

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

Case No. CC/43/2014

IN THE MATTER OF:

Mr. Pawan Kumar Mehra

Proprietor of M/s Royale Falcon Security Services
Shop No. 2, (First Floor), Raj Singh Complex,
Opp. Rao Ganga Ram Public School,
Old Delhi-Gurgaon Road, Kapashera,
New Delhi-110037.

..... Complainant

Versus

1. M/s. Thomas Cook India Ltd.

C-35, Connaught Place,
Inner Circle, New Delhi-110001

Also At:

M/s. Thomas Cook India Ltd.
Unit No. 6, Ground Floor,
Vatika First India Place, M.G. Road,
Gurgaon-122 002, Haryana

2. Mr. Md. Kamal Hassan

Assistant Manager
M/s. Thomas Cook India Ltd.
C-35, Connaught Place,
Inner Circle, New Delhi-110001

3. Mr. Sankalp Kumar

General Manager
M/s. Thomas Cook India Ltd.
Unit No. 6, Ground Floor,
Vatika First India Place, M.G. Road,
Gurgaon-122 002, Haryana.

.... Opposite Parties

Quorum:

Ms. Poonam Chaudhry, President

Mr. Bariq Ahmad, Member

Mr. Shekhar Chandra, Member

Date of Institution:- 15.01.2014

Date of Order:- 08.12.2023

ORDER

SHEKHAR CHANDRA, MEMBER

The facts as adumbrated in the complaint are as under:

2. This complaint case was originally filed by two complainants – complainant No. 1 Lt. Col. Pawan Kumar Mehra and (2) Dr. Madhu Mehra wife of complainant No. 1. In the proceedings dated 4th April, 2014 of this Commission, it is recorded that complainant No. 2 has expired and an amended Memo of Parties was ordered to be filed, which was later on filed and placed on record by the complainant No. 1.
3. It is averred in the complaint that the OP No.1 is a private limited company engaged in the business of Tour & Travels and providing services such as Airline seats, Hotel accommodation, ground transportation etc. The OP No. 2 is Assistant Manager of the OP No. 1 and the OP No. 3 is General Manager of OP No.1.

4. In June 2012, the complainant No. 1 and his deceased wife had jointly booked and availed a tour to Europe for 15 days through OP No. 1. After being satisfied of the services of the OPs, the complainant had again decided to book a tour for South East Asia under a holiday package namely "Asian Wonders" offered by the OP No. 1. The date of departure for the tour was fixed on 25.12.2012. A joint meeting took place between the parties, when the complainant No. 1 and his deceased wife visited the office of O.P. No. 1 in Connaught Place, New Delhi and interacted with their executives. A booking acknowledgement form was filled in and presented by the complainants along with a cheque for Rs.50,000/-. The executive of O.P. No. 1 also signed the form and accepted the advance payment

5. It is further averred by the complainants that the executive of the OP No.1 before initiating further formalities had demanded advance payment from the complainants. Looking into the goodwill and reputation enjoyed by the OP No. 1 in the market, the complainants paid a sum of Rs. 50,000/- towards the booking amount on 12.10.2012 to the OP No.1. The OP No.1 had allotted a tour code "TCAW 2512" to complainants. The executive of the OP No.1 had informed the complainants that one of the other

executives namely "Navneet" will contact the complainants to complete the pre-tour formalities like Visa, balance payment etc.

6. As per the payment schedule, total cost for the South East Asia tour was Rs.1,14,000/- including 3.09% service charges on total package costs. Complainants had acted bonafidly and paid a sum of Rs.50,000/- towards the booking amount vide cheque No. 802159 dated 12.10.2012 drawn on YES Bank, Gurgaon Branch which was duly acknowledged by the OP No.1 in correspondence sent to the complainants.
7. Soon before the date of journey, mother of complainant No.1 fell critically ill and her condition became very serious. The complainant No.1 was the only person to look after her in these conditions. Therefore, the complainants had decided to postpone their tour to South East Asia. The complainants contacted to the OP No. 3 and requested to cancel the booking of the tour for the reasons hereinabove. The OP No. 3 assured to the complainants that he will take appropriate steps in this regard. Thereafter, the OP No. 2 contacted the complainants and informed that booking of tour has been cancelled and the money will be refunded after taking into consideration the circumstances and the policies of the OP No. 1.

8. As alleged by the complainants, subsequently, the complainants received another e- mail from OP No. 2 whereby it was intimated to complainants that the OP No.1 has forfeited the entire booking amount as the cancellation was made less than 10 days prior to the departure of the tour. The complainants requested the OP No. 2 to refund at least the basic amount because the cancellation was made on account of the illness of the mother of the complainant No.1, but the same was not refunded by the OP No.1 to the complainants. It was informed to complainants by the OP No. 2 that under the terms and procedure of the OP No.1, the entire amount paid by the customer is forfeited and no money is refunded. The complainants submit that such policies are against the professional ethics and general practice. The OP No. 1 under the garb of general terms and conditions cannot forfeit the amount paid by the complainants. It is further pleaded by the complainants that the services as promised by the opposites parties including Visa etc. were not given to the complainants, moreover, nothing was done by the executives of the OP No.1 to facilitate any of the services as promised by the OP No.1 to the complainant, at the time of accepting the advance payment.
9. Thus, it is submitted by the complainants that the action of the OP No.1 by withholding the amount of Rs.50,000/- paid by the complainants to the

OP No. 1 at the time of advance booking has left a bad taste with the complainants. The amount is much needed by the complainants in the unfavouring circumstances qua the critical health of mother of the Complainant No.1. Such inhumanity and unphilanthropic attitude of the executives of the OP No. 1 caused mental agony and harassment to the complainants. It is alleged that the complainants have been cheated and defrauded by the OP No.1 and their executives. The OP No. 1 has forfeited the amount of Rs.50,000/- as the complainants decided to postpone tour for South East Asia, for which they could not travel, due to circumstances beyond their control. The complainants submit that the OP No. 1 has arbitrarily withheld the hard earned money of the complainants. It is further alleged that there is deficiency of service on the part of OP No.1 and their executives. The OP No. 1 has been resorting to monopolistic and restrictive trade practice. The OP No.1 and their officials have been involved in manipulation of price in such a manner as to impose unjustified cost and restrictions.

10. Thus, it is alleged that the action of the OP No.1 has caused wrongful loss to complainant and wrongful gain to the OP. The OP No. 1 has forfeited the entire booking amount without any justifiable reason and cause which

amounts deficiency in service as well as criminal misappropriation of funds.

11. The Complainant through their counsel sent a legal notice dated 09.07.2013 to the OP No. 1, thereby calling upon them to pay a sum of Rs.50,000/- along with the interest @ 18% per annum within 15 days from the receipt of the legal notice. The OP No. 1 sent a reply dated 01.08.2013 to the legal notice dated 09.07.2013. In the said reply, the OP No.1 denied the allegations leveled by the Complainants. Thereafter, the Complainant had sent a rejoinder notice dated 25.09.2013; reiterated the contents of the legal notice dated 09.07.2013. However, no further reply to the rejoinder has been sent by the OP till date.

12. As regards the cause of action, it is submitted that the cause of action for filing the present complaint firstly arose in June 2012, when the complainants had met the executives of the respondents in their office in Connaught place, New Delhi had jointly booked and availed a tour to Europe for 15 days through OP. The cause of action arose on 12.10.2012 when the complainants had paid a sum of Rs.50,000/-towards the booking amount to the OP No. 1. The cause of action arose on 09.07.2013 when the Complainants through their counsel sent a legal notice to the OP. The cause of action further arose on 01.08.2013 when the OP sent a reply to

the legal notice dated 09.07.2013. The cause of action arose on 25.09.2013 when, the Complainant had sent a rejoinder notice to the reply dated 01.08.2013. The cause of action is still continuing.

13. The complaints submit that the registered office of OP No.1 is situated at New Delhi. The complainants reside at New Delhi and the OP Nos. 2 to 3 are working for gain at New Delhi. The transaction between the Complainants and the OP No. 1 took place in New Delhi. Therefore, the entire cause of action arose in New Delhi hence this Commission has territorial jurisdiction to try and decide the present complaint.

14. Since the complainants could not get resolution of their grievances from OPs, hence the present complaint case with the following reliefs:-

(1) Direct the OPs to pay a sum of Rs. 50,000/- along with the interest @ 18% per annum;

(2) Direct the OPs to pay compensation of Rs.50,000/- for causing harassment and mental agony to the Complainants; and

(3) Award cost of the proceedings in favour of the Complainant and against the OP.

19. Notice of the complaint was issued to OPs, upon which OPs entered appearance and filed written statement contesting the case on various

grounds inter alia that the present Complaint is wholly frivolous, vexatious, without any cause of action and/or any actionable cause and is not maintainable. The Complainants have made false and baseless claims and allegations, without any basis and cogent reasons. It is submitted that the Complainants have failed to disclose any fact to support any allegation of deficiency in service on the part of the OP. No grounds exist for entertaining the present Complaint. The entire Complaint is devoid of any merits and is based on impermissible conjectures, inferences and surmises and is completely devoid of any cause of action against the OP, either wholly or partly. It is further submitted that the Complainants have failed to make out any credible case qua the OPs or in support of the allegations of harassment or alleged mental agony. The OPs submit that the Complaint deserves to be dismissed with costs. The refund of 50,000/- sought herein with interest at 18% thereon and a compensation of Rs.50,000/- to each Complainant and litigation costs, as claimed by the Complainants for the alleged inconvenience and/or alleged harassment and/or mental agony and or alleged deficiency in service etc. are per se unsustainable, misconceived, based on frivolous contentions and untenable besides being imaginary and preposterous and in any event excessive. There is absolutely no loss and/or damage to the Complainants, for reasons as alleged or at all.

20. It is submitted by the OPs that the Complainants had decided to cancel the said Tour and the same was intimated to the OPs only on 07.12.2012 i.e. 18 days prior to the scheduled departure date. The Cancellation Policy of the OPs as contained in the booking form, clearly provides that the cancellation charges of Rs. 1,00,000/- per person would be chargeable when the cancellation is made between 20 days to 11 days prior to the departure of the Tour. It is submitted that the tour and the tour bookings as would be known to the Complainants, who claimed to be the clients of the OPs 'for many years' are regulated by and in accordance with the terms and conditions mentioned in the tour brochure of the OPs. The cancellation policy was also explained to the Complainants at the time of booking and booking form was signed by the Complainants after going through the Terms and Conditions mentioned in the booking form.
21. Since the moot question raised by the OPs is that the complainants violated the terms and conditions of the contract, therefore, they were/are not liable for refund of money. A specific question was put to the learned counsel for the OPs as to whether such terms and conditions were ever served on the complainants and if yes, under what mode of service and whether any acknowledge of having received and explained the same was recorded or accepted by the complainants to which the answer was in

negative. There are numerous judicial pronouncements in which it is held that the terms and conditions must have been served and acknowledged by the complainant.

22. In the case titled '*Modern Insulator Limited Vs. Oriental Insurance Company Limited*' (2000)2 SCC -734, the terms and conditions of the policy must be served on the insurer and if not served, no benefit of having such terms and conditions on paper can be claimed by the Insurance company.
23. After considering the rival contentions of the parties, we are of the view that the OP No. 1 cannot forfeit the advance amount paid by the complainants as neither any service was rendered by the OPs nor OPs had booked or/and paid for any accommodation etc., as the intimation of cancellation of tour was given 18 days in advance, which fact is not denied by the OPs. This Commission, therefore, directs the OP No. 1 to refund advance amount of Rs. 50,000/- to the complainant No. 1 with interest @ 9% per annum from the date of receipt of amount till realization, within six weeks from the date of receipt of this order, failing which the complainant No. 1 shall be entitled to interest at the enhanced rate of 12% per annum. Since the OP No. 1 has forced the complainant No. 1 to go for litigation, a sum of Rs. 25,000/- is awarded towards

litigation expenses in favour of complainant No. 1, which must be paid by OP No. 1 within the time stipulated above.

A copy of order be sent to all the parties free of cost.

The order be also uploaded in the website of the Commission.

File be consigned to the record room along with a copy of the order.

[Poonam Chaudhry]
President

[Bariq Ahmad]
Member

[Shekhar Chandra]
Member