

Date of filing: 17.08.2023  
Date of Disposal: 04.04.2024

**BEFORE THE III ADDITIONAL BANGALORE URBAN  
DISTRICT CONSUMER DISPUTES REDRESSAL  
COMMISSION, BENGALURU – 560 027.**

**DATED THIS THE 4<sup>TH</sup> DAY OF APRIL, 2024**

**CONSUMER COMPLAINT NO.230/2023**

**PRESENT:**

**SRI. SHIVARAMA K : PRESIDENT**  
**SRI. CHANDRASHEKAR S NOOLA : MEMBER**  
**SMT. REKHA SAYANNVAR : MEMBER**

Smt.Hamsaveni Balakrishna,  
Aged about 72 Years, Window  
Of late Yogananda Presently  
R/at No.297, 1<sup>st</sup> Cross,  
Cambridge Layout, Ulsoor,  
Bangalore-560008.  
(Party In-Person)

.....

**COMPLAINANT**

V/s

M/s.Thomas Cook (India) Limited,  
No.70 2<sup>nd</sup> & 3<sup>rd</sup> Floor, Thomas  
Cook Building, M.G.Road,  
Bengaluru-560001.  
and Also at  
Thomas Cook Tours Limited,  
Leisure Division, Leisure 11<sup>th</sup> Floor



Marathon, Futurex Building,  
11<sup>th</sup> N.M.Joshi Marg Lower Parel,  
Mumbai-400013.  
(Sri.S.Ramakrishnan, Advocate)

..... **OPPOSITE PARTY**

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**// JUDGEMENT //**

**BY SRI.CHANDRASHEKAR S NOOLA, MEMBER**

The complainant hereby lodges this complaint under Section 35 of the Consumer Protection Act, 2019, and prays that this Commission directs the opposite parties to undertake the following actions:

2. Refund a sum of Rs.5,18,020/- to the complainant, which includes interest at the rate of 18% per annum calculated from June 21st, 2023, and,
3. Pay future interest at 18% per annum from June 21st, 2023, until the realization of the refunded amount.
4. Additionally, the complainant seeks: Compensation in the amount of Rs.5 lakh for the deficiency in service provided by the opposite party, and Any other relief that this Commission deems fit to grant.

**The brief facts of the case are as follows:**

The complainant contacted the opposite party when she intended to travel to Australia. She requested accommodation on a tourist itinerary using the Rs.4,39,000/- she had already

paid to the opposite party. The opposite party demanded an additional Rs.2,00,000/- for the travel arrangements and informed the complainant that she would need a travel partner. They arranged for an individual named Anusuya to accompany her, whom the complainant had never seen or heard of before. The opposite party stated that Anusuya would bear her own costs for the trip and accompany the complainant accordingly.

**2.** The tour was supposed to commence on the night of May 17, 2022. The complainant made all necessary travel arrangements and awaited instructions, but she was left waiting and eventually informed that due to visa processing delays by the opposite party, she could not depart India as planned. This left the complainant stranded in Bengaluru. The next day, the Australian visa arrived, but the opposite party claimed it was too late as the flight had already departed, allegedly with the complainant on board.

**3.** The complainant requested a refund of her money, but the opposite party states there helplessness to move to Australia as scheduled.

**4.** The opposite party had initially credited Rs.4,39,000/- paid by the complainant, which was later cancelled due to the pandemic. When the complainant was ready to reschedule the tour, the opposite party demanded an additional Rs.2 lakh. On June 21, 2023, the complainant issued a legal notice to the opposite party regarding these matters.



5. The Opposite parties state that in the year 2020, the complainant booked a 2-week tour to Australia scheduled to depart on April 24, 2020, by paying a non-refundable amount of Rs.50,000/-. However, due to the pandemic and restrictions on air travel, the tour could not proceed as planned.

6. After the restrictions were lifted, the complainant approached the opposite party to resume her Australia tour. It is common knowledge that the cost for a single person occupying a separate room during travel is higher. Therefore, the complainant requested the opposite party to find one more traveller with whom she could share a room to reduce costs.

7. In response to this request, the opposite party identified another single traveller to share the room with the complainant, reducing the total tour cost to Rs.4,39,000/-. The complainant paid the balance amount after deducting the earlier advance of Rs.50,000/-, which is not disputed.

8. The scheduled departure date for the tour was May 17, 2022. The opposite party had already submitted the necessary documents to the embassy/consulate for obtaining the complainant's visa. However, the opposite party clarifies that they are only facilitators for visas and do not control the decisions of the embassy or consulate, nor the release date of passports with visa stamping. Unfortunately, the visa was approved by the embassy only on May 18, 2022, which was after the scheduled departure date. Consequently, the

complainant was unable to travel on the tour. The opposite party offered the complainant the option to reschedule the tour with an additional cost of Rs.2,00,000/-, treating it as a new booking. Considering the circumstances, this offer was made in goodwill. However, as the complainant could not embark on the tour, it was treated as a 100% cancellation, and accordingly, 100% cancellation charges were applied.

**9.** The opposite party asserts that they cannot be held responsible for the delay caused by the embassy or consulate in processing the visa. Based on these grounds, the opposite party requests this Commission to dismiss the case

**10.** The points that would arise for consideration are as under:

- i) Whether there is deficiency of service on the part of the opposite party?
- ii) Whether the complainant is entitle for the relief sought ?
- iii) What order?

**11.** Our findings on the aforesaid points are as follows:

**Point No.1:** In affirmative

**Point No.2:** partly in affirmative

**Point No.3:** As per the final order for the following;



## **REASONS**

**12. POINT NO.1 & 2:-** The point no 1 & 2 are merged together to avoid repetitions. The opposite party No 1 is the branch office for the opposite party No 2 which is the main office. The complainant has filed an affidavit in the form of evidence in chief from Ex.P1 to Ex.P6, and the opposite party has filed an affidavit in the form of evidence in chief from Ex.R1 to Ex.R2. The complainant booked the tour program conducted by the opposite party called Australian Extravaganza (Ex.P1). This includes the cost of visas, documentation, and processing fees as of March 1, 2022, and any further increase in the same has to be borne by the passengers. The opposite party clearly mentioned that the cost of visa and medical insurance for the duration of the tour is part of the itinerary (Ex.P1).

**13.** The complainant has paid Rs.66,000/- on February 28, 2020, Rs.1,20,000/- on March 28, 2022, and Rs.2,53,400/- on May 15, 2022, and there is no dispute regarding the payments made by the complainant. The main issue in this case is that the complainant booked the holiday package to Australia, and at the last moment, her tour was cancelled due to a delay in receiving the visa from the Australian embassy. It is not the fault of the complainant, as the holiday package includes obtaining a visa from the concerned authorities by the opposite parties. Since the visa did not arrive on time, the complainant could not visit Australia. She claims that despite making the necessary arrangements and payments, she was unable to

travel due to visa processing delays caused by the opposite party. The complainant seeks a refund of the amount paid along with interest and compensation for the alleged deficiency in service.

**14.** The opposite party acknowledges the initial booking and subsequent cancellation due to the pandemic. They argue that they facilitated the tour and visa processing but had no control over the embassy's decision and the visa approval date. The opposite party offered a rescheduling option with additional costs, which the complainant did not accept.

**15.** After careful consideration of the above discussion and evidence presented by both parties, this commission is of the view that the complainant is entitled to a refund of the amount paid, which is Rs.4,39,000/-, as acknowledged by the opposite party, with interest at 9% from the respective dates of payments made. Considering the inconvenience and financial loss suffered by the complainant due to the visa processing delays and subsequent cancellation, compensation of Rs.25,000/- is awarded for the deficiency in service provided by the opposite party.

**16. POINT No.3:-** In view of the findings given on point numbers 1 and 2 and discussions made above, we proceed to pass the following order:

### **ORDER**

The complaint is allowed in part. The opposite party is jointly and severally directed to refund a sum of Rs.4,39,000/-



with interest at 9% from the respective dates of payments made until realization. Additionally, the opposite parties are jointly and severally directed to pay a sum of Rs.25,000/- towards compensation and Rs.10,000/- towards the cost of litigation.

**2.** The opposite parties shall comply with this order within 45 days from the date of this order. If the opposite parties fail to comply with the order within 45 days from the date of this order, the outstanding amount of Rs.35,000/- shall carry interest at 9% per annum from the date of the order until the date of realization.

**3.** Applications pending, if any, stand disposed of in terms of the aforesaid judgment.

**4.** Supply free copy of this order to both the parties and return extra copies of the pleading and evidence to the parties.

(Dictated to the Typist to online computer and typed by her and corrected and then pronounced in the open Commission on **04<sup>th</sup> day of April, 2024**)

  
 (Rekha Sayannvar) (Chandrashekhar S Noola) (SHIVARAMA K)  
 MEMBER MEMBER PRESIDENT  
  


**//ANNEXURE//**

**Witness examined from the side of complainant:**

Smt.Hamsaveni Balakrishna, the complainant (PW-1).



**Documents marked from the side complainant:**

1. Print out copy of Itinerary is marked as Ex.P1.
2. Xerox copy of Cheque dt.28.02.2020 is marked as Ex.P2.
3. Xerox copy of payment receipts dt.28.03.2022, 15.05.2022 is marked as Ex.P3.
4. Print out copy of E-Ticket is marked as Ex.P4.
5. Print out copy of Visa is marked as Ex.P5.
6. Print out copy of e-mail communication containing the complaint raised by the complainant dt.06.06.2023 is marked as Ex.P6
7. Office copy of legal notice dt.21.06.2023 with postal receipt and acknowledgement is marked as Ex.P7.

**Witness examined from the side of opposite party:**

Sri.Vishwanath Sriram, the Opposite party (RW-1)

**Documents marked from the side of Opposite Party:**

1. Letter of authorisation dt.09.10.2023 is marked as Ex.R1.
2. Copy of reply dt.24.08.2023 with postal receipts and postal acknowledgement are marked as Ex.R2.

  
04/04/2024  
**(Rekha Sayannvar)**  
**MEMBER**

  
**(Chandrashekhar S Noola)**  
**MEMBER**

  
04/04/2024  
**(SHIVARAMA K)**  
**PRESIDENT**

