

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION (EAST)

GOVT. OF NCT OF DELHI

CONVENIENT SHOPPING CENTRE, FIRST FLOOR,

SAINI ENCLAVE, DELHI – 110 092

C.C. No.515/2021

Prashant Sagar Rustagi,

E-54, 3rd Floor, Preet Vihar, Delhi-110092.

.....Complainant

Versus

The Country Inn & Suites by Radisson

through its Director(s)/Owner(s)

64/6, Site-IV, Sahibabad, Ghaziabad,

UP-201010.

.....OP

Date of Institution: 22.12.2021

Judgment Reserved on: 18.08.2023

Judgment Passed on: 29.08.2023

QUORUM:

Sh. S.S. Malhotra (President)

Sh. Ravi Kumar (Member)

Ms.Rashmi Bansal (Member)

Order By: Sh. Ravi Kumar (Member)

JUDGMENT

The Complainant has alleged deficiency in service on the part of OP in not refunding the advance amount paid by him for booking the venue for his daughter's marriage on 30.11.2020 i.e Royal Heritage Banquet and not providing changed venue i.e Imperial Hall for 10.12.2020 to which date the marriage was postponed due to COVID-19 and Complainant was constrained to perform the marriage of his daughter at a different Venue.

1. The Complainant had initially impleaded Magnum Venture Limited as OP2. On 11.02.2022 on the request of the Complainant, OP2 was dropped from the array of Parties and Notice was issued to OP1 i.e. The Country Inn & Suits only. Therefore cause title of the judgment depicts only one OP.
2. The Complainant in his complaint has contended that he approached OP for booking Marriage Hall for the marriage of his daughter for 30.11.2020. He initially paid Rs.40,000/- and Rs.10,000/- on 22.07.2020 to the OP and thereafter he paid Rs.55,000/- on 17.08.2020 and Rs.1,75,000/- on 03.10.2020 thus totalling Rs.2,80,000/- has been paid to OP & the name of the Hall which was booked, was 'Imperial Hall' at the venue of OP, which was the subsequently changed by the Complainant to 'Royal Heritage Hall' on 11.11.2020 in which the number of guests to be accommodated were 200 and the package was costing Rs.7,00,000/-.
3. On 17.11.2020 the Complainant's daughter whose marriage was to be performed on 30.11.2020 got infected with COVID-19 and Complainant's wife and Son also got infected on 22.11.2020. Later Complainant also got infected by COVID-19. His condition was serious and he was admitted in Apollo Hospital on 24.11.2020, from where he was discharged on 04.12.2020.
4. In the above circumstances the Complainant and his family decided to postpone the Wedding Ceremony of his daughter to a new date i.e. 10.12.2020 (after 11 days) and they requested OP by e-mail on 21.11.2020 to cancel the booking and refund Rs. 2,80,000/- i.e. booking amount but there was no reply from OP.
5. Later, son of the Complainant again approached OP through e-mail on 29.11.2020 but again there was no reply from OP. Subsequently, on account of the Government of Uttar Pradesh advisory, the total number of Guests for marriage functions purpose was restricted to maximum 100 only. There was further meeting of the Complainant and representative of the OP with the request to shift the venue of marriage ceremony to a smaller Hall i.e. *Majestic Hall* for total price consideration of Rs.3,50,000/- with the revised capacity of number of Guests as 100. As per the Complainant, OP assured that Rs.2,80,000/- would be adjusted in the total price consideration of Rs. 3,50,000/- for *Majestic Hall* and the Complainant had to pay only balance amount of Rs.70,000/- and to this effect an e-mail dated 06.12.2020 was also sent by the Complainant to the OP. Marriage ceremony was to be performed on 10.12.2020.
6. On 07.12.2020 the Complainant received a message from the OP stating that the venue fixed previously i.e. Royal Heritage Hall has been approved with the total number of guests of 200 persons for Rs.7,00,000/-. On 07.12.2020 at 01:19 pm the Complainant's son wrote another e-mail to the OP wherein he opposed booking of previous hall i.e. Royal Heritage Hall and reminded the OP about the new hall i.e. *Majestic Hall*. On the same day at 03:50 pm the Complainant received an e-mail from the representative of OP which conveyed that Royal Heritage Hall booked for the purpose of has been cancelled and the amount paid by the Complainant was not refundable.
7. Aggrieved by all the above discussions and email the Complainant again made request to hold the wedding at the smaller hall i.e. *Majestic Hall* as agreed between them and one text message was sent on 07.12.2020 to Mr. Manoj Abraham, representative of OP. On 08.12.2020 again Mr. Manoj Abraham was approached with the request to arrange for the marriage ceremony at *Majestic Hall*, however he informed that all Wedding Banquet Venue for 10.12.2020 have been sold out and there was no scope left for arranging the wedding ceremony of Complainant's daughter. The Complainant was left in lurch as just 2 days after the Complainant's daughter was to get married on 10.12.2020 and left with no choice the

Complainant was constrained to book a new venue at *Jhankar Banquet, Preet Vihar* where the marriage of his daughter was performed.

8. Legal Notice was sent to the OP by the Complainant but to no avail and thereafter Complainant has filed this complaint before this Commission seeking following reliefs:

- To direct the OP to refund Rs. 2,80,000/- (Rupees Two lakh Eighty Thousand) together with an interest at the rate of 18% p.a. from the date of cancellation of the booking of the Wedding Hall namely 'Royal Heritage Hall' i.e. 20.11.2020 till the date of actual payment to the Complainant.
- To direct the OP to pay Rs.1,00,000/- to the Complainant as compensation for causing undue hardship, harassment, mental agony and pain.
- To direct the OP to pay Rs.50,000/- to the Complainant as litigation cost.
- To direct the OP to pay Rs.50,000/- to the Complainant as cost of the present complaint.
- Pass any other or further order(s) which this Commission deems fit and proper under the facts and circumstances of the case in the interest of justice.

9. Alongwith his complaint the Complainant filed following documents:

- Copy of the acknowledgement/receipt number 3386 and 3387 dated 22.07.2020 of the payment made by the Complainant to the OP.
- Copy of the demand letter dated 17.08.2020 and 03.10.2020 raised by the OP and the acknowledgement/receipts of the payment made by the Complainant to the OP.
- Copy of the receipt dated 11.11.2020 issued by the OP.
- Copy of the SARS-Cov-2 (COVID 19) detection report- PCR report of the Complainant's daughter and that of himself, his wife & his son.
- Copy of the Admission Slip dated 24.11.2020 and the Discharge Slip dated 04.12.2020 pertaining to the Complainant.
- Copy of the e-mail dated 21.11.2020 sent by the Complainant to the OP.
- Copy of the e-mail dated 29.11.2020 sent by the Complainant's son to the OP.
- Copy of the e-mail dated 06.12.2020 sent by the Complainant to the OP.
- Copy of the e-mail dated 07.12.2020 sent by the Complainant's son to the OP.
- Copy of the e-mail dated 07.12.2020 sent by the OP to the Complainant.
- Screenshot of the correspondence dated 07.12.2020 between the Complainant and Mr. Manoj Abraham.
- Screenshot of the text message sent by Mr. Manoj Abraham to the Complainant.
- Copy of the receipt dated 10.12.2020 pertaining to the Booking of Jhankar Banquet.
- Copy of the e-mail dated 26.12.2020 sent by the Complainant's son to the OP.
- Copy of the Legal Notice sent by the Complainant to the OP.
- Copy of the Legal Notice dated 03.09.2021 along with the Speed Post receipt and the corresponding tracking report and the copy of the Legal Notice dated 15.12.2021, screenshot of the notice sent on 15.12.2021 via e-mail.

- Certificate under section 65-B of the Indian Evidence Act.
 - Complainant's ID Proof.
10. Notice was issued to OPs and Joint Reply by OP1 & OP2 has been filed denying the contents of the complaint filed by the Complainant. OP has stated that Complainant had booked initially 'Imperial Hall' on 22.07.2020 for 100 Guests and deposited Rs.50000/- and the total cost was Rs.350000/-. The Complainant had also signed the Agreement for the same. All the payments made by the Complainant thereafter were for 'Imperial Hall' only for the wedding ceremony for his daughter on 30.11.2020.
 11. Some time before 11.11.2020 the Complainant changed his mind and wanted to increase the number of guests from 100 to 200 and a revised Agreement was signed and venue was changed from 'Imperial Hall' to 'Royal Heritage Hall' for which the total amount was fixed at Rs.7,00,000/- and two complementary Rooms were also offered. The earnest money deposited by the Complainant was non refundable. However Complainant postponed the date of Wedding Ceremony from 30.11.2020 to 10.12.2020.
 12. OP has denied that there was any decision taken on 06.12.2020 for finalizing Majestic Hall for the charges of Rs.3,50,000/- and has stated that there was no Agreement signed for the same. The venue was Royal Heritage Hall only for 200 guests and not 100 guests as stated by the Complainant. The Complainant violated the terms of Agreement dated 11.11.2020 and conducted the marriage ceremony of his daughter at altogether different venue i.e. "Jhankar Banquette Preet Vihar, Delhi." OP has stated that how it is possible for the Complainant would change the venue after 08.12.2020 for holding function on 10.12.2020 at a different venue despite of the fact that venue at Royal Heritage Hall was still available with the OP. In fact the Complainant had no intention to conduct the function at the venue of OP and he is making story to get the refund of the amount. The Complainant is bound by the Agreement dated 11.11.2020 wherein under para 2 it is clearly mentioned that the earnest amount deposited was not refundable.
 13. Complainant has filed Rejoinder to the Reply of the OP reiterating the contents of his complaint and has stated that no service has been provided by OP and OP even sold out the venue to some third person and at the eleventh hour he had to make arrangements for the marriage of his daughter at a different venue. Complainant has further stated that he visited OP on 06.12.2020 in its office and had verbal conversation with Ms. Roopa Maini and OP agreed to book Majestic Hall for Rs. 3,50,000/- in place of Royal Heritage Hall and as per OP's request he made e-mail also confirming the same. However, OP took a different stand and confirmed booking of Royal Heritage Hall. Again on 07.12.2020 Complainant sent text message to Mr. Manoj Abraham, Representative of OP apprising him of the assurance given by them however on 08.12.2020 he was informed by Mr. Manoj Abraham by way of text message that all the wedding banquet venue for 10.12.2020 have sold out and there was no scope left for arranging the wedding ceremony of the Complainant's daughter. As a result the Complainant had to rush and search for alternative wedding venue and booked a new venue namely Jhankar Banquet Preet Vihar for 10.12.2020 where the marriage of his daughter was performed. The Complainant has also stated in his Rejoinder that w.r.t. the terms & conditions of the contract OP is forfeiting the entire amount mentioning as 'Non-Refundable' which is heavily loaded in favour of the OP and amounts to Unfair Trade Practice.
 14. The Complainant has filed its evidence by way of affidavit. He has filed following documents along with the complaint:
 - Copy of the acknowledgement/receipt number 3386 and 3387 dated 22.07.2020 payment made by the Complainant as ANNEXURE A1.
 - Copy of the demand letter dated 17.08.2020 and 03.10.2020 and the acknowledgement/receipts of the payment made by the Complainant to the opposite party annexed as ANNEXURE A2 (COLLY) and ANNEXURE A3 (COLLY) respectively.
 - Copy of the receipt dated 11.11.2020 issued by the Opposite Party as ANNEXURE A4.
 - Copy of the SARS-Cov-2 (COVID 19) detection - PCR report of the Complainant's daughter and that of the Complainant himself, his wife, his son are annexed as ANNEXURE A5.
 - Copy of the admission slip dated 24.11.2020 and the discharge slip dated 04.12.2020 as ANNEXURE A6 and ANNEXURE A7.
 - Copy of the E-Mail dated 21.11.2020 sent by the Complainant to the opposite party no.1 as ANNEXURE A8.

- Copy of the E-Mail dated 29.11.2020 sent by the Complainant's son to the opposite party no.1 as ANNEXURE A9.
 - Copy of the E-Mail dated 06.12.2020 sent by the Complainant to the opposite party no. 1 as ANNEXURE A10.
 - Copy of the E-Mail dated 07.12.2020 sent by the Complainant's son to the opposite party no.1 as ANNEXURE A11.
 - Copy of the E-Mail dated 07.12.2020 sent by the opposite party to the Complainant as ANNEXURE A12.
 - Screenshot of the correspondences dated 07.12.2020 between the Complainant and Mr. Manoj Abraham as ANNEXURE A13.
 - Screenshots of the text message sent by Mr. Manoj Abraham to the Complainant as ANNEXURE A14.
 - Copy of the receipt dated 10.12.2020 pertaining to the booking of the said Jhankar banquet as ANNEXURE A15.
 - Copy of the E-Mail dated 26.12.2020 sent by the Complainant's son to the opposite party as ANNEXURE A16.
 - Copy of legal demand notice sent by the Complainant to the opposite party as ANNEXURE 17.
 - Screenshot of the notice sent on 15.12.2021 via E-mail are ANNEXURE A18 (COLLY) and ANNEXURE A19.
15. On 11.10.2022 OP was ordered to file its evidence and the matter was fixed on 23.01.2023 for the said purpose however none appeared for the OP and OP was proceeded ex-parte.
16. This Commission has heard the arguments of both sides and perused the records.
17. It is not in dispute that marriage of the daughter of the Complainant was scheduled on 30.11.2020 and Complainant had booked on 22.07.2020 a Banquette Hall of OP to accommodate 100 guests i.e. 'Imperial Hall' and the cost was Rs.3,50,000/- and the Complainant had paid Rs.50,000/- vide receipt no. 3386 & 3387 both dated 22.07.2020. The Complainant was supposed to pay 30% of the booking amount and he made further payment of Rs. 55,000/- on 20.08.2020 vide receipt no. 2850. The Complainant further paid Rs.1,75,000/- on 26.10.2020 thus totalling Rs.2,80,000/-. However, later Complainant changed his mind and instead of 'Imperial Hall' a bigger hall i.e. 'Royal Heritage Hall' to accommodate 200 guests was booked at the cost of Rs.7,00,000/-.
18. Subsequently on account of Covid-19, the whole family of the Complainant got infected at very crucial time just 10 days prior to the marriage day, which was fixed on 30.11.2020 and Covid-19 restrictions were in place. This made the Complainant to postpone the marriage of his daughter from 30.11.2020 to 10.12.2020 (after 11 days) and Complainant requested OP to change the venue from bigger hall to smaller one i.e. Royal Heritage Hall to Majestic Hall. However there is no evidence submitted by the complainant by way of any signed Agreement/document to this effect rather he is relying on the confirmatory e-mail sent by his son on 07.12.2020 to OP.
19. As per the conversation between the parties the Complainant wrote email dated 07.12.2020 and the reply of OP dated 07.12.2020 by way of email wherein OP informed that as per the contract the amount was non refundable and they are ready to adjust the advance deposited for 30.11.2020 to the date of 10.12.2020 lunch event for 200 persons for Rs.7,00,000/-. This followed further communication by way of text message dated 07.12.2020 and 08.12.2020 wherein Mr. Manoj Abraham Representative of OP informed that all banquet venues are sold out for the date 10.12.2020. *This aspect of exchange of emails and text message as above are not disputed/rebutted specifically by the OP and its denial is general in nature in their written statement.*
20. OP is relying upon Agreement dated 11.11.2020 in not refunding the amount to the Complainant. The said Agreement is not even in proper format and it is rather in a shape of a receipt. There are catena of judgements wherein such Terms & Conditions of an Agreement have been held to be heavily loaded in favour of one party and amounts to Unfair Trade Practice. Hon'ble Supreme Court in *Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghavan and Ors* (Civil Appeal No.12238 of 2018 and 1677 of 2019) 2019 SCEJ 528 has held that *'a term of contract will not be final and binding if it is shown that the Flat purchasers had no option but to sign on the dotted line'*.

21. Though the contention of the OP that it is not bound to refund the amount deposited by the Complainant is untenable however keeping in view the facts of the case that the time gap between shifting of Marriage ceremony date was only 11 days i.e. from 30.11.2020 to 10.12.2020 and complainant approaching OP to change the venue and negotiations were going on between 06.12.2020 and 08.12.2020 then equity demands that OP should be directed to refund the amount after deduction 20% of the amount deposited by the Complainant.

For the reasons stated above, this Commission holds OP liable for deficiency in service and orders as follows:

- OP to refund Rs.2,24,000/- alongwith interest @7% p.a. from 22.12.2021 to the Complainant within 30 days from the date of receipt of this Order, failing which OP would pay interest @9% p.a. on the said amount till the date of realisation.

No order as to cost and other expenses.

C. copy of the Order be supplied/sent to the Parties free of cost as per rules.

File be consigned to Record Room.

Announced on 29.08.2023.