

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION: NORTH-EAST**GOVT. OF NCT OF DELHI****D.C. OFFICE COMPLEX, BUNKAR VIHAR, NAND NAGRI, DELHI-93****Complaint Case No. 77/21****In the matter of:**

1. Mrs. Anupama Kasana
W/o Sh. Swaraj Singh Chauhan,
2. Sh. Swaraj Singh Chauhan
S/o Sh. Sheetal Prasad Chauhan
3. Ms. Deeksha Chauhan
D/o Sh. Swaraj Singh Chauhan
4. Sh. Pratham Chauhan
S/o Sh. Swaraj Singh Chauhan
5. Sh. Anirudh Chauhan
(Minor, Through its Mother, Complainant No.1)

Complainant No.1,2,3 and 4,5 at:-

C 86/03, St. No.02, Opposite Post Office,

Bhajanpura, Delhi-110053

6. Sh. Mohan Lal Kasana
S/o Sh. Harkesh kasana
7. Mrs. Kharamviri Devi
W/o Sh. Mohan Lal Kasana

Complainants

Complainant No.6 and 7 at:-

A 07/46, St. No. 07, Bhajanpura,

Delhi-110053

Versus

1. M/s OYO Rooms Ltd.

Corporate Office at:-

9th Floor, Spaze Palazo,

Sector 69, Gurugram, Haryana -122001

M/s GOIBIBO Group Pvt. Ltd.

Delhi Branch Office:-

UG 07(Front side), TDI Mall,

Rajouri Garden, Delhi-110027

2.

Head office:-

Goibibo Web Pvt. Ltd., 4th Floor,

Pearl Towers, Plot No. 51, Sector 32,

Gurgaon-122002

Corporate Office:-

18th & 19th Floor, Tower A,B & C,

Epitome Building No. 05, DLF Cyber City, phase III,
Gurgaon-122002, Haryana

Manager,

‘Silver Wood Hotel’ Oyo 14217

Opposite Parties

1, Deorali School Street, Deorali, Near Deorali Flyover,
Gangtok 737101, Sikkim, India

3.

DATE OF INSTITUTION:	02.06.21
JUDGMENT RESERVED ON:	17.08.23
DATE OF ORDER :	23.11.23

CORAM:

Surinder Kumar Sharma, President

Anil Kumar Bamba, Member

Adarsh Nain, Member

ORDER

Anil Kumar Bamba, Member

The Complainant has filed the present complaint under Section 35 of the Consumer protection Act, 2019.

Case of the Complainant

1. The case of the Complainant is that the Complainant alongwith 6 family members planned a family tour from 05.06.19 to 09.06.19 for availing her LTC and outing from their native place. On 22.05.19 Complainant No.1 booked 3 rooms online at Opposite Party No.1 booking website for Opposite Party No.3 website from 05.06.19 to 08.06.19 and Opposite Parties confirmed booking through email regarding booking id HTLUVQ5Y64 and hotel booking id 0050837617 and on 22.05.19 Complainant No.1 paid 100 % of booking amount of Rs. 26,866/- through her credit card. On 22.05.19 Complainant No.1 received email from Opposite Party No.2 regarding confirmation of hotel booking. It is stated that till departure of Complainant in morning 05.06.19 Complainant received no email/ message/ information either from Opposite Party No.1 or the Opposite Party No.2 regarding cancellation or change in the status of their confirmed booking. On 05.06.19 Complainant and her family reached at Opposite Party No.3 and Opposite Party No.3 refused to allot them the rooms which were booked through the Opposite Party No.1 and 2. The Complainant stated that in these critical circumstances the

Complainant and her family were forced to stand on open road. The customer care representative of Opposite Party No.1 and 2 did not resolve the ill situations of Complainant. The Complainant stated that they got accommodation for half of the remaining night in hotel Singalila Mingyur and on 06.06.19 next day Complainant had to vacate those rooms by paying Rs. 6,500/- as rent and had to search another accommodation in hotel Bayul where Complainant stayed for rest of the tour period and paid Rs. 24,000/-. The Complainant stated that during the stayed Opposite Party did not made single attempt to contact the Complainant and through email by Opposite Party No.2 on 08.06.19 Opposite Party refused to provide accommodation to Complainant. On 10.06.19 Complainant sent email to Opposite Party No.1 to refund the amount and Opposite Party No.2 sent reply to Complainant No.1 by filing false and fabricated entries mischievously in their record. It is stated that on 11.06.19 Complainant received email from Opposite Party No.2 about processing of refund and Complainant sated that bare refund of principal amount does not include Opposite Parties from their liabilities. Complainant No.1 sent notice to Opposite Party No.1 and 2 regarding their wilful refusal for providing proper services with details of all unwanted danger and severe hardship faced by the Complainant in their tour and demanded compensation from the Opposite Parties with interest. On 17.06.19 the Complainant also sent reminder to email dated 17.06.19 to both Opposite Parties. On 10.08.19 regarding refusal for providing proper services. The Complainant has sent legal notice to Opposite Party No.1 on 14.10.19 through email and on 15.10.19 through speed post but Opposite Parties did not refund the money of Complainant. Hence, this shows deficiency in service on behalf of Opposite Parties. Complainant has prayed for Rs. 6,134/- on account of excess amount(Rs. 3,634/- (Rs. 30,500-26,866)+ 2500/- for searching alternate accommodation. The Complainant has further prayed for Rs. 2,45,000/- as compensation/damaged to the Complainant for making interruption in their visits and Rs. 4,50,000/- towards physical and mental harassment.

2. None has appeared on behalf of Opposite Party No.3 to contest the case despite service of notice. Therefore, Opposite Party No.3 was proceeded against Ex-parte vide order dated 05.04.22.

Case of the Opposite Party No.1

3. The Opposite Party No.1 contested the case and filed written statement. It is stated that the Opposite Party No.1 provides website and mobile app where customers can search hotels and homes across the country and book rooms online. Customers may check in at the hotel pursuant to the online booking made through OYO website or app, through offline demand channels such as travel agents or by walk in directly to the hotel front desk. The link to the website is <https://www.oyorooms.com/>. Currently OYO lists over 13,500 hotels and homes in India.
4. The Opposite Party No.1 does not own or operate these hotels themselves, which is done by the owner or an operator/lessee contracted by him. Opposite Party enters into a marketing and operational consultancy agreement (MOCA) with the owner/operator of these hotels and homes (patron). When they sign up with Opposite Party, Opposite Party lists them on its online platform and provides various digital and marketing services to help them to increase their occupancy and generate revenue. Opposite Party No.1 takes a service fee for these services from the owner/operator.
5. The guest/customer as per their requirement and choice fill in the booking form available online or on OYO platforms and book the rooms. Once the booking is created by the customer/guest, the Opposite Party sends a booking confirmation voucher in which booking details of the guest are specified and a link to the guest policy is provided. The guest at the time of check-in shows the said voucher to the front desk manager of the hotel.
6. Once the booking is made by the guest, the guest has an option to make the payment i) online, via various payment modes available in OYO platforms ii) pay directly at the hotel (pay at hotel) or iii) part payment via online mode balance as pay at hotel.
7. The Opposite Party No.2 is India's leading online travel booking brand providing range of choice for hotel, flights, trains, bus and cars for travellers.
8. The Opposite Party No.3 is one of the properties which Opposite Party No.1 provides consultancy and branding services. The Opposite Party No.3 is an independent entity and has no other relation with Opposite Party No.1 and is run and managed by its own owners and management.
9. That on 22.05.19, the Complainant No.1 as per the own case of the Complainants purportedly along with Complainant Nos. 2-7 made an online booking for stay in three rooms at the property of the Opposite Party No.3 at Gangtok, for the period from 05.06.19 to 08.06.19 and paid Rs. 26,866/- to Opposite Party No.2. The online booking was made by the Complainant No. 1 through the online booking portal of the Opposite Party No.2. It must be noted that in the booking transaction with

- Opposite Party No.2 and the purported acceptance of the same by Opposite Party No.3, Opposite Party No.1 has no role to play and is not privy to such booking arrangements. The Opposite Party No.1 has neither accepted money from the Complainant nor has the booking been made on the online booking portal of Opposite Party No. 1.
10. The Complainant No.1 as per her own case, received an email from the Opposite Party No.2 on 22.05.19 regarding confirmation of booking and generation of booking id of the Opposite Party No.2 being "HTLUVQ5Y64" which clearly indicates that the booking was made by the Complainant No.1 on the online booking portal of Opposite Party No.2 for the property of Opposite Party No.3 and the same was accepted by Opposite Party No.2.
 11. That the Complainant No.1 as per her own case, received an email from the Opposite Party No.2 on 03.06.19 regarding took kit and guidelines for the tour. This further fortifies the case made out by the Complainants themselves that the booking and contract for accommodation at Opposite Party No.3 was only between the Complainants, Opposite Party No.2 and Opposite Party No.3. It is manifest that Opposite Party No.1 had no role to play.
 12. It is stated that without prejudice to the fact that the booking was not made through the online portal of Opposite Party No.1, in terms of Opposite Party No.1's guest policy as applicable only to the booking made through its online booking portal and not to the instant booking of the Complainant, if any check-in is denied for a confirmed booking, Opposite Party No.1 shall ensure that the user is provided with an alternate accommodation of comparable standards. In an event, where the alternate accommodation could not be provided, Opposite Party No.1 shall arrange for the refund of any pre booking amount collected from the user. The liability of Opposite Party No.1 is restricted to the refund and no compensation/interest in this regard is payable in addition to the amount of refund, however, only in case the booking is made through the online booking portal of Opposite Party No.1, which was not the case in the instant matter. Therefore, the Complainants are not "consumers" of the Opposite Party No.1 since Opposite Party No.1 has not provided any services to the Complainants, nor has accepted any monies from the Complainants and there is no contract between them.
 13. That the Complainants, of their own will and violation and without any fault on part of Opposite Party No.1 allegedly checked in to some other property, which is not connected in any manner to the Opposite Party No.1, without any intimation in this regard to the Opposite Party No.1. It was discretion of the Complainants to purportedly check-in at the two properties by paying higher amount and the Opposite Party No.1 cannot be held liable for the same.
 14. That the entire transaction of booking by the Complainant's is through the online booking portal of the Opposite Party No.2 and there is no privity of contract of the Complainants with the Opposite Party No.1. The role of the Opposite Party No.1 is only limited and restricted to branding, marketing and operational consultancy for many hotel and properties across India, including the Opposite Party No.3. The Opposite Party No.1 in the instant matter has not accepted the booking on its own online booking portal and therefore, is not liable for any transaction that may have taken place between the Complainants and the Opposite Party No.3, and the entire operational liability of the particular hotel is that of the Opposite Party No.3 through Opposite Party No.2. It is pertinent to state that the Opposite Party No.3 is not an exclusive property for which booking are taken by Opposite Party No.1 only, it is free to accept bookings on its own or through other websites, for which Opposite Party No.1 is not liable in any manner.
 15. The role of the Opposite Party No.1 is only limited to branding, marketing and operational consultancy for many hotels and properties across India, including the Opposite Party No.3. Even otherwise, the Opposite Party No.3 is free to accept bookings on its own or through other websites, for which Opposite Party No.1 cannot and should not be held liable in any manner.
 16. The instant purported consumer complaint is not maintainable against the Opposite Party No.1 since the booking amount of Rs. 26,866/- already stands refunded to the Complainants by the Opposite Party No.2 as already admitted by the Complainants.

Case of the Opposite Party No.2

17. The Opposite Party No.2 contested the case and filed written statement. It is stated that the Opposite Party No.2 merely acts as a facilitator for booking the confirmed hotel bookings on behalf of its customers with the concerned service providers. That the Opposite Party No.2 upon the request received from its customer, forwards the same to the concerned hotel/ hospitality service providers through softwares embedded on its web portal. That upon receiving the confirmation from concerned

service providers the booking id is generated and confirmed bookings/ tickets is shared with the customer.

18. That, any person intending to purchase any product or avail the services of the Opposite Party No.2, is governed by the terms and conditions of the User Agreement. It is further pertinent to mention here that for availing the services of the Opposite Party No.2, the intended guest has to enter into an E-contract with the Opposite Party No.2 by consenting to the terms and conditions of the Opposite Party No.2 by clicking on "I Agree" pop up or button. Hence, the customers are bound by the terms and condition of the user agreement of the Opposite Party No.2.
19. To understand the issue in hand, the Opposite Party No.2 shall brief out the booking made by the Complainants herein through the Opposite Party No.2.

Booking ID HTLUVQ5Y64

Total Amount Paid INR 26,866/-

Hotel & Stay Details OYO 14217 Silver Wood, Gangtok

Check in Date 05.06.19

Check out Date 08.06.19

20. The Opposite Party No.2 being the facilitator between the concerned service provider and the intended guest such as the Complainants in the present case is under the obligation to provide the confirmed booking/tickets to its customers like the Complainants herein. Once the bookings are confirmed by the concerned service providers, the same was shared with the Complainants herein.
21. The Opposite Party No.2 shall not be held responsible or liable for any deficiency caused on the part of the concerned hotel i.e. OYO 14217 Silver Wood, Gangtok (Opposite Party No.3) and the concerned hospitality service provider i.e. OYO (Opposite Party No.1) both of which have not even been impleaded as a part to the present case. The Opposite Party No.2 in order to assist the Complainants, duly mentioned the complete respective details of the hotel along with the contract details on its web portal and same was clearly visible to the Complainants at the time of booking. Further, the User Agreement also explicitly mentioned that the Opposite Party No.2 shall not be responsible for any deviance in the standard of the service provided by the concerned end service provider or the concerned hotel. The relevant excerpt from the User Agreement has been reproduced hereunder for the sake of brevity of this Hon'ble Commission.

"Unless ibibo explicitly acts as a reseller in certain scenarios, ibibo always acts as a facilitator by connecting the User with the respective service providers like airlines, hotels, restaurants, bus operators etc. (collectively referred to as "service providers"). Ibibo's liability is limited to providing the User with a confirmed booking as selected by the User.

Any issues or concerns faced by the user at the time of availing any such services shall be the sole responsibility of the service provider. Ibibo will have no liability with respect to the acts, omissions, errors, representations, warranties, breaches or negligence on part of any service provider.

Unless explicitly committed by ibibo as a part of any product or service.

Ibibo assumes no liability for the standard of services as provided by the respective service providers.

Ibibo provides no guarantee with regard to their quality or fitness as represented.

Ibibo doesn't guarantee the availability of any services as listed by a service provider

By making a booking, User understands ibibo merely provides a technology platform for booking of services and products and the ultimate liability rests on the respective service provider and not ibibo. Thus the ultimate contract of service is between user and service provider.

User further understands that the information displayed on the website with respect to any service is displayed as furnished by the service provider. Ibibo, therefore cannot be held liable in case if the

information provided by the service provider is found to be inaccurate, inadequate or obsolete or in contravention of any laws, rules, regulations or directions in force. ”

22. Further, the User Agreement of the Opposite Party No.2 also explicitly states that no liability for the denial of check in on the end of the concerned can be attributed to the Opposite Party No.2.
23. In the present case, at the instance of denial of check in to the Complainants, the Opposite Party No.2, in accordance to the User Agreement, duly provided for the complete refund. Hence, no further liability can be fastened upon the Opposite Party No. 2.
24. Further, the Complainants, at the time of booking, agreed to the role of the Opposite Party No.2 as being an intermediary for the booking services and hence, shall not be responsible for any deficiency caused on the part of Opposite Party No.1 & 3. The same is the sole prerogative of Opposite Party No.1 & 3. Moreover, in the instant case in hand, the Opposite Party No.2 shared a detailed itinerary with the Complainants at the time of booking of the concerned hotel. Thus, it was the duty of the Complainants to check if the itinerary provided is as per its satisfaction and requirement and could have raised the issue, if any, before the availing the hotel vouchers.
25. Once, the confirmed booking is made by the Complainants and the Opposite Party No.2 has duly shared the confirmation of the same with the Complainants, thereafter, the Opposite Party No.2 is discharged from its obligations qua the said bookings. In case of any cancellation or rescheduling or service-related issues, by the concerned hotel/hospitality service provider, the concerned hotel/hospitality service provider shall refund or reschedule the tickets or bookings in lieu of charges duly agreed upon at that time of making the bookings. Further, in case of any other technical fault, lapse, change in prices, service-related issues, sell-outs or error in confirming bookings, the concerned hotel/ hospitality service provider is liable to compensate the customer for the same. Hence, it is clear from the foresaid that in the present case, the concerned hotel i.e. Opposite Party No.3 and the concerned hospitality service provider i.e. Opposite Party No.1 without prejudice, are liable to process the refund/ compensation to the Complainants for indulging into the malpractice of deficiency in services.
26. The Complainants are being aggrieved by the denial of accommodation by Opposite Party No.1 & 3. However, when the Complainants had contracted the Opposite Party No.2 at the instance of denial for accommodation by the concerned hotel, the representatives of the Opposite Party No.2 duly assisted them and coordinated for the refund for the concerned hotel booking, cancelled by the Opposite Party No.1 & 3. In furtherance to the above, it is submitted that the Opposite Party No.2 processed the complete refund amounting to Rs. 26,866/- vide refund reference No. 85215229161922152988777 dated 10.06.19 itself in accordance with the User Agreement and the Terms of Service of the Opposite Party No.2 and hence, no further liability for any refund can be fastened upon the Opposite Party No.2. Hence, the Complainants, despite relinquishing all their rights against the Opposite Party No.2 have filed the present complaint, only to extort undue monetary advantage from the Opposite Party No.2.

Rejoinder to the written statements of Opposite Party No. 1 & 2

27. The Complainant filed separate rejoinders to the written statements of Opposite Party No.1 and Opposite Party No.2 wherein the Complainant has denied the objection raised by the Opposite Party No.1 and Opposite Party No.2 and has reiterated the assertion made in the complaint.

Evidence of the Complainant(s)

28. The Complainant No.1 in support of her complaint filed her affidavit wherein she has supported the averments made in the complaint.

Evidence of the Opposite Party No.1 and 2

29. In order to prove its case Opposite Party No.1 has filed affidavit of Ms. Ambika Saraf, Authorized Representative of Opposite Party No.1 and Opposite Party No.2 has filed affidavit of Sh. S. Sreesh, Assistant Manager (Legal) & Authorised Representative of Opposite Party No.2, wherein the averments made in the written statements of Opposite Party No.1 & 2 have been supported.

Arguments and Conclusion

30. We have heard the Ld. Counsels for the Complainant and Opposite Party No.1 and Opposite Party No.2. We have also perused the file and the written arguments filed by the Complainant and Opposite Party No.1 and Opposite Party No.2. The case of the Complainant is that Complainant No.1 booked 3 rooms online at Opposite Party No.1 booking website in the hotel of Opposite Party No.3 which was listed as OYO hotel on the website of Opposite Party No.1 and payment for the booking of the 3 rooms was made to Opposite Party No.2. Complainant No.1 received confirmation email regarding hotel booking from Opposite Party No.2. It is further stated by the Complainant that when they have reached the hotel of Opposite Party No.3, Opposite Party No.3 refused to allot rooms which were booked through the Opposite Party No.1 and 2. The customer care representative of Opposite Party No.1 and 2 did not resolve the issue regarding availability of rooms in the hotel of Opposite Party No.3 and she had to made alternate arrangement for their stay in another hotel as Opposite Parties refused to provide accommodation to the Complainant as agreed by them. Upon taking up the matter with the Opposite Party No.2, they have paid the booking amount paid by the Complainants without any compensation for difficulty faced by the Complainants at unknown place. Hence, this shows deficiency in service on behalf of Opposite Parties.
31. The case of the Opposite Party No.1 is that they provide website and mobile app where customers can search hotels and homes across the country and book rooms online. The Opposite Party No.1 listed over 13,500 hotels in india on their website. It is further stated by the Opposite Party No.1 that they do not own or operate these hotels themselves, which is done by the owner or an operator contracted by him. Opposite Party No.1 enters into a marketing and operational consultancy agreement (MOCA) with the owner/operator of these hotels. When owner/operator of these hotels sign up with the Opposite Party No.1. Opposite Party lists them on its online platform and provides various digital and marketing services to help the hotel owners to increase their occupancy and generate revenue and Opposite Party No.1 takes a service fee for these services from the owner/operator of the hotel listed on their website.
32. It is confirmed by the Opposite Party No.1 that Complainant made online booking for the stay in three rooms at the property of the Opposite Party No.3 and paid Rs. 26,866/- to Opposite Party No.2. The online booking was made by the Complainant No.1 through the online booking portal of the Opposite Party No.2. and booking transaction was done with Opposite Party No.2. Opposite Party No.1 has no role to play and not privy to such booking arrangements. The Opposite Party No.1 has neither accepted money from the Complainant nor has the booking been made on the online booking portal of Opposite Party No. 1. In the case of booking was made through online portal of Opposite Party No.1 if, any check-in is denied for a confirmed booking, Opposite Party No.1 ensure that the user is provided with an alternate accommodation of comparable standards and in an event, where the alternate accommodation could not be provided, Opposite Party No.1 arrange to refund any pre booking amount collected from the user and liability of Opposite Party No.1 is restricted to refund and booking amount and no compensation/interest in this regard is payable in addition to the amount of refund. The role of the Opposite Party No.1 is only limited and restricted to branding, marketing and operational consultancy for many hotel and properties across India, including the Opposite Party No.3. In this instant case online booking was not made through online portal of Opposite Party No.1. Hence there is not deficiency in service on behalf of Opposite Party No.1.
33. The case of the Opposite Party No.2 is that the Opposite Party No.2 merely acts as a facilitator for booking the confirmed hotel bookings on behalf of its customers with the concerned service providers. The Opposite Party No.2 upon the request received from its customer, forwards the same to the concerned hotel/ hospitality service providers through softwares embedded on its web portal and upon receiving the confirmation from concerned service providers the booking id is generated and confirmed booking is shared with the customer.
34. It is further stated that the Opposite Party No.2 being the facilitator between the concerned service provider and the intended guest such as the Complainants in the present case is under the obligation to provide the confirmed booking/tickets to its customers like the Complainants herein. Once the bookings are confirmed by the concerned service providers, the same was shared with the Complainants herein.
35. The Opposite Party No.2 shall not be held responsible or liable for any deficiency caused on the part of the concerned hotel i.e. Opposite Party No.3 and the concerned hospitality service provider i.e. Opposite Party No.1. It is further stated by the Opposite Party No.2 as per the User Agreement signed by the Complainant that Opposite Party No.2 also explicitly states that no liability for the denial of check in on the end of the concerned can be attributed to the Opposite Party No.2. It is further stated by the Opposite Party No.2 at the instance of denial of check in to the Complainants, the Opposite Party

- No.2, in accordance to the User Agreement, duly provided for the complete refund. Hence, no further liability can be fastened upon the Opposite Party No. 2.
36. It is clear from the above Opposite Party No.3 was listed on the website of Opposite Party No.1 which is not denied by the Opposite Party No.1 and for registering the hotel on their website Opposite Party No.1 charges service fee from the Opposite Party No.3. It is also not denied by the Opposite Party No.1 & 2 that Complainant was having confirmed booking of the hotel for the said dates and Opposite Party No.3 refused to provide accommodation against the confirmed booking to the Complainant. Since Opposite Party No.1 is charging service fee from the Opposite Party No.3 for providing list of their hotel as OYO hotel have performed duty of an agent of the Opposite Party No.3 so they are liable for any deficiency in service on behalf of the hotels listed on their website further Opposite Party No.1 did not lead any evidence for taking any action against the Opposite Party No.3 like de-registration of their hotel from their website on account of not providing rooms against the confirmed booking. Opposite Party No.2 is also confirmed that Complainant booked hotel through their website and they have provided confirmation of rooms to the Complainant. Merely refunding the booking amount to the Complainant they will not escape from the responsibility of pain and anguish caused to the Complainant No.1 and her family members which including minor and senior citizen for not getting rooms against the confirmed booking in far off place.
37. In view of the above discussion and in our considered view, there is deficiency in service on behalf of Opposite Party No.1 and 2. Therefore, the complaint is allowed. The Opposite Party No.1 is directed to pay Rs. 1,00,000/- on account of deficiency in service to the Complainants and Opposite Party No. 2 is also directed to pay Rs. 1,00,000/- on the same ground to the Complainants. Further, both the Opposite Parties are directed to pay interest @ 9 % p.a. from the date of this order till recovery on the above mentioned amount to the Complainant.

38. Order announced on 23.11.23.

Copy of this order be given to the parties free of cost.

File be consigned to Record Room.

(Anil Kumar Bamba)

(Adarsh Nain)

(Surinder Kumar Sharma)

Member

Member

President