

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
PANCHKULA**

Consumer Complaint No	:	207 of 2020
Date of Institution	:	22.07.2020
Date of Decision	:	26.03.2024

Sh. Kanishak Singhal, son of Late Sh. D.R.Singhal, Resident of House No.108-P, Sector-21, Panchkula-134112(Haryana).

....Complainant

Versus

1. OYO Rooms, 325, Spaze Tech Park Tower B, Sohna Road, Gurgaon, Haryana, India, Pin Code-122001 through its Authorised Representative
2. Ritesh Aggarwal, CEO of OYO Rooms, 325, Spaze Tech Park Tower B, Sohna Road, Gurgaon, Haryana, India, Pin Code- 122001.
3. Hotel Kasauli Continental, near Pine Grove School, Dharampur- Kasauli Road, Kasauli, Himachal Pradesh-173209 through its Authorised representative.
4. Maninder Thakur, owner Hotel Kasauli Continental Near Pine Grove School, Dharampur-Kasauli Road, Kasauli, Himachal Pradesh-173209 through its authorized representative.

....Opposite Parties

COMPLAINT UNDER SECTION 35 OF THE CONSUMER PROTECTION ACT, 2019

Before: Sh. Satpal, President.
Dr. Sushma Garg, Member.
Dr. Barhm Parkash Yadav, Member

For the Parties: Sh.Anil Kumar Chauhan, Advocate for the complainant.

Sh.Puneet Tuli, Advocate for OPs No.1 & 2.

Sh.Maninder Singh Proprietor of OPs No.3 & 4.

ORDER

(Satpal, President)

1. The brief facts, as alleged, in the present complaint are, that the complainant had made reservation of rooms, on 20.08.2019, for having stay in OP No.3-Hotel for 01.09.2019, through the website of OP No.1 i.e. "oyorooms.com" wherein a booking I.D. bearing No.VJER3928 was issued. In this regard, payments were to be made at the Hotel itself. It is alleged that, on 01.09.2019, at about 2:25 P.M., the complainant along with his family, comprising of his wife, 8 month old child and mother(who is a senior citizen), reached the OP No.3 hotel, looking forward to a relaxing weekend, but after reaching at the OP No.3 hotel, which was owned by OP No.4, to the utmost amazement of the complainant and his family, the staff at the front desk of the OP No.3 hotel refused to entertain the booking and simply denied having any relation with OP No.1. It is averred that the complainant immediately, telephonically, contacted the helpline of OP No.1 at 2:40 P.M. but to no avail. It is averred that the staff of OP No.3 as well as the OP No.4, who was the owner of the hotel(OP No.3), misbehaved with the complainant by abusing the complainant in filthy, libelous and slanderous language in the presence of family of the complainant and that on raising the objections to the same by the complainant, the OP No.4 pounced on him and attacked him in a threatening and intimidating manner. The complainant was manhandled and physically assaulted and battered by the OP No.4 in the presence of employees of the OP No.3 hotel. The complainant was mentally and physically harassed and was also humiliated by the Hotel staff and management of OP No.3 hotel and OP No.4, in the presence of family members of the complainant. It is stated that the complainant with his family managed to get out of the place and saved their life and limb. In this regard, the complainant also filed a complaint at Police Station, Kasauli. Throughout this incident, no person from OP No.1 even bothered to call back and check upon the complainant and/or his family regarding their well-being or whether the complainant and his family had been properly accommodated. It is averred

that the complainant had to seek accommodation in another hotel at exorbitant rate and thus, the complainant had suffered financial loss, physical harassment, humiliation, insult, mental agony and fear for the life and limb of his family and himself because of the pathetic arrangement and tie ups between OPs No.1 & 2 on one hand and OP No.3 & OP No.4 on the other hand. After the incident, the complainant had sent several emails to the OPs No.1 & 2 for resolving the issue but to no avail. Due to the act and conduct of the OPs, the complainant has suffered financial loss and mental agony, physical harassment; hence the present complaint.

2. Upon notice, the OPs No.1 & 2 appeared through counsel and filed written statement, wherein the preliminary objection has been raised that the complainant has wrongly impleaded Sh. Ritesh Aggarwal as OP No.2, who has no connection or involvement with the present case; there is no prima facie case against OPs No.1 & 2; the complainant has suppressed the material facts; it is submitted that the OP No.1 is one of the platform in the Hospitality industries, which operate its platform in the name and style of "OYO Rooms". It is submitted that as per the policy & business model of the OPs No.1 & 2, it executes agreement with the owner of several Hotels/Guest Houses in the country and promotes the said Hotels/Guest Houses for hiring their rooms. It is submitted that the role of the OP No.1 is only limited to the extent of the arranging of the booking through its platform and rest of the operational liability, if any, is of the owner of the said Hotel/Guest House. It is submitted that Ops No.1 & 2 are not at fault as all the disputes and arguments had taken place between the complainant and OPs No.3 & 4. It was the OPs No.3 & 4, who resorted to violence and did not accept the bookings made by the complainant. It is further submitted that representative of the OPs No.1 & 2 provided an alternative accommodation in another Hotel, namely, OYO 46600 Green View Cottage but the complainant did not check-in due to the reasons best known to him and choose to book a non-OYO Hotel. Thereafter, as a goodwill gesture, an email dated 05.09.2019 was sent by representative of Ops No.1 & 2 to the complainant offering a refund of the booking difference amount for non-OYO Hotel (post sharing invoice), cab charges and a complimentary stay with OYO of INR1000/-, which was vehemently denied by the complainant vide email dated 10.9.2019. The complainant was adamant on receiving of Rs. 5,00,000/- as compensation from the OPs No.1 & 2, which is against the policy of OPs No.1 & 2. It is submitted that as per "no warranty clause" and terms and conditions contained in the usage terms, no liability qua any lapses or negligence on the part of above hotel i.e. OPs No.3 & 4 can be fastened upon the OPs No.1 & 2.

On merits, the pleas and assertions made in the preliminary objections have been reiterated and it has been prayed that there is no deficiency in service on the part of the OPs No.1 & 2 and as such, the complaint of the complainant is liable to be dismissed.

Upon notice, the OPs No.3 & 4 appeared through counsel and filed written statement by raising preliminary objection that the complainant has not come with clean hands as he has concealed the material facts. It is submitted that the complainant had misbehaved with the lady employee of the hotel in drunkard state and forcefully demanded the room for Rs.1,000/-, which was listed for minimum Rent of Rs.6,000/-. He concealed this fact that he intimidated and committed violence on OP No.4; the present complaint is not maintainable because there was no relationship of the consumer and service provider between the complainant and OPs No.3 & 4; no

consideration amount was ever paid by the complainant to OPs No.3 & 4. It is submitted that the real facts are that on 01.09.2019, the complainant approached the Hotel i.e. OP No.3 and he was drunk at that time and he started misbehaving with the receptionist lady/employee of the hotel i.e. OP No.3. The complainant claimed that he has booked room in the Op's Hotel but after inspection, when lady receptionist informed him that hotel has no booking in his name, then he started abusing and misbehaving with her. By hearing the noise, the OP No.4 came to the reception and asked the receptionist about the matter, who told that the complainant was misbehaving. It is submitted that, thereafter, the OP No.4 asked the complainant, who claimed that he has booked Room on OYO site and he was informed by the OP No.4 that Hotel had stopped to take booking of OYO. It is submitted that the OP No.4 told complainant that in the Hotel premises there was no sign board of OYO Rooms and hotel has no link with OYO and that the OP No.4 also showed the notice affixed on the main door of the hotel, where it was clearly mentioned that they(OPs No.3 & 4) did not accept booking from OYOs. It is submitted that the complainant again started abusing the OP No.4 and demanded the room for Rs.1,000/-, which was listed for Rs.6,000/- tariff/rent. The OP No.4 told the complainant that hotel-OP No.3 cannot give room at the rate of Rs.1,000/- because they have to deposit tax more than that. It is submitted that the matter qua misbehavior by the complainant was reported to the local police, having territorial jurisdiction. The rest of the allegations alleged by the complainant has been denied and it has been prayed that there is no deficiency in service on the part of the OPs No.3 & 4 and as such, the complaint is liable to be dismissed.

3. Replication to the written statements of the OPs No.1 to 4 was filed by the complainant reiterating the contents of the complaint while controverting the contentions of the OPs.

4. To prove the case, the learned counsel for the complainant has tendered affidavit(Annexure C-A) along with documents Annexure C-1 to C-4 in evidence and closed the evidence by making a separate statement. On the other hand, the learned counsel for the OPs No.1 & 2 has tendered affidavit as Annexure R-1/A along with documents as Annexure R-1/1 to R-1/3 and closed the evidence. The authorized representative on behalf of the OPs No.3 & has tendered affidavit as Annexure R-3/A along with document as Annexure R-3/1 and closed the evidence.

During pendency of the case, the Maninder Singh, Proprietor of Ops No. 3 & 4 has tendered the affidavits of Receptionist and Supervisor, namely, Ms. Ritika and Sh. Braham Singh, which are taken on record as Mark 'A' & 'B' respectively for proper and fair adjudication of the case.

During arguments, the learned counsel for the Ops No.1 & 2 has tendered the terms and condition of the agreement executed between OP No.1 on one hand and Op No.4 on the other hand, which is taken on record as Mark 'C' for proper and fair adjudication of the case.

5. We have heard the learned counsels of the complainant, OPs No.1 & 2 as well as Sh. Maninder Singh, Proprietor of OPs No.3 & 4 and gone through the record available on file including the written arguments filed by the complainant, OPs No.1 & 2 as well as OPs No.3 & 4, minutely and carefully.

6. During arguments, the learned counsel for the complainant has reiterated the averments as made in the complaint as also in the affidavit Annexure C-A and contended that the OPs No.3 & 4, wrongly and without any valid justification had denied to accept the confirmed booking of the complainant bearing ID No.VJER3928(Annexure C-1) qua stay w.e.f. 01.09.2019 to 02.09.2019. It is argued that the OP No.4 along with the staff of OP No.3 misbehaved with the complainant on 01.09.2019 and abused him in filthy, libelous and slanderous language in the presence of his family members. It is further argued that no assistance was provided by OPs No.1 & 2 to the complainant even after the intimation of denial of the confirmed booking. Concluding the arguments, the learned counsel for the complainant had to make stay arrangements for him and his family members in another hotel at the exorbitant rates and thus, the complaint is liable to be accepted by granting the relief as claimed for in the complaint.

7. The OPs No.1 & 2 has contested the complaint on the basis of preliminary objection as well as on merits. The learned counsel appearing on behalf of the OPs No.1 & 2, during arguments, reiterated the averments as made in the written statement as also in the affidavit (Annexure R-1/A) and contended that the representative of OPs No.1 & 2 had offered an alternative accommodation in another hotel, namely, OYO 46600 Green View Cottage to the complainant but the same was not accepted by him due to the reasons best known to him. The learned counsel argued that the complainant was further offered, as goodwill gesture, vide email dated 09.05.2019, a refund of the booking difference amount for non-OYO Hotel(post sharing invoice), cab charges and a complimentary stay with OYO of INR 1000/-, which was vehemently denied by him(the complainant) vide email dated 10.09.2019. It is argued that the denial of the confirmed booking bearing ID No.VJER3928(Annexure C-1) by the OP No.3 was wrong and invalid as the same was in violation of the terms and conditions of the agreement(Mark 'C') entered between the OPs No.1 & 2 on one side and OPs No.3 & 4 on the other side.

Concluding the arguments, the learned counsel contended that no liability qua any lapses and negligence or deficient services on the part of hotel i.e. OP No.3 or its owner(OP No.4) can be fastened upon the OPs No.1 & 2 as per the usage terms; thus it was prayed that the complaint be dismissed being frivolous, baseless and meritless.

8. Sh. Maninder Singh(OP No.4) has contested the complaint on behalf of the OPs No.3 & 4, primarily, on the ground that there was no relationship of the consumer and service provider between the complainant on one hand and the OPs No.3 & 4 on the other hand. The OP No.4, during arguments, contended that no consideration was received from the complainant and thus, he does not fall under the category of consumer as defined under the Consumer Protection Act, 2019. Reliance has been placed on the case law titled as Morgan Stanley Mutual Fund Vs. Kartick Das 1994 SCC (4) 225, JT 1994(3)654.

9. The OP No.4 has further raised the objection that the complainant has not approached the Commission with clean hands as he has concealed the true and material facts. The OP No.4 argued that the complainant was in drunkard state on 01.09.2019, when he visited the OP No.3 hotel and misbehaved with lady receptionist and committed violence on the OP No.4. It was

argued that the matter was reported to police vide application, on the same day at 4:30 p.m. Reliance was placed on the following case laws:-

i. *Canara Bank and Ors. Vs. Debasis Das and Ors Suit No. 50752/2016 Iqbal Malik Vs. SDMC 13/23(SC).*

ii. *Kimti Lal Rahi Vs. Union of India, AIR 1993 Delhi 211(Delhi HC).*

10. On merits, the OP No.4 argued that the OP No.3 had discontinued to accept the booking from OYO i.e. OP No.1 w.e.f. 15.08.2019 and in this regard, an email was sent on 16.07.2019 to OP No.1 qua termination of the contract between them. It was vehemently argued that a sign board was affixed at the outside of the OP No.3 hotel mentioning that booking made through OYO were not accepted and thus, it has been prayed that the complaint is liable to be dismissed qua OPs No.3 & 4.

11. Before going into the merits of the case, we deem it proper to look into the objections raised by OPs No.3 & 4 qua the relationship of consumer and the service provider between the complainant on one hand and the OPs No.3 & 4 on the other hand. As per confirmed booking ID No.VJEF3928(Annexure C-1), room tariff amounting to Rs.1,014/- was to be paid by the complainant at the time of arrival at the hotel i.e. OP No.3. As per definition of consumer given in Section 2(7) of the Consumer Protection Act, 2019, a person who has made the payment in advance or has promised to pay falls under the category of consumer. For the sake of clarity and convenience, the definition of a consumer as given Section 2(7) in the Consumer Protection Act, 2019 is reproduced as under:-

- i. Consumer means any person who buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose.
- ii. Consumer means any person who hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised or partly paid and partly promised or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

12. From the above, it is clear that a person who has promised to make the payment is also covered under the definition of the “Consumer”. In the present case, the complainant was supposed to make the payment at the time of “check-in” by him in the hotel(OP No.3) but he was not allowed “check-in” by the OPs No.3 & 4. It is not the case of OPs No.3 & 4 that the complainant had refused to make the payment qua room tariff. Therefore, the objection raised by the OPs No.3 & 4 qua the relationship of the consumer and service provider between the

complainant on one hand and the Ops No.3 & 4 on other hand is not tenable.

13. Now, the question that arises for adjudication before the Commission, is, whether the denial of the confirmed booking ID No.VJER3928 (Annexure C-1) by OPs No.3 & 4 was valid, legal and justified.

14. Admittedly, the complainant was not allowed to check-in, on 01.09.2019, in OP No.3-hotel on the basis of his confirmed booking (Annexure C-1) made by him through OPs No.1 & 2. The OPs No.3 & 4 have taken the plea that they had broken the tie-up with the OYOs i.e. OPs No.1 & 2 and in this regard, invited our attention towards an email dated 16.07.2019 sent by OP No.3 to OP No.1.

The aforesaid plea is not tenable because the OPs No.3 & 4 were bound to accept the booking made by any person through OYO i.e. OP No.1, by virtue of the terms and conditions contained in the agreement(Mark 'C') entered between OP No.4 with OP No.1 on 30.06.2019(Mark 'C'). As per the said agreement dated 30.06.2019, there was lock-in period of 12 months and thus, the said email sent by OPs No.3 & 4 to OP No.1 terminating the agreement unilaterally was of no consequence. Thus, OPs No.3 & 4 has failed to adhere to the terms and condition as contained in the said agreement dated 30.06.2019 (Mark 'C') entered between OPs No.3 & 4 on one side and OPs No.1 & 2 on other side, while not accepting the confirmed booking ID No. VJER3928(Annexure C-1).

15. Further, the defence plea taken by OPs No.3 & 4, qua the misbehavior of the complainant, on his arrival on 01.09.2019 at OP No.3 hotel, with the lady receptionist and other staff member, is not tenable because no name of any receptionist and supervisor was mentioned in the written statement filed by OPs No.3 & 4. Moreover, the name of receptionist and supervisor i.e. Ms.Reetika and Sh. Brahm Singh, whose affidavits have been tendered as Mark 'A' & 'B', were not mentioned in the police report lodged by the OP No.4 in Police Station, Dharampur on 01.09.2019 at 04:19 P.M. Therefore, no reliance can be placed on the affidavits of Ms. Reetika and Sh. Brahm Singh.

The aforesaid facts lead us to the irresistible conclusion that there was gross negligence and deficiency on the part of OPs No.3 & 4, while not accepting the confirmed booking ID No.VJER3928 (Annexure C-1) as provided by the OP No.1 through its website to the complainant.

16. Now, coming to the liability of OPs No.1 & 2, it is found that the complainant has made specific, consistent and categorical assertions in para no.7 of his complaint that no assistance or help was provided to him(the complainant) by OP No.1, after the incident on 01.09.2019 at the OP No.3-hotel. The plea taken by OPs No.1 & 2 in defence that the complainant was offered an alternative accommodation in hotel, namely, OYO 46600 Green View Cottage is not acceptable for want of proof. No email or any other documentary evidence, much less cogent, credible and adequate, has been placed on record by OPs No.1 & 2 in support of the fact that the complainant was offered the alternative arrangement in said hotel i.e. OYO 46600 Green View Cottage as alleged. It is not the case of OPs No.1 & 2 that the intimation qua

the alleged incident i.e. quarrel between the complainant and the OPs No.3 & 4 was not received by them. Therefore, after the receipt of intimation qua the denial of the confirmed booking to the complainant, a heavy duty was cast upon the OPs No.1 & 2 to provide the best possible accommodation to him and his family members but the OPs No.1 & 2 have been found to have failed to provide any such accommodation to the complainant; therefore, the OPs No.1 & 2 were also deficient, while rendering services to the complainant.

17. In relief, the complainant has prayed for directing the Ops to pay a sum of Rs.5,00,000/- along with interest from the date of incident. The complainant has also claimed the compensation of Rs.5,00,000/- & 6,000/- on account of mental agony, harassment and litigation charges respectively.

18. As a sequel to above discussion, we partly allow the present complaint with the directions to the OPs No.1 & 2 as well as the OPs No.3 & 4 to pay a total compensation of Rs.40,000/- i.e. Rs.20,000/- shall be paid by the OPs No.1 & 2 and Rs.20,000/- shall be paid by the Ops No.3 & 4, to the complainant on account of mental agony and physical harassment as suffered by him and his family members. Further, a compensation of Rs.5,500/- shall be paid, in equal proportion, by the OPs No.1 & 2 as well as the OPs No.3 & 4 to the complainant as litigation charges.

19. The OPs No.1 & 2 as well as the Ops No.3 & 4 shall comply with the order within a period of 45 days from the date of communication of copy of this order, failing which the above awarded amount shall carry an interest @9% per annum (simple interest) w.e.f. from the date of this order till realization. The complainant shall be at liberty to approach this Commission for initiation of proceedings under Section 71/72 of CP Act, against the OPs No.1 & 2 as well as the Ops No.3 & 4. A copy of this order shall be forwarded, free of cost, to the parties to the complaint and file be consigned to record room after due compliance.

Announced on:26.03.2024

Dr.Barhm Parkash Yadav	Dr.Sushma Garg	Satpal
Member	Member	President

Note: Each and every page of this order has been duly signed by me.

Satpal

President

