

Date of Filing: 08.07.2022

Date of Order: 03.11.2023

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-III,
At HYDERABAD.

Present

SRI. M. RAM GOPAL REDDY, PRESIDENT

SMT. J. SHYAMALA, MEMBER

SRI R. NARAYAN REDDY, MEMBER

Friday, the 3rd day of November, 2023

C.C. No 550 of 2022

Between:

Mr. Ganji Kailash Chander,
S/o. Ganji Satyanarayana,
Ae 42 years, Occ: Business,
R/o. Plot No.33/35, Jupiter Colony,
Sikh Village, Secunderabad – 500009.
Cell : 8121221188.

....Complainant

AND

1. M/s. MakeMy Trip India Pvt., Ltd.,
Having its registered office at:
DLF Building No.5 Towers B,
DLF Cyber City, DLF Phase 2,
Sector 25, Gurugram, Haryana – 122002, India,

2. Emirates Air Lines,
Having Office at: A1 & A2, Ground Floor Building,
Net to Mentor Graphics Queena Square Ltd.,
Telangana.

.... Opposite parties

Counsel for the complainant : M/s. DMR Law Chamber &
Associates, Advocates.

Counsel for the opposite Party No.1 : Smt. M.A. Madhumathi,
Advocate.

Counsel for the opposite Party No.2 : Ritu Singh Mann Kawashaw
Jagose & Nethan Reddy, Advocates.

ORDER

**(PER HON'BLE SRI M. RAMGOPAL REDDY, PRESIDENT ON BEHALF
OF THE BENCH)**

This complaint is filed by the complainant under Section 35 of
Consumer Protection Act, 2019 praying to direct the Opposite Parties :

- i. To refund amount of Rs.3,18,987/-, towards interest,
Rs.2,00,000/- along with future interest @ 18% from the date of
complaint till date of refund.
- ii. To pay costs of this petition and to pass such other relief or reliefs
as this Hon'ble Commission may deem fit and proper
circumstances of the case.

Brief Facts of the Case:

2. The case of the complainant in brief is that the complainant is business man at Secunderabad. The complainant and his family, decided to go to United States of America, requested to book 4 tickets for himself and his family to travel through the Opposite Party No.1 website i.e., www.Makemytrip.com site on 07.02.2020 by paying a total amount of Rs.3,18,897/- bearing booking reference ID: NN2115452628984. On 04.03.2020 phone call is coming to Opposite Party No.1 office to the complainant regarding the trip and was informed that all the flights during that period had got cancelled due to the COVID-19 pandemic outbreak. The Opposite Party No.1 further without any consent of the complainant and without giving any information regarding the refund of the amount had initiated a call to refund the amount to Make My Trip wallet and when the complainant had checked for the same the amount shown was zero and when he called at Make My Trip Customer Care they informed that the refund taken 10 days of time to reflect in the wallet and when the same was checked again after 10 days to see if the amount has been credited or not, it again has shown zero thus the amount has not been credited to Complainant's wallet even as on this day in spite persistent calls to customer care to ensure the amount is refunded. The complainant had tried calling Opposite Party No.1's company customer care services numerous times regarding the refund of the amount to wallet but not credited to which there was no proper response or resolution to it and the problem remained still and complainant's refund is still pending from 2020 to till date. The inaction in respect of flight booking which tickets were cancelled due to COVID-19 is bad amounts to cheating.

2.(a) The complainant further states that, the Consumer Protection Act, 2019, E-Commerce Rules on unfair trade practice are laid down under the Consumer Protection E-Commerce Rules. These rules are applicable to all marketplaces, inventories, e-commerce portals and other entities as per these rules, e-commerce entities are mandatorily required to dispense information such as payment options, warranty and refund policy. The complainant has on facts demonstrated & established wilful fault, imperfection, shortcoming or inadequacy in the service of the opposite party the deficiency in service is clearly visible action of the opposite party is found to be in good faith under the Act. On 09.03.2022 the complainant issued a legal notice to the Opposite party No.1 regarding refund of the amount with 18% interest, but there is no reply to the legal notice nor deficiency reported is complied, their silence is deliberate/intentional.

Vexed with the attitude of the opposite parties, no other option except to approaching this commission and prays that, to refund an amount of Rs.3,18,987/- with 18% interest and costs. Hence, the complaint.

3. The Opposite Party No.1 filed their written version stating that this opposite party is a Private Limited Company, duly incorporated under the Companies Act, 1956. It is a well reputed and highly acclaimed Tour & Travel Company having its offices at New Delhi, Mumbai, Kolkata, Bangalore, Ahmedabad, Gurugram and branch Office at New Your (USA). The complaint filed by the complainant is not maintainable either on merits or as per law and is liable to be out rightly dismissed. The contents of the complaint are wholly misconceived, vexatious, misleading, misrepresented, unsustainable, false, frivolous and are nothing but a flagrant abuse of the process of law. There is no deficiency of service on the part of this opposite party and therefore, no case is made out against this opposite party, under the provisions of the act. The present complaint is therefore liable to be dismissed in limine with exemplary costs, thereto, under Section 36(2) of the Consumer Protection Act, 2019 for dragging a reputed and highly acclaimed Tour and Travel Company, in an unnecessary, unwanted and speculative litigation. The averments made therein are vague, baseless and with malafide intent. The complainant has made misconceived and baseless allegations of deficiency of service without any documentary evidence in support of his allegations made in the complaint.

3.(a). The complaint filed by the complainant does not fall within the definition of a "Consumer Dispute" under the act, as there is neither any unfair trade practice adopted by this opposite party nor any deficiency in services being established against this opposite party. This opposite party is only an intermediary between the end users such as the complainant and the service provider such as Airline. It is engaged in the business of e-commerce travel organizer by providing an online platform to book tickets, accommodation, holiday packages, etc., from among various service provider. The complainant approached the Opposite Party and expressed their willingness to book a tour to the United States of America for four persons on 17.02.2020 for a total amount of Rs.3,18,897/-. It is pertinent to mention that the Opposite Party had duly used that money in effectuating the booking of flights from the Opposite Party No.2. On 04.03.2020 the Opposite Party duly informed that, all the flights are cancelled due to the COVID-19 pandemic. On 12.04.2020, the

complainant contacted the Customer Service of the opposite party for seeking information on refund and cancellation. Then informed the complainant that the booked tour ticket can be kept open for a total of 760 days from issuance date and on the COVID-19 pandemic situation improving, the complainant can avail the same booking subject to flight fare differences and any other cancellation related penalties can be waived off. On receipt of a cancellation request by the complainant, on 22.07.2020, the opposite party duly refunded the amount of Rs.3,09,261/- to the MakeMyTrip wallet of the complainant and Rs.7,999/- is the GPM amount in the booking. The aforesaid booking completed by the complainant was governed by the terms of the User Agreement which is marked as Ex.B2. The opposite parties to the present case are governed by the terms and conditions agreed between the parties at the time of booking. It is well settled law that, learned District Commission should not entertain in the matter where terms and conditions of the booking has been duly agreed and binding between the parties. Reliance is placed upon the case of : *“Bharathi Knitting Co., Vs. DHL Worldwide Express Courier”* [reported in (1996) 4 SCC 704], *Patel Roadways Ltd., Vs. Birla Yamaha Ltd., vide Appeal (Civil)9071 of 1996* and in the case titled *Citicorp Maruti Finance Ltd., Vs. S. Vijayalakshmi vide Civil Appeal No.9711 of 2011* passed by Hon’ble Supreme Court of India. *The Hon’ble National Commission in yet another land mark judgment dated 12.08.2014 titled HDFC Bank Ltd., Vs. Kanwar Ohri & Ors., [RP No.2001 of 2012]* have affirm the proposition in respect of Forums and Commission have no jurisdiction and / or entitled to modify the terms of the agreement, which had been arrived at between the parties and when there is an acute dispute relating to facts, the Forums and Commissions ought not have gone behind the terms of the Agreement and should have instead referred the parties to the Civil Court.

3.(b). It is further stated that, the complainant has been refunded the amount of Rs.3,09,261/- to his MakeMyTrip wallet and can be used by the complainant for further bookings. Further, being a customer centric organization, the opposite party is ready and willing to process the amount in MakeMyTrip wallet to the complainant’s bank account as well. Hence, the opposite party has acted with utmost care and diligence and the complainant are not entitled to any compensation or any other damages charge such as interest, cost of litigation, from the opposite party. In the present case, it is crystal clear that there has been no unfair trade practice adopted by the opposite party No.1 and / or deficiency in service on the

part of the opposite party. Therefore, the complaint is liable to be dismissed against this opposite party.

4. The Opposite Party No.2 filed written version stating that the complaint filed by the complainant is time barred and filed beyond the period of limitation as prescribed under the Carriage by Air Act, 1972 as amended, which is the applicable act in respect of travel by Air. That the said Carriage by Air Act, 1972 being a special statute will override the provisions of the general acts like the Consumer Protection Act and Limitation Act. It is well settled law that where there a conflict between two Acts, the special act will prevail over general law.

4.(a). The Opposite Party No.2 further stated that, there is no deficiency in service on the part of this opposite party, as the opposite party has already refunded to the opposite party No.1 the cost of the tickets as on July, 22, 2020. Thus, it is the duty of the travel agent pass on the refund to the passenger. The complainant booked the tickets from himself and his family through the travel agent makemytrip.com the Opposite Party No.1 from Hyderabad to USA via Dubai and he paid the applicable fare as agreed to the Opposite Party No.1. The same pertains to the Opposite Party No.1 and this opposite party cannot comment upon the same. However, it is correct to state that, due to COVID-19 pandemic the flights were cancelled. The Opposite Party No.1, travel agent and this opposite party asked them why the amount was not credited to the MakeMyTrip wallet of the complainant or why no refund was made by the opposite party No.1 to the complainant can only answered by the opposite party No.1. this opposite party has already refunded the tickets to the opposite party No.1 and nothing more remains to be done by this opposite party. Hence, no claim lies against this opposite party and should be discharged from the present complaint.

5. During the course of trial, the complainant is examined as PW1 and marked Ex.A1 to A5. Sri Puneet Chawla, Deputy Manager-Legal is examined as DW1 on behalf of the opposite party No.1 and marked Ex.B1 & B2. Mr. Mohammed Sarhan, Vice President, India & Nepal with Emirates, is examined as DW2 on behalf of the opposite party No.2 and marked Ex.B3 to B5. The complainant and as well as the Opposite Parties filed their written arguments respectively. Heard both.

6. The points that arise for consideration are:-

(1) Whether there is any deficiency of service on the part of the Opposite Parties?

- (2) Whether the complainant is entitled for the reliefs as prayed for?
 (3) Whether the Opposite Parties are liable to refund the amount or not?
 (4) To what extent?

7. Point No.1 & 2 :- Heard both sides. On perusal of the record the case of the complainant is that the complainant booked the tickets on 17.02.2020. Bank Statement of complainant for booking of Air tickets for an amount of Rs.3,18,897-00 which is marked as Ex.A1 Hyderabad to Chicago for 4 tickets two adults, two children total amount of Rs.3,18,987/- journey date 21.05.2020. On 04.03.2020 informed to the complainant by the opposite parties stating that, the flights have cancelled due to COVID-19. The complainant has requested the Opposite Parties to refund the amount, the Opposite Party is not refunded the amount for given any information inspite of several requests by the complainant. On 09.03.2022 when the complainant got issued a notice and further on 15.02.2020 noticed were issued by Opposite party No.1 which is marked as Ex.A4. Ex.A3 is the cancellation of details, Ex.A5 is the postal receipts. In spite of receipt of the notice the Opposite Parties failed to refund the amount, except having no other option the complainant approached this Commission seeking direction to Opposite parties to pay an amount of Rs.3,18,987/- along with interest @ 18% and costs of the complaint. The Opposite party No.1 filed a written version admitting the cancellation of flight and also at paraNo.10 of the written version on receipt of cancellation request by the complainant. On 22.07.2020 the Opposite party No.2 duly refund of Rs.3,09,261/- to the Opposite party No.1 Wallet of the complainant and Rs.7,999/- is the GPM amount booking.

7.(a). The Opposite party No.1 contended that, the amount shall keep for 760 days kept in the MakeMyTrip Wallet of the complainant account the complainant shall utilise these amounts for further booking of flights till the date. The complainant cannot claim refund or also not entitled to get any interest as per the role of MMT Limitation of liability. And further contended that this Commission has no jurisdiction as per the Agreement *“This Agreement is subject to interpretation as per the laws of India, and the parties shall refer any unresolved disputes to the exclusive jurisdiction of courts in Delhi.”* The Opposite party No.1 filed to establish that in which condition, which clause they can withholding these cancellation amount of the customers and the contentions raised by the Opposite party No.1 is the baseless and unjustifiable. In this case, the complainant has requested any cancellation it is the universal flight of due to COVID-19.

The entire flights services are cancelled on such ground the Opposite parties have to return the amount immediately then and there without holding keeping these amounts in MMT Wallet, which is nothing but not only rendering deficiency in service but it amounts to unfair trade practice also. The contention of the Opposite parties is that they are contending the Agreement between the customer and Opposite party No.1. Once, the booking is raised by the customers, the customers oblige all the terms and conditions of the agreement. But the Agreement is not placed before this Commission, the Opposite party No.1 thus the such as agreement is one side which is contrary to the judgment of Hon'ble Supreme Court held in: *IREO Grace Realtech Pvt. Ltd. vs. Abhishek Khanna and Ors.*, (I)AIR 2021 SC 437.

7.(b). The Opposite party No.2 is submitted that, when the movement of the cancellation of the flights they are refunded the amount to their agent i.e., Opposite party No.1 as per their User Agreement understanding and stated that they have not committed any deficiency of services and the complaint is dismissed Opposite Party No.2. The Opposite Parties relation is principal and agent once the amount is refunded to the agent the agent has no role to keep this amount for long time without allowing by the complainant to withdraw which is nothing but not only rendering deficiency in service but it amounts to unfair trade practice also.

7.(c). Point No.3: The Opposite party No.1 ought to have refunded then and there only this amount when the Opposite party No.2 refunded. We are of the considered view that, the Opposite party No.1 is committed deficiency in service and the Opposite party No.1 is liable to refund the above amount of Rs.3,18,987/- with interest @ 12% from the date of booking till the date of realization along with compensation of Rs.50,000/- and costs of Rs.5,000/- and to pay Rs.10,000/- (Rupees ten thousand only) to the Consumer Legal aid account towards punitive damages. Accordingly, this point is answered in favour of the complainant against the Opposite Party No.1. Complaint against the opposite party No.2 is dismissed.

8. Point No.4 :

In the result, the complaint is allowed in part directing the opposite party No.1:

- i. To refund the amount of Rs. Rs.3,18,987/- (Rupees Three Lakhs eighteen thousand nine hundred and eighty-seven only) with interest @ 12% from the date of booking till the date of realization.

- ii. To pay Rs.50,000/- (Rupees Fifty thousand only) towards compensation.
- iii. To pay Rs.5,000/- (Rupees Five thousand only) towards costs.
- iv. and to pay Rs.10,000/- (Rupees ten thousand only) to the Consumer Legal aid account towards punitive damages.
- v. Complaint against the opposite party No.2 is dismissed.

Time for compliance is 45 days from the date of receiving the copy of this order.

Dictated to steno transcribed and typed by her pronounced by us on this the 3rd Day of November' 2023.

Sd/-
MEMBER

Sd/-
MEMBER

Sd/-
PRESIDENT

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Complainant:-

PW1 : Mr. Ganji Kailash Chander

For Opposite Party No.1:-

DW1 : Sri Puneet Chawla.

For Opposite Party No.2:-

DW2 : SH. Jasbir Chaudhary.

Documents Marked:-

For Complainant:

Ex.A1 – is the copy of Bank Statement of complainant for booking of Air tickets for an amount of Rs.3,18,897-00 dt.17.02.2020.

Ex.A2 – is the copy of tickets (online) confirmation on 21.05.2020..

Ex.A3 – is the copy of cancellation of tickets dt.12.04.2020.

Ex.A4 – is the Original Notice issued by the complainant to Opposite Party No.1 dt. 09.03.2022 of Screenshot of Mobile phone Call details.

Ex.A5 – is the original postal receipts.

For Opposite Party No.1:-

Ex.B1 – is the copy of Hyderabad to Chicago tickets, ID: NN2115452628984 dt.21.05.2020.

Ex.B2 – is the copy of Agreement and MakeMy Trip.

For Opposite Party No.2:

Ex.B3 – is the copy of proof of refund made to the travel agent Opposite Party No.1 by this Opposite Party.

Ex.B4 – is the copy of confonet case status.

Ex.B5 – is the copy of Statement.

Sd/-
MEMBER
KPS

Sd/-
MEMBER

Sd/-
PRESIDENT