

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-I,**U.T. CHANDIGARH**

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| Consumer Complaint No. | : | CC/206/2023 |
| Date of Institution | : | 20/4/2023 |
| Date of Decision | : | 1/10/2024 |

Amit Kohar aged 39 years S/o Late Sh. Dharam Pal Kohar, resident of House No. 5293, Sector 38 West, Chandigarh.

Complainant

Versus

1. Make My Trip India Pvt. Ltd. having its Head Office at DLF Building No.5, Tower B, DLF Cyber City, DLF Phase 2, Sector-25, Gurugram, Haryana-122002 through its Chairman/Managing Director. 2. Go Airlines (India) Limited, having its Head Office at 4th Floor, Kaledonia building, Sambhaji Nagar, Opp. Dmart, Sahar Road, Andheri East-Mumbai-400069 through its Chairman/Managing Director.

Opposite Party

CORAM : **SHRI PAWANJIT SINGH** **PRESIDENT**
 MRS. SURJEET KAUR **MEMBER**
 SHRI SURESH KUMAR SARDANA **MEMBER**

ARGUED BY : Complainant in person.
 : Sh. Gaurav Deep Goel, Advocate for OP No.1
 : OP No.2 exparte.

Per Pawanjit Singh, President

1. The present consumer complaint has been filed by the complainant under Section 35 of the Consumer Protection Act 2019 against the opposite parties (hereinafter referred to as the OPs). The brief facts of the case are as under :-

a. It transpires from the averments as projected in the consumer complaint that Opposite party No.1 i.e. Make My trip is an authorized agent of Opposite party No.2 Airlines who operates the flights and issue air tickets through Opposite party No.1. It is alleged that Opposite party No.1 in connivance with Opposite party No.2 allured and misrepresented various customers including the complainant by giving frivolous offer in the market by publishing in the newspaper Hindustan Times Annexure C-1. Allured with the aforesaid misrepresentation of Opposite party No.1 offering various offers/discounts of booking of international airlines tickets through its portal, the complainant booked international tickets on 24.1.2023 for himself, his wife and two minor children from New Delhi to Phuket (Thailand) with departure time at 1:00 a.m. on 1.4.2023 from Delhi and arrival time at Phuket at 7.00 a.m. with return ticket from Phuket to New Delhi with departure time from Phuket 13:30 p.m. and arrival at Delhi at

16:35 p.m. on 7.4.2023. The copies of air tickets and invoice are annexed as Annexure C-2 and C-3 respectively. As per the booking schedule, the complainant had also booked international hotel in Phuket (Thailand) on 17.2.2023 from Agoda Travel company for 4 nights stay from 3.4.2023 to 7.4.2023 by paying a sum of Rs.25,534/- to AGODA through credit card and also booked two nights stay from 1.4.2023 to 3.4.2023 in Krabi from Opposite party No.1 by paying a sum of Rs.15,726/- through credit card. Copy of hotel vouchers are annexed as Annexure C-4 and C-5. After about one and half month of booking the complainant received a telephonic call from Opposite party No.2 airlines i.e. on 10.3.2023 intimating the complainant that the booking has been cancelled for 1.4.2023 due to operational reasons. However, later on option was given to the complainant by Opposite party No.2 for rescheduling of the flight for 1.4.2023 with delay of 3 hours 40 minutes with new timings of 4.40 a.m. as departure time from New Delhi and arrival timing 10:45 a.m. to Phuket. Again the said booking was also cancelled by the Opposite party No.2 who had again provided an alternative flight to the complainant for 2.4.2023 and the airlines tickets were confirmed for the said date by issuing fresh tickets Annexure C-9 with departure time 7:40 a.m. and arrival at 13:45 pm. in Phuket. Due to the aforesaid cancellation and re-scheduling of the flights the complainant could not stay in the hotel at Krabi on the night of 1st April and the said stay was re-scheduled from 2.4.2023 to 4.4.2023 by paying additional amount of Rs.2516/-. Similarly for the booking on 3.4.2023 at Phuket the same could not be availed by the complainant for which Rs.9000/- was charged from the complainant and the complainant is entitled for refund of Rs.9000/- which he paid for one night at Phuket. When the OPs did not redress the grievance of the complainant, a legal notice Annexure C-13 was sent to the Opposite Parties but with no result. The aforesaid act amounts to deficiency in service and unfair trade practice on the part of OPs. OPs were requested several times to admit the claim, but, with no result. Hence, the present consumer complaint.

- b. Opposite party No.1 resisted the consumer complaint and filed its written version, inter alia, taking preliminary objections of maintainability, cause of action. It is averred that the answering Opposite party is consumer centric company which is managed through online portal www.MakeMyTrip.com. The answering Opposite party is merely a facilitator for the booking of the confirmed hotel/Air tickets on behalf of its customers with concerned service providers. It is alleged that as per User Agreement the complainant has agreed to check the destination of the services and products carefully before making the booking and has also agreed to comply with all terms and conditions. It is further alleged that as per User's Agreement, refund will be processed as per airline fare rules and cancellation policy and the convenience fee paid to the MMT at the time of booking is a non-refundable. It is denied that due to any act of answering Opposite party, the complainant and his family had to face any mental agony or harassment. It is averred that once confirmed bookings have been communicated to the complainant, the obligation of the answering Opposite party towards the complainant is discharged. On merits, the facts as stated in the preliminary objections have been re-iterated. The cause of action set up by the complainant is denied. The consumer complaint is sought to be contested.
- c. Opposite party No.2 was properly served and when Opposite party No.2 did not turn up before this Commission, despite proper service, they were proceeded against ex-parte on 2.6.2023.
- d. Despite grant of numerous opportunities, no rejoinder was filed by the complainant to rebut the stand of the OP.

2. In order to prove their respective claims the contesting parties have tendered/proved their evidence by way of respective affidavits and supporting documents.
3. We have heard the learned counsel for the contesting parties and also gone through the file carefully, including the written arguments on record.

i. At the very outset, it may be observed that when it is an admitted case of the contesting parties that the complainant had booked air tickets and hotels for the stay of himself and his family members and due to cancellation of departure flight from Delhi to Phuket on 1.4.2023 as is evident from Annexure C-2, fresh tickets Annexure C-6 for the same day with delay of 3 hours 40 minutes were issued and again after cancellation of the said tickets Annexure C-6 another fresh ticket Annexure C-9 for 2.4.2023 was issued to the complainant and due to re-schedule of flight, the hotel booking which provided by Opposite party No.1 at Krabi for two nights of 1.4.2023 and 2.4.2023 were also rescheduled for which the complainant has paid additional amount of Rs.2516/- as is also evident from Annexure C-12 and the complainant could stay at Phuket only for three nights instead of 4 nights, the case is reduced to a narrow compass as it is to be determined if the aforesaid act of Opposite Parties amounts to deficiency in service and the complainant is entitled for an amount of Rs.9000/- the cost of one night stay at Phuket plus extra

charges of Rs.2516/- paid by the complainant to Opposite party No.1 for change of date at Krabi hotel alongwith compensation as prayed for by the complainant, as is the case of the complainant or if the complaint is liable to be dismissed being false and frivolous as is the case of the Opposite party No.1.

- ii. In order to prove the fact that the complainant has paid an additional amount of Rs.2516/- to Opposite party No.1 for change of schedule at Krabi hotel i.e for the night of 3rd April 2023 instead of initial booking for the night of 1&2.4.2023, the complainant has proved a copy of booking schedule Annexure C-12, which clearly indicates that the complainant paid additional amount of Rs.2516/- to the hotel authorities for the booking of night of 3.4.2024 and similarly it stands proved on record that the complainant has paid an amount of Rs.25,5534.64 for stay at Phuket i.e. from April 4, 2023 to April 7, 2023 for 4 nights as is evident from Annexure C-4 but due to sudden cancellation of flight ticket the complainant could not stay with family on the night of 3.4.2023 as on the said night the complainant and his family stayed at Krabi. Thus, the OPs are liable to refund the amount of one night which the complainant could not availed at Phuket in proportionate i.e. $\text{Rs.}25,534.64/4 = 6383.6$ rounded off to Rs.6,384/- alongwith amount of Rs.2516/- the amount received by the hotel at Krabi for re-scheduling the booking as the complainant has suffered due to the negligent act of the Opposite Parties. It has also been proved on record that the Opposite Parties have failed to refund the aforesaid amount to the complainant till date. Hence, the aforesaid act of Opposite Parties amounts to deficiency in service and unfair trade practice on its part, especially when the entire case set up by the complainant in the consumer complaint as well as the evidence available on record is unrebutted by the OPs. Hence, the instant consumer complaint deserves to be allowed.
- iii. No doubt in its written version the OP No.1 has come with the defence that there is no deficiency in service or unfair trade practice on its part as it is only an intermediary to facilitate booking of the tickets and pricing of ticket is not in its control and thus it has no role to play in the dispute in hand, however, admittedly the tickets and hotel at Krabi were booked by it thus, neither OP-1, being e-commerce entity, nor OP-2, being airlines of the subject product, can escape from their liability, especially when both the OPs are duty bound to provide service to the consumer as provided under The Consumer Protection (E-Commerce) Rules, 2020 and the relevant portion of the same is reproduced below for ready reference :-

4. Duties of e-commerce entities.

xxx xxx xxx

(10) Every e-commerce entity shall effect all payments towards accepted refund requests of the consumers as prescribed by the Reserve Bank of India or any other competent authority under any law for the time being in force, within a reasonable period of time, or as prescribed under applicable laws.

4. In the light of the aforesaid discussion, the present consumer complaint succeeds, the same is hereby partly allowed and OPs are directed as under :-
- to pay ₹8,900/- (Rs.6384+Rs.2516/-) to the complainant alongwith interest @ 9% per annum (simple) from the date of institution of the present consumer complaint till onwards
 - to pay lump-sum amount of ₹10,000/- to the complainant as compensation for causing mental agony and harassment and towards cost of litigation.
5. This order be complied with by the OPs jointly and severally within a period of 45 days from the date of receipt of certified copy thereof, failing which the amount(s) mentioned at Sr.No.(i) & (ii) above shall carry penal interest @ 12% per annum (simple) from the date of expiry of said period of 45 days, instead of 9% [mentioned at Sr.No.(i)], till realization.
6. Pending miscellaneous application(s), if any, also stands disposed off.
7. Certified copies of this order be sent to the parties free of charge. The file be consigned.

Announced

[Pawanjit Singh]

1/10/2024

President

mp

[Surjeet Kaur]

Member

[Suresh Kumar Sardana]

Member