, an amount of Rs.65.07 was debited towards Dhamaal mix pack and Rs.45.21 were debited as HD access fee. Further, a goodwill credit of Rs.16.71 was also extended in the Complainant's subscription account by the OPs on 10.05.2014. The charges are clear from the bill statement of the Complainant's subscription for the month of May 2014.

12. OPs contend that their representatives had rightly informed the Complainant that the balance in the Complainant's subscription account could not be refunded as a sum of Rs.464.11/- had already been utilized towards the English movie pack. Further, as per Company's policy and even as per the terms of the Subscription Contract, the subscribers are not entitled to refund of the balance amount in the subscriber's

subscription account. However, under exceptional circumstances, the Company may reverse any transaction upon the request of the subscriber. However, the Company can reverse exactly the amount recharged by the subscriber. But, in this case, since the recharge was done with Rs.3410/- and the balance in the subscription account of the Complainant was only Rs.2945.90/- the transaction could not be reversed from the Complainant's subscription account. This was clearly informed and explained to the Complainant by the representative of OPs.

13. OPs further submitted that for viewing HD channels, HD access fee has to be paid by the subscribers. This has also been clearly mentioned on the website tatasky.com and this fact was also communicated to the Complainant. As far as 4K is concerned, no additional charges are being levied on the Complainant for the 4K content. It is submitted that no cause of action ever arose in favour of the Complainant, since the OPs at every stage have acted in furtherance to the subscription and plan opted by the Complainant and the Complainant was provided with all the benefits, as and when accrued under his plan. OPs therefore, prayed that since the Complainant has failed to make out a prima facie case against them, the complaint deserves outright dismissal.

14. OPs filed with their written statement copy of the bill statements of the Complainant's subscription account from March 2012 to December 2015.

15. In rebuttal to the averments of OPs made in their written statement, complainant preferred rejoinder and denied all its allegations as baseless and misleading. Complainant submitted that at the time of shifting from Chennai to Delhi,

he had contacted OPs informing them of the change of place and requested for disconnection and packing of the dish for safe transportation to Delhi when he was asked to do it himself as they were short of technicians. The Answering OPs have conveniently omitted details of payments made during the year 2010 and 2011. Further, as against the amount of Rs. 1925/- mentioned by them, the Petitioner had paid Rs. 2100/- after the call centre of OPs had confirmed that the same would be sufficient for both Annual Dhamaal Mix Pack and Annual English Movie Pack. There was no reason therefore, to place English Movie Pack on daily basis. The complainant was never informed by the Answering OPs about this. Similarly, there was no reason for the English Movie Pack to end in August 2012.

16. According to the complainant, the first, amount of Rs. 3000/- was paid to the answering OPs for one year subscription of Dhamaal Mix and English Movie Packs after telephonic confirmation with their call centre. The Commission may summon the recording of the call made by the Complainant from the answering OPs to ascertain the facts. Complainant therefore, reiterated and reaffirmed the prayers made in the complaint.

17. Evidence by way of affidavit was led by the parties and they exhibited the documents filed on record. Written arguments were also filed by the parties on record. It may be noted that arguments in this case were heard by the previous Bench on 28.8.2019 and orders reserved but no orders were passed. After this Bench took over, fresh oral arguments were heard on 25.10.2023 when complainant only made his oral submissions. There was none present on behalf of OPs and accordingly after going

through their written arguments filed on record, orders in terms of Section 38(3)(C) of the CP Act, 2019 were reserved.

18. This case prima facie appeared to be a simple one but on thorough analysis of the facts stated by both the sides, we find that disputed questions of fact are involved relating to small payments being adjusted here and there. The complainant is not satisfied with the justification given by the OPs in their reply. Despite all these alleged shortcomings reflected by the complainant from 2010 onwards, he is surprisingly till date using and enjoying the services of OPs without fail. Since the complainant is disputing the transactions and not satisfied with the explanations offered by the OPs, we are afraid, the same cannot be adjudicated in the summary proceedings under the provisions of Consumer Protection Act and it will be in the fitness of things if the matter is tried by the Civil Courts by adducing elaborate evidence.

19. In **Synco Industries vs State Bank Of Bikaner And Jaipur**, decided on 15 January, 2002, Hon'ble Apex Court has held as under:

"Given the nature of the claim in the complaint and the prayer for damages in the sum of Rupees fifteen crores and for an additional sum of Rupees sixty lakhs for covering the cost of travelling and other expenses incurred by the appellant, is obvious that very detailed evidence would have to be led, both to prove the claim and thereafter to prove the damages and expenses. It is, therefore, in any event not an appropriate case to be heard and disposed of in a summary fashion. The National Commission was right in giving to the appellant liberty to move the Civil Court. This is an appropriate claim for a Civil Court to decide and, obviously, was not filed before a Civil Court to start with because, before the Consumer Forum, and figure in damages can be claimed without having to pay court fees. This, in that sense, is an abuse of the process of the Consumer Forum."

The above resolve of the Hon'ble Supreme Court, by relying on its another judgment in the case of **Oriental Insurance Co. Ltd. v. Munimahesh Patel**, (2006) 7 SCC 655

was reiterated in the matter of CMD, **City Union Bank Ltd. V.R. Chandramohan**,
2023 SCC Online SC 341, decided on 27-3-2023 with the following observations:

“12. The proceedings before the Commission being summary in nature, the complaints involving highly disputed questions of facts or the cases involving tortious acts or criminality like fraud or cheating, could not be decided by the Forum/Commission under the said Act. The “deficiency in service”, as well settled, has to be distinguished from the criminal acts or tortious acts. There could not be any presumption with regard to the wilful fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in service, as contemplated in Section 2(1)(g) of the Act. The burden of proving the deficiency in service would always be upon the person alleging it.

20. For the foregoing reasons, complainant, if so advised, may approach the Civil Courts for redressal of his grievance. The complaint is dismissed with such liberty, with no order as to costs.

A copy of this order shall be supplied free of cost to parties to the dispute in the present complaint, upon a written requisition being made in writing in the name of President of the Commission in terms of Regulation 21 of the Consumer Protection Regulations, 2020. File be consigned to record room after pronouncement of order.

(Richa Jindal)
Member

(Anil Kumar Koushal)
Member

(Sonica Mehrotra)
President