

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-I,

U.T. CHANDIGARH

Consumer Complaint No.	:	CC/340/2023
Date of Institution	:	21.7.2023
Date of Decision	:	28/3/2024

Rajinder Kumar Gupta S/o Sh. Rajkishan Gupta, Resident of House No: 3448, Sector 38-D,
Chandigarh

Complainant

VERSUS

1. Makemy Trip Pvt. Ltd. Through its Manager, DLF Building No.5 Tower B DLF Cyber City,
DLF Phase 2, Sector 25, Gurugram, Haryana-122002.

2. Makemy Trip Pvt. Ltd. Through its Manager, SCO 169- 170, First floor, Sector 8-C, Chandigarh
160018

3. J.W.Marriott Hotel Chandigarh, Through its Manager, Plot No.6, Dakshin Marg, Sector 35-B,
Chandigarh 160035.

....Opposite Parties

CORAM :

PAWANJIT SINGH

PRESIDENT

ARGUED BY : Sahil Singla, Advocate for complainant.
: Sh. Gaurav Deep Goel, Advocate for OPs No.1&2.
: None for OP No.3

Per surjeet kaur, Member

Briefly stated the complainant has booked a hotel room for his son 8.2.2023 through OP No.2 with OP No.3 by paying an amount of Rs.13,574/-. However, on 11.2.2023 due to death of the brother of the complainant, the complainant approached OP No.2 to cancel reservation made for his son with OP No.3 for 11.2.2023. Accordingly the OP No.2 asked the complainant to sent email for cancellation of reservation with OP No.2 and assured refund of the amount. The complainant sent the email as asked by the OP No.2 but despite that the OPs lingered on the matter on one pretext or the other. The complainant sent many communications to the OPs for the refund of the amount the Ops did not refund the amount of Rs.13,574/- to the complainant. Alleging the aforesaid act of Opposite Parties deficiency in service and unfair trade practice on their part, this complaint has been filed.

2. The Opposite Parties NO.1&2 in the joint reply stated that the answering opposite parties are only facilitator between the concerned service provider and the intended guests as such the answering opposite parties in the present complaint were under the obligation to provide the confirmed hotel bookings to its customers like the complainant in the present case. Once the bookings are confirmed by the concerned service providers i.e. Opposite Party No. 3 in the, the same is then shared with the customer/ complainant. The location of the property of opposite party no. 3 which was on the web portal/mobile application of answering opposite party was also received by the complainant. All the details of the Hotel, amenities and the map location of the Hotel on the website of the answering opposite parties for easier access are submitted by the service provider i.e. opposite party no. 3 and the answering opposite parties do not have any control over the same. The answering Opposite Parties cannot be held responsible or liable for any deficiency caused on the part of the concerned hotel i.e. opposite party no. 3 as the answering opposite party has already fulfilled its obligation and discharged its liability towards the complainant. The answering opposite party in order to assist the complainant had supplied the complainant with the complete details of the hotel of opposite party no. 3 along with the contact details on its web portal and application and the same was clearly visible to the complainant at the time of booking. Further, the User Agreement also explicitly mention is that the answering opposite party shall not be responsible for any deviance in the standard of service provided by the concerned and service provider or the concerned Hotel. All other allegations made in the complaint has been denied being wrong.

3. OP No.3 in its reply stated that the consumer complaint is not maintainable as in the terms and conditions of the booking it has been mentioned in bold letters that "the booking was non refundable" and that no refund shall be generated in case the booking was cancelled. It is pertinent to mention that the booking was done through the opposite parties 1 & 2 (i.e. Make My Trip) and the condition that the booking would be non refundable also has been fixed by the said OPs in their wisdom. As such, when the complainant had got the booking done with his eyes and ears open, he cannot now take a somersault. Even if the booking had been got done by the complainant directly from the OP 3 (i.e. the Hotel) then also, he was duty bound to inform the hotel at least 24 hours in advance that he shall not be utilizing the services of the hotel and only in such circumstances, he would have been entitled to receive any refund from the hotel as per the terms & conditions of the hotel. Denying all other allegations made in the complaint a prayer for the dismissal of the complainant has been made.
4. Rejoinder was filed and averments made in the consumer complaint were reiterated.
5. Contesting parties led evidence by way of affidavits and documents.
6. We have heard the learned counsel for the contesting parties and gone through the record of the case.
7. The sole point for consideration in the present complaint is that who is the custodian of Rs.13,574/- the hard earned money of the complainant paid by him for the purpose of booking of room with OP No.3 through OPs No.1&2. Another point which needs to be considered is whether the complainant has availed any service of the OPs and what was the motive of the complainant to cancel the booking of the room.
8. After careful perusal of the file and the admission on the part of the OPs, the room in question was booked with OP No.3 through OPs No.1&2 and the same was cancelled by the complainant in the emergency situation of death in his family and as such the complainant could not avail the services of OP No.3.
9. Undoubtedly, the room was booked through OPs No.1&2 and as per Annexure OP-1/2 the booking was confirmed for one room for Saturday 11th February to 12th February Sunday and it is apparent from Annexure OP-1/2 that the cancellation was 100% free till Friday 10th February 2023. It is also apparent from record that due to emergency situation the OPs No.1&2 made efforts with OP No.3 to get full refund for the complainant but it is the OP No.3 who vide its email Annexure OP-1/4 replied that as per cancellation/amendment policy full retention would be applicable. Meaning thereby it is OP No.3 who despite knowing fully well that due to emergency situation cancellation was made, did not refund the amount paid by the complainant till today rather informed the complainant that he was duty bound to inform the hotel atleast 24 hours in advance that he is not utilizing the services of the hotel and only in such circumstances the complainant was entitled for refund from the hotel. However, in our opinion death is an act of the God which cannot be indicated in advance. In the present case in hand the booking of the room was cancelled due to the death of the brother of the complainant. This fact of the compelling circumstances was duly brought to the notice of the OP hotel but despite that the OP No.3 did not refund the booking amount and forced the complainant to indulge in the present unnecessary litigation. Hence, the act of OP No.3 for not paying any heed to the genuine requests of the complainant for refund as he could not avail any service due to sudden death in his family amounts to

deficiency in service and its indulgence in unfair trade practice.

10. In view of the above discussion, the present consumer complaint succeeds and the same is accordingly allowed. OP No.3 is directed as under:-

- i. to refund Rs.13,574/- with interest @9% P.A. from the date of cancellation of booking till onwards.
- ii. to pay Rs.5000/- to the complainant as compensation for causing mental agony and harassment to him;
- iii. to pay Rs.5000/- to the complainant as costs of litigation.

11. This order be complied with by the OP No.3 within 45 days from the date of receipt of its certified copy, failing which, they shall make the payment of the amounts mentioned at Sr.No.(i) & (ii) above, with interest @ 12% per annum from the date of this order, till realization, apart from compliance of direction at Sr.No.(iii) above.

12. Complaint qua OPs No.1&2 stands dismissed.

13. Pending miscellaneous application(s), if any, also stands disposed off.

14. Certified copies of this order be sent to the parties free of charge. The file be consigned.

sd/

[Pawanjit Singh]
President

Sd/-
[Surjeet Kaur]

Member