

**In the District Consumer Disputes Redressal Forum  
Alipurduar  
Madhab More, Alipurduar  
Pin. 736122**

**Complaint Case No. CC/5/2023  
( Date of Filing : 16 Feb 2023 )**

1. SUMAN NANDI

FLAT C-101,GOVT. HOUSING,COURT RICE MILL  
COMPLEX,ALIPURDUAR

Alipurduar

WEST BENGAL

.....Complainant(s)

Versus

1. PREM GURUNG

S/O KHARGA BDR. GURUNG,R/O- CHALAMTHANG  
PACHEYKHANI,NEAR ICDS PACHEYKHANI,KITGOLAI  
PACHEYKHANI LOSING,PO-PACHEYKHANI,PS-PAKYONG  
POLICE STATION BERING,CITY-RANIPOOL,PIN-  
737106,SIKKIM

EAST DISTRICT

SIKKIM

.....Opp.Party(s)

**BEFORE:**

**JUDGES Shri Santanu Misra PRESIDENT**

**HON'BLE MR. Rajib Das MEMBER**

**HON'BLE MRS. Smt. Giti Basak Agarwala MEMBER**

**PRESENT:**

**Dated : 16 Oct 2023**

**Final Order / Judgement**

The case of the complainant is that he hired a car service from the O.P over telephone as the O.P is a tour operator and the complainant was willing to visit Sikkim during vacation period. After consulting with the O.P over telephone about the tour plan which was scheduled from 06/10/2022 to 11/10/2022 and he make an advance payment of Rs. 4,000/- to the bank account of the O.P through online mode dated - 19/06/2022 for hiring two tourist vehicles. After making payment complainant sent screenshot of payment voucher through whatsapp communication on the same day and that was seen by the O.P. Later the complainant had cancelled his one car and it was decided that the advance amount of Rs. 2,500/- for one car has to be compensated for cancellation. Prior to the date of two complainant had been inconstant conversation with the O.P through his mobile phone at his contact number on 24/07/2022 and 15/09/22 as the complainant travelling with his family and friends and lastly on 02/10/2022 the complainant called the O.P before reaching Siliguri to affirm the availability of vehicle of his tour operation and he affirmed that the vehicle would at Siliguri Junction Railway when I would arrived there. As per his assurance complainant reached Siliguri by train on 06/10/2022 and was awaiting for his vehicle to start the journey towards Sikkim but it was quite astonished that there was no vehicle of that route operation of the

O.P available at Siliguri Railway Station then the complainant called the O.P but the O.P did not picked up his phone at the beginning and later when he picked up the phone and he stated that he was not informed about the tour programme and did not know he had paid the advance money. He also stated that he was busy another client to operate his programme. The complainant requested him to arrange his tourist car but he continuously misbehave to the complainant during his conversation. The complainant finding no other alternative arranged a local taxi cab from Siliguri to Sikkim at the cost of Rs. 7,000/- and hired another car for another five days and total cost of Rs. 35,000/- therefore. Although the O.P at first agreed to provide car for six days of Rs. 24,000/- only. So, due to the negligence and misbehavior of the O.P the complainant had to pay Rs. 19,000/- extra cost. After returning the complainant sent a personal notice on 16/10/2022 which was received by the O.P on 11/10/2022 after then O.P called the complainant and admitted all of his fault misbehavior and injustice. In spite of not being sufficient compensation I was agreed to be paid by O.P of Rs. 12,000/- which includes advance money and extra monetary loss through telephonic conversation on several dates. On 21/12/2022 O.P sent a letter with apology where he broke his verbal admission of refund money and he assured to return advance money of Rs. 4,000/- but till now he did not take any initiative for return of money. Due to the negligence of deficiency of service of the O.P the complainant has suffered mental agony as well as monetary loss for that reason complainant has prayed for refund of Rs. 1,500/- and also claim Rs. 19,000/- which he has paid for excess hiring charge of a car due to non supply of hire car by the O.P. He has also claim Rs. 50,000/- for his mental agony, torture and harassment.

After admission of this case the notice was sent to the O.P by registered post with A/D card and according to postal track report the said consignment report notice was delivered to the O.P on 17/03/2023 but the O.P did not turn up to contest this case. Hence, ex-parte.

In support of his case complainant files evidence-on-affidavit and Xerox copy of documents.

### **POINTS FOR CONSIDERATION**

1. Is the complainant a consumer u/s. 2(7)(ii) of Consumer Protection Act, 2019 ?
2. Has this Commission jurisdiction to try the instant case?
3. Is there any deficiency in service on the part of the O.Ps?
4. Is the complainant entitled to get any relief/reliefs as prayed for?

### **DECISION WITH REASONS**

Considering the nature and character of the case all points are interlinked to each other as such all such points are taken up together for consideration for the sake of brevity and convenience.

**Point Nos. 1 and 2:-** The complainant was paid advance money for his tour programme to the O.P who is a tour operator of Sikkim. The allegation is that after receiving the advance amount the O.P did not provide any vehicle from his tour operation. As a result the complainant and his family members have suffered. Here the complainant has paid the advance amount for the service of the O.P as the O.P is service provider of tour operation at Sikkim. So, according to the provision of Consumer Protection Act, 2019 the complainant is the consumer as he hired the service from the O.P by making payment. The complainant is residing within the territorial jurisdiction of this

commission and therefore, this Commission has territorial jurisdiction to try this case as per section 34(d) of the C.P. Act, 2019.

**Point Nos. 3 and 4:-** In this case the allegation is that the complainant hired the service of tourist vehicle from the O.P for the purpose of their visit to Sikkim and in this regard he has paid of advance money of Rs. 4,000/- by UPI being Transaction ID No. T2206191732079057896120 dated - 19/06/2022 to the bank account of the O.P which O.P supplied to the complainant. The O.P thereafter did not provide any vehicle on the date and time on which it was fixed to supply. The complainant was compelled to go to visit to Sikkim by hiring another Inova vehicle by making payment of Rs. 35,000/- for six days. The complainant has produced the receipt of that amount. It also appears that the complainant wrote a letter to the O.P which is Annexure - E and after receiving that letter the O.P sent one apology letter Annexure - G where he has admitted that he has received the amount of Rs. 4,000/- and assured the complainant to return the same within two days but the O.P did not return the amount. It appears from the case record along with the evidence we find that the complainant hired the service from the O.P by making payment of Rs. 4,000/- but the O.P did not provide any vehicle as per their discussion. So, there is a deficiency in service from the part of the O.P and the O.P did not comply his assurance according to Annexure - G and due to the laches from the part of the O.P the complainant had to pay the excess amount for hiring the vehicle of Rs. 35,000/- for six days instead of Rs. 24,000/- (Rs. 4,000/- x 6) as agreed by the O.P. Due to this act of the O.P the complainant and his family members were harassed. They also suffered mental agony and sufferings as because due to non-availability of the vehicle provided by the O.P their tour is going to cancel for which they had to pay excess payment for hiring the vehicle as the O.P did not provide any vehicle according to their discussion. The complainant is entitled to get his claim as prayed for. We did not consider any case of the O.P as the O.P did not turn up to contest this case. In this regard we find from the petition of complaint that the complainant at first booked two vehicles for their tour with the O.P and thereafter he has cancelled one vehicle and it was decided between them but due to the cancellation of one car a money amounting to Rs. 2,500/- has to be compensated for cancellation of one car. So the complainant is entitled get refund of Rs. 1,500/- as advance amount as well as also entitled to get compensation of Rs. 50,000/- for his mental agony and harassment and also Rs. 19,000/- for the excess payment to the hire vehicle due to the not providing of vehicle by the O.P as agreed.

Thus all the points are disposed of accordingly.

Hence, for ends of justice; it is;-

### **ORDERED**

that the instant case be and the same is allowed ex-parte against the O.P. The complainant Sri. Suman Nandi do get the total award amounting to Rs. 70,500/- (Rupees Seventy Thousands Five Hundred Only) which includes the refund money of Rs. 1,500/-, extra cost of hiring the vehicle of Rs. 19,000/- due to non provide the vehicle by the O.P as agreed and Rs. 50,000/- for his mental agony and harassment. The O.P (Prem Gurung) is hereby directed to pay the total decretal amount as stated above to the complainant. The O.P (Prem Gurung) is directed to pay the said award to the complainant within 30 days from the day of receiving this order i.d. legal action will be taken against him.

**[JUDGES Shri Santanu Misra]  
PRESIDENT**

**[HON'BLE MR. Rajib Das]  
MEMBER**

**[HON'BLE MRS. Smt. Giti Basak Agarwala]  
MEMBER**