

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-I,

U.T. CHANDIGARH

Consumer Complaint No.	:	CC/616/2021
Date of Institution	:	09/09/2021
Date of Decision	:	07/03/2024

Harminder Kaur w/o S.Gurmukh S.Makkar R/O # 255, Sector 35A, Chandigarh.

... Complainant

V E R S U S

1. The Manager, Yes Bank Ltd., SCO No.331-332, Ground Floor, Himalaya Marg, Sector 35-B, Chandigarh.
2. Mr. Sahil Kumar, Dy. Manager, Yes Bank Ltd. (Agent), SCO No.331-332, Himalaya Marg, Sector 35-B, Chandigarh.
3. Max Life Insurance Co. Ltd. through its Branch Manager, Plot No.90A, Uduog Vihar, Gurugram- 122015.
4. Subhra Agarwal, Customer service, Max Life Insurance Co. Ltd., 3rd Floor, Operation Centre, 90A, Uduog Vihar, Sector 18, Gurugram- 122015.

... Opposite Parties

CORAM : **SHRI PAWANJIT SINGH** **PRESIDENT**
 MRS. SURJEET KAUR **MEMBER**
 SHRI SURESH KUMAR SARDANA **MEMBER**

ARGUED BY : Sh. Gurmukh Singh, Advocate for complainant
 : Sh. Kaveesh, Advocate for OP-1
 : Complaint against OP-2 dismissed as withdrawn vide order dated
 : 14.8.2023.
 : Sh. Rajneesh Malhotra, Advocate for OPs 3 & 4

Per Pawanjit Singh, President

1. The present consumer complaint has been filed by Mrs. Harmander Kaur, complainant against the aforesaid opposite parties (hereinafter referred to as the OPs). The brief facts of the case are as under :-
 - a. It transpires from the allegations, as projected in the consumer complaint, that OP-2, agent of OPs 1 & 3, had approached the complainant for selling of the insurance policy plan of OP-3 and induced her to purchase the same by informing that the complainant was required to invest only for the specific period of three years with one time investment of ₹1,00,000/- and also assured survival benefit of ₹5.45 lacs after three years. In addition to that, complainant was also to get income tax and life risk benefits. Believing the version of OP-2, complainant agreed to purchase insurance policy No.604633909 (hereinafter referred to as "*subject policy*") and transferred an amount of ₹1,00,000/- to OP-3 online on 28.1.2021. On this, complainant received the subject policy on 15.2.2021 by post and she was stunned to see that all the facts and benefits explained by OP-2 were false as it was found in the subject policy that the maturity date was fixed as 29.1.2031 and the premium was payable for five years. Thereafter complainant tried to contact OPs on 17.2.2021, 19.2.2021, 25.2.2021 and 3.4.2021 by sending emails and letters (Ex.C-1 to C-4) intimating about the mis-selling of the subject policy and requested for cancellation of the same within free look period of 15 days. As nothing was done by OPs despite of receiving request of the complainant for cancellation of the subject policy, complainant sent legal notice to the OPs on 14.5.2021 and in reply to the same, on 11.6.2021 complainant received a letter dated 3.6.2021 addressed by OP-4 intimating that as a service gesture they were ready to cancel the subject policy and refund the complete amount of ₹1,00,000/-. The complainant replied the said letter of the OPs, but, no further response was received from the OPs, till date. In this manner, the aforesaid act of the OPs amounts to deficiency in service and unfair trade practice. OPs were requested several times to admit the claim, but, with no result. Hence, the present consumer complaint.
 - b. OPs resisted the consumer complaint and filed their separate written versions.
 - c. In its written version OP-1, inter alia, took preliminary objections of maintainability, concealment of material facts and cause of action. It is alleged that, in fact, answering OP is merely a corporate agent of OP-3/Max Life Insurance Co. Ltd. and it assisted the complainant in availing the subject policy. The complainant, who is an educated person, had submitted the proposal form in English through OTP after making declaration to the effect that she understood the terms and conditions of the subject policy. On merits, it is denied that OP-2 induced the complainant to purchase the subject policy, rather complainant herself had approached the answering OP for purchase of the subject policy from OP-3. On merits, the facts as stated in the preliminary objections have been reiterated. The cause of action set up by the complainant is denied. The consumer complaint is sought to be contested.

- d. In their written version OPs 3 & 4, inter alia, took preliminary objections of maintainability, cause of action, jurisdiction and mis-joinder and non-joinder of necessary parties. On merits, admitted the subject policy was purchased by the complainant from the answering OP-3 after admitting the terms and conditions of the same by filling the proposal form. However, later on, upon receiving request of the complainant, answering OP-3 cancelled the subject policy and sent the refund cheque (Annexure R-10), but, the same was not accepted by the complainant. The subject cheque was valid for three months and the answering OPs were willing to pay the amount of ₹1,00,000/- to the complainant and even now ready to issue a fresh cheque, if so desired by the complainant. In fact, complainant was asked to send some particulars required for the refund of the amount which were not shared by the complainant and only after that the answering OP decided to send the refund amount through cheque, which was not accepted by her and there is no deficiency in service or unfair trade practice on the part of answering OPs. On merits, the facts as stated in the preliminary objections have been reiterated. The cause of action set up by the complainant is denied. The consumer complaint is sought to be contested.
- e. In view of the endorsement made by the advocate for the complainant, consumer complaint against OP-2 was dismissed as withdrawn vide order dated 14.8.2023 of this Commission.
- f. In separate rejoinders, complainant re-asserted the claim put forth in the consumer complaint. The complainant categorically admitted that OP-3 had sent the refund cheque only after receiving legal notice and not prior to that in the month of February and March when the complainant had sent letters for cancellation of the subject policy and due to that reason only she refused to accept the cheque as OP-3 was not ready to pay interest and compensation to the complainant. Prayer has been made that the consumer complaint be allowed as prayed for.
2. In order to prove their case, contesting parties have tendered/proved their evidence by way of respective affidavits and supporting documents.
3. We have heard the learned counsel for the contesting parties and also gone through the file carefully, including written arguments.
- i. At the very outset, it may be observed that when it is an admitted case of the parties that the complainant had obtained the subject policy and being not satisfied with the terms & conditions of the same, she immediately approached OP-3 for cancellation of the same vide letters dated 17.2.2021 (Ex.C-1), 19.2.2021 (Ex.C-2) and 25.2.2021 (Ex.C-3) and also sent legal notice dated 14.5.2021 (Ex.C-5) and after accepting the request of the complainant, OP-3 had agreed to cancel the subject policy and refund the amount of ₹1,00,000/- by sending request to the complainant to send certain documents i.e. original policy pack, duly filled and signed policy cancellation form and cancelled cheque vide letter dated 3.6.2021 (Ex.C-6), but, the complainant did not send the same to OP-3, rather has asked OP-3 to refund the aforesaid amount alongwith interest @18% on the paid amount as well as ₹25,000/- as compensation and counsel fee of ₹22,000/- vide letter dated 15.6.2021 (Ex.C-7) and finally OP-3 had even sent the cheque of ₹1,00,000/- dated 11.3.2022 (Annexure R-10) to the complainant with the request to encash the same, which the complainant has refused to accept, the case is reduced to a narrow compass as it is to be determined if OP-3 is

unjustified in not refunding the aforesaid amount of ₹1,00,000/- at the time of cancelling the subject policy and the complainant is entitled to the reliefs prayed for in the consumer complaint, as is the case of the complainant, or if the complainant herself has not accepted the cheque towards refund amount and there being no deficiency in service or unfair trade practice on the part of OP-3, the consumer complaint is liable to be dismissed, as is the defence of OP-3.

- ii. Perusal of emails dated 17.2.2021 and 19.2.2021 (Ex.C-1 & C-2) clearly indicates that complainant had requested OP-3 for cancellation of the subject policy within the free look period as the subject policy was received by her on 15.2.2021 and within 15 days, she had requested OP-3 for its cancellation.
 - iii. Perusal of letter dated 3.6.2021 (Annexure R-8) clearly indicate that OP-3 had agreed to cancel the subject policy and complainant was also communicated about the same and she was asked to submit certain documents in order to refund the entire premium amount. It is further the defence of OP-3 that it had sent letter dated 11.3.2022 accompanied with a cheque (Annexure R-10) to the tune of ₹1,00,000/- with respect to the refund of total premium amount, which the complainant has categorically admitted in her rejoinder that she refused to accept the same as OP-3 had sent it after issuance of legal notice by the complainant and the same was also without interest and compensation.
 - iv. Thus, one thing is clear from the above that till 11.3.2022, OP-3 had not refunded the premium amount to the complainant despite of the fact that the subject policy was cancelled and the said act certainly amounts to deficiency in service and unfair trade practice on the part of OP-3 as had OP-3 sent the said cheque prior to that, complainant would have accepted the same and would not have pursued the present litigation. However, as the complainant herself has refused to accept the said cheque dated 11.3.2022 sent by OP-3, it is safe to hold that the said cheque could not be encashed after the said date due to negligence of the complainant and she cannot be held entitled to interest on the said amount after the said date.
 - v. In view of the aforesaid discussion, it is safe to hold that the complainant has partly proved the cause of action set up in the consumer complaint and the present consumer complaint deserves to succeed against OP-3.
4. In the light of the aforesaid discussion, the present consumer complaint succeeds, the same is hereby partly allowed and OP-3 is directed as under :-
- i. to refund the amount of ₹1,00,000/- to the complainant alongwith interest @ 9% per annum w.e.f. 3.6.2021 to 11.3.2022.
 - ii. to pay ₹5,000/- to the complainant as compensation for causing mental agony and harassment;
 - iii. to pay ₹7,000/- to the complainant as costs of litigation.
5. This order be complied with by OP-3 within forty five days from the date of receipt of its certified copy, failing which, the payable amounts, mentioned at Sr.No.(i) & (ii) above, shall carry interest @ 12% per annum from the date of this order, till realization, apart from compliance of direction at Sr.No.(iii) above.

6. Since no deficiency in service or unfair trade practice has been proved against OPs 1 & 4, the consumer complaint against them stands dismissed with no order as to costs.
7. Pending miscellaneous application(s), if any, also stands disposed of accordingly.
8. Certified copies of this order be sent to the parties free of charge. The file be consigned.

07/03/2024

hg

Sd/-

[Pawanjit Singh]

President

Sd/-

[Surjeet Kaur]

Member

Sd/-

[Suresh Kumar Sardana]

Member