

DISTRICT CONSUMER DISPUTES REDRESSAL FORUM-II, U.T. CHANDIGARH

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Consumer Complaint No : 441 of 2018

Date of Institution : 08.08.2018

Date of Decision : 20.08.2019

Gautam Dutt s/o Late Sh.S.K.Dutt,
resident of H.No.2163, Sector 21-C,
Chandigarh 160022

.....Complainant

Versus

1] Cleartrip Pvt. Ltd., 312-316, 3rd Floor, Vipul Agora Building, next to Sahara Mall,
M.G.Road, Gurgaon, 122002 through its Proprietor/Manager/Authorised Signatory.

2] Go Airlines (India) Ltd., 1st Floor, C-1, Wadia International Centre (WIC), Pandurang
Budhkar Marg, Worli, Mumbai 400025 through its Proprietor/Manager/Authorised
Signatory

..... Opposite Party

BEFORE: SMT.PRITI MALHOTRA PRESIDING MEMBER

SH.RAVINDER SINGH MEMBER

For Complainant : Ms.Shiti Jain Dutt, Advocate

For Opposite Party : None for OP No.1.

Sh.Gaurav Bhardwaj, Adv. for OP-2

PER RAVINDER SINGH, MEMBER

Briefly stated, the complainant on 13.4.2018 booked a flight from Bangalore to Pune for travel on 14.7.2018 by paying amount of Rs.1721/- on the Online site of Clertrip (Ann.C-1). The complainant cancelled the said ticket on the next day of booking i.e. on 14.4.2018 by calling on the customer care of Opposite Party No.2 and he was assured to get refund from Opposite Party NO.1 within 5-7 working days. However, when the complainant did not get any refund, he enquired about it from the customer care of Opposite Party No.1 on 28.4.2018, who in turn told that the booking was still active on their site and was not cancelled (Ann.C-2). Then the complainant again made cancellation on the Online site of Opposite Party No.1 and on 12.5.2018, he received a mail from Opposite Party NO.1 about Rs.0/- as refund on cancellation of the said booking (Ann.C-3).

It is submitted that the complainant got refund receipt from Opposite Party NO.2 according to which they charged Rs.1166/- as cancellation charges on the said ticket which is nearly more than 65% of the ticket amount, whereas the complainant was misguided by quoting the ticket as refundable. It is also submitted that the complainant booked the refundable ticket with a belief that the amount paid for the ticket shall be refunded back to him in case of cancellation whereas only Rs.683/- was refunded by Opposite Party NO.2. Furthermore, the Opposite Party NO.1 instead of making the refund of said amount, zeroed the refund of Rs.683/- and no refund was made to him.

Alleging the said act & conduct of OPs as gross deficiency in service, hence this complaint has been filed.

2] Opposite Party NO.1 has filed reply stating that it merely provides a facility/platform for booking of flight tickets and actual service provider are the Airline. It is stated that while making booking of the air-ticket in question, the complainant received a cash back discount of Rs.400/- and at the time of making booking, a convenience fee of Rs.270/- was charged for transaction done Online using credit card, debit card, net banking payment. It is also stated that the Go Airline/OP No.2 has provided the ticket to Opposite Party NO.1 at the cost of Rs.1851/- and Opposite Party NO.1 provided it to the complainant on discounted rate of Rs.1721/-. It is submitted that on receipt of online cancellation request on 12.5.2018, Opposite Party No.1 raised the refund notice on Opposite Party No.2 and Opposite Party No.1 has processed the refund amount as duly received from Opposite Party No.2. It is also submitted that Opposite Party No.1 received refund of Rs.685/- from Opposite Party No.2 and from said amount, Opposite Party No.1 has deducted an amount of Rs.250/- towards the cancellation charges and Rs.270/- as convenience charges and has also reversed the cash back discount of Rs.400/-, thus in total Nil refund amount has been processed to the complainant. It is submitted that the Opposite Party No.1 deducted the charges as

per terms and conditions well within the knowledge of the complainant. Denying all other allegations and pleading no deficiency in service, the Opposite Party has prayed for dismissal of the complaint.

The Opposite Party No.2 has also filed reply stating that a request for cancellation was made by the wife of the complainant and as the tickets were booked as a special fair, the same were non-refundable as per Ann.R-1. It is stated that the ticket in question was not refundable as the same was offered to the complainant at a special price, so there was no question of refund. Other allegations have been denied with a prayer to dismiss the complaint.

3] Rejoinder has been filed by the complainant reiterating the assertions as made in the complaint.

4] Parties led evidence in support of their contentions.

5] We have heard the Id.Counsel for the parties and perused the entire evidence on record.

6] After thorough examination of complete facts in issue and evidence on record, it has been noticed that the complainant on 13.4.2018 took ticket of Go Airlines for air-journey from Bengaluru to Pune for 14.7.3028 on payment of Rs.1721/- through Cleartrip/OP No.1 (Ann.C-1). The complainant, just on the next day i.e. 14.4.2018 cancelled the said ticket for travel on Go Airlines for 14.7.2018 and made a request refund of the booking amount.

7] The Opposite Party No.2/GoAirlines (India) Ltd. in its reply (Para No.6) has stated that the ticket was non-refundable and was offered to the complainant at a special price and hence no refund is permissible for the cancellation of ticket.

8] The Opposite Party No.1/Cleartrip Pvt. Ltd., in its reply stated that they have processed the request of the complainant for refund, but found it to be zero refund amount as per terms & conditions applicable thereto. It is stated by Opposite Party No.1 that after deduction of Rs.1166/- as cancellation charges by airline, they have received Rs.685/- from Opposite Party No.2. However, out of the said amount, they have deducted Rs.250/- as cancellation charges, Rs.270/- towards convenience charges and reversed discount amount of Rs.400/- and as such accordingly no amount was found to be payable to the complainant.

9] After perusal of ticket Trip ID No.180413110932 (Ann.C-1), it is found that the ticket was refundable. It means that in case of cancellation of ticket, traveler is entitled for refund of the amount of booking. On the face of the record i.e. Travel Ticket, no conditions of any kind, scribed thereon, which may substantiate the defence of Opposite Party for no entitlement for any refund in this matter. The complainant has booked the ticket on 13.4.2018 and cancelled the same on 14.4.2018 for the flight on 14.7.2018 i.e. 3 months prior to the scheduled journey. The confiscation of whole of the amount of Rs.1721/- which the complainant has paid for the ticket despite the ticket being refundable, is against established canon of law. The terms & conditions referred to at this stage by the Opposite Parties regarding booking & cancellation of the ticket in question, is superfluous and cannot be forced to be applicable in this matter. Such conditions as is envisaged from the ticket Ann.C-1 were never part of the transaction of booking of the ticket Online. The OPs cannot be permitted to dwell upon such so called irrelevant, superfluous and unreasonable guidelines/terms & conditions, as referred herein in the rebuttal to the claim of the complainant.

10] The **Hon'ble Supreme Court of India in case Central Inland Water Transport Corporation Ltd. & Anr. Vs. Brojo Nath Ganguly 1986 AIR 1571** has held as under:-

2.4

[Article 14](#)

of the Constitution guarantees to all persons equality before the law and

economic strength of the contracting parties. It will apply where the inequality i

2.5

In the vast majority of cases, however, such contracts with ur [section 16\(1\)](#)

of the Indian Contract Act. The majority of such contracts are in a sta [section 23](#)

of the Indian Contract Act, as opposed to public policy.

capable on proper occasion, of expansion or modification. Practices which were c

The normal rule of Common Law has been that a party who seeks to enforce an agree

11] It has been noticed that due to emergence of Online booking system, the

12] The Airlines often overbook their flights and keep their portals oper

Hon'ble Supreme Court of India in case Central Inland Water Transport Corporat

- 13] The regulatory authorities have failed to consider the issues, as discus
- 14] The Ministry of Civil Aviation shall consider this matter and pass appr
- 15] The confiscation of Rs.1721/-, paid by the complainant while booking the
- 16] Keeping into consideration the above facts & circumstances of the case,
Keeping in view the powers as envisaged under Section 14(f) The Consumer

Certified copy of this order be sent to the parties, as per rules.

Announced

20th August, 2019

Sd/-

(PRITI MALHOTRA)

PRESIDING MEMBER

Sd/-

(RAVINDER SINGH)

MEMBER