

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
8TH FLOOR, B.W.S.S.B BUILDING, K.G.ROAD,BANGALORE-09**

**Complaint Case No. CC/522/2023
(Date of Filing : 30 Dec 2023)**

1. Nakul Munjal

S/o Rakesh Kumar Munjal, House No. 202, 1st Floor 3rd Main, 4th
B Cross Road, Domlur, Bangalore-560071

.....Complainant(s)

Versus

1. Yatra Online Private Limited,

Plot No.272, Phase II, Sector 20, Haryana 122008.

.....Opp.Party(s)

BEFORE:

**HON'BLE MRS. M. SHOBHA PRESIDENT
HON'BLE MRS. K ANITHA SHIVAKUMAR MEMBER
HON'BLE MRS. SUMA ANIL KUMAR MEMBER**

PRESENT:

Dated : 25 Jun 2024

Final Order / Judgement

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION AT
BANGALORE (URBAN)**

DATED 25th DAY OF JUNE 2024

PRESENT:-

SMT.M.SHOBHA

BSC., LLB

SMT.K.ANITA SHIVAKUMAR

M.S.W, LL.B., PGDCLP

SMT.SUMA ANIL KUMAR

BA., LL.B., IWIL-IIMB

: PRESIDENT

MEMBER

:

MEMBER

COMPLAINT No.522/2023

COMPLAINANT

1 Nakul Munjal,

S/o Rakesh Kumar Munjal,

House No.202, 1st floor, 3rd main,

4th B Cross road, Domlur,

Bangalore-560071.

(In-person)

OPPOSITE PARTY

1

Yatra Online Private Limited,

Gulf Adiba, Plot No.272, Phase II,

Sector 20, Haryana,

Gurgaon-122008.

(Sri. P.S. Poornima, Adv.)

ORDER

SMT. SUMA ANILKUMAR, MEMBER

The complaint filed U/S 35 of Consumer Protection Act 2019, complainant seeking direction towards OP for the reliefs. A total of approx Rs.90,000/- was spent on the trip in total, out of which Rs.11,299/- was paid to Yatra for hotel bookings. The entire trip was spoilt by Yatra, hence seeking compensation amounting to Rs.1,50,000/- encompassing financial losses, mental distress, loss of office leaves, and damage to reputation due to Yatra's mismanagement and unprofessional conduct.

2. Brief facts of this case are as follows:-

The complainant has booked his trip through Yatra on 09.12.2023 having 2 separate booking via Yatra.com i.e. Booking ID – 0912230113204 for Cloudnine Inside hotel (15-16th December 2023) at Rs.5,33,736/- and booking ID – 0912230038859 for Green Garden Ayurveda Resort (16-17th December 2023) amounting to Rs.5,96,210/-. A prompt confirmation was received for both reservation via E-mail from Yatra, securing 2 rooms for 5 adults. The complainant received communication via E-mail and phone from Yatra on 13.12.2023 informing that Cloudnine Inside resort would not honour the booking. Yatra suggested an alternative Unwind Hotels and resorts located 50Kms away. The complainant responding to the change unsatisfied, requested to change to Black beach resort available on Yatra platform to OP. On 14/12/2023 Yatra confirmed via E-mail their arrangement for Black beach resort as an alternative date for the stay from 15th to 16th December 2023. On 15th December 2023, when the complainant arrived at Black beach resort, the manager at Black beach resort denied the booking and an extensive discussion with OP to resolve the issue the complainant then was accommodated at Rachna's. The accommodation was provided at 1.30 p.m. 1 and half an hour after the designated check in time of 12 noon. On 16/12/2023 as per schedule for check-in at Green Garden Ayurveda Resort at noon 12.02 p.m. the complainant received call from Yatra i.e. OP indicatin the inability to facilitate the check-in at Green Garden Ayurveda Resort and proposed an alternate location Thiruvambadi Beach Resort. On reaching

Thiruvambadi Beach Resort the complainant discovered that there was no booking made by the Yatra (OP). At 4:37 p.m. Yatra suggested another alternative, Akil Beach Resort and confirmed it over call, but at 4:51 p.m. Yatra (OP) informed that Akil Beach Resort does not accommodate bachelors. At 4.51 p.m. Yatra (OP) provided an alternative accommodation option at Raja Park Beach Resort, over call at 5.02 p.m. the complainant received confirmation from Yatra for accommodation at Raja Park Beach Resort around 8 p.m. significantly deviating from the planned itinerary. The complainant had to put efforts to rectify the situation including extensive communication with Yatra OP representation. However, despite repeated assurances, no satisfactory resolution was provided aggravating the distress and inconvenience, significantly derailing the planned itinerary and causing immense mental distress to the consumer and also breaching the implied term of contract. The complainant has encompassed financial loss, mental distress, loss of office leaves and damage to reputation due to Yatras (OPs) mismanagement and unprofessional conducts.

3. On issue of notice to OP, OP appears before this commission and files his version.

4. In the version of OP, OP denies each and every statement, allegation or contention which is inconsistent with or contradictory to whatever is stated in this written statement and no statement, allegation or contention, not specifically denied by the OP shall be deemed to have been admitted, merely for want of a specific traverse.

5. The OP are bound by the terms and conditions of the Master User Agreement (herein referred to as "User Agreement") which they accept at the time of using the website of the OP. Upon perusal of the terms of the User Agreement, it is clear that this Hon'ble Commission has no jurisdiction to try the present case. The User Agreement consists of a Jurisdictional clause. As per Clause 21 of the User Agreement any disputes which arise between a user and the OP shall be subject to the exclusive jurisdiction of the courts of Gurgaon, Haryana. Clause 21 of the User Agreement is being reproduced below for the convenience of this Hon'ble Forum:

"21. Governing Law

This agreement and each TOS shall be governed by and constructed in accordance with the laws of India without reference to conflict of laws principles and disputes arising in relation here to shall be subject to the exclusive jurisdiction of the Courts of Gurgaon, Haryana".

OP also refers two case: **M/s Swastik Gases P. Ltd vs. Indian Oil Corporation Ltd. [(2013) 9 SCC 32]** and **Nariman Films v. Dilip R. Mehta an Anr. [2005(31) PTC 571 (Del)]**.

6. The OP is an intermediary between the service providers and the customers and it does not have any interference in the modus operandi or working of merchants/service providers and the liability for any changes, deficiencies related to the services provided by the service providers. OP is merely a facilitator of services on behalf of third party service providers. It is a platform where the service providers and the customers meet and it markets travel related services to particular destinations and warrant that travel to such destinations is without risk and help the user make an informed choice while purchasing any tickets or booking hotels.

7. As per section 79 of IT Act which states the exemption of liability for intermediaries under certain instances. An intermediary shall not be liable for any third party information or data made available by it or hosted by it. Intermediaries can be online platforms (like Google in this case) that facilitate information. The Act extends "safe harbor protection" only to those instances where the intermediary merely acts a facilitator and is not involved in creation or modifications of the data of information. The OP has referred to landmark case of **Shreya Singhal v. Union of India**, the

Supreme Court addressed the issue of whether intermediaries could be left to decide the legality of the content on their platforms. That is further stated that the OP has made the same very clear in its User Agreement that the OP is merely a service facilitator and not a service provider and hence acts as an intermediary between a customer and a service provider. The relevant portion of the User Agreement in this regard:

“5. Disclaimer of Warranties/Limitations of Liability

5.1 Yatra has endeavored to ensure that all the information provided by it is correct, but Yatra neither warrants nor makes any representations regarding the quality, accuracy or completeness of any data or information. Yatra makes no warranty, express or implied, concerning the Website and/or its contents and disclaims all warranties of fitness for a particular purpose and warranties of merchantability in respect of services, including any liability, responsibility or any other claim, whatsoever, in respect of any loss, whether direct or consequential, to any User or any other person, arising out of or from the use of any such information.

5.2 To the extent Yatra acts only as a booking agent and facilitator of services on behalf of third party service providers, it shall not have any liability whatsoever for any aspect of the arrangements between the service provider and the User as regards the standards and rendering of services by the service providers. In no circumstances shall Yatra be liable for the services provided by the service provider.

5.3 Although Yatra makes reasonable commercial efforts to ensure that the description and content in the TOS and on each page of the Website is correct, it does not, however, take responsibility for changes that occurred due to human or data entry errors or for any loss or damages suffered by any User due to any information contained herein. Also, Yatra is not the service provider and cannot therefore control or prevent changes in the published descriptions or representations, which are always based upon information provided by the service providers. Yatra acts only as a facilitator of services and shall not be held liable for any changes, deficiencies, disputes etc. related to the services being provided by Service providers, including the matters related to delays in refunds or no refunds, of the fares and charges paid to service providers. All refunds to User/customer on account of cancellation of any tickets/services or otherwise shall be made subject to receipt of such refunds by Yatra from the respective Service provider including airlines.

5.4 Yatra does not endorse any advertiser on its website in any manner. The Users are requested to verify the accuracy of all information on their own before undertaking any reliance on such information.

5.5 Yatra does not, by offering travel related services to particular destinations, represent or warrant that travel to such destinations is without risk, and shall not be liable for damages or losses that may result from travel to such destinations.

5.6 In no event shall Yatra be liable for any direct, indirect, punitive, incidental, special, consequential damages or any other damages resulting from: (a) the use or the inability to use the services; (b) the cost of procurement of substitute goods and services or resulting from any goods, information or services purchased or obtained or messages received or transactions entered into through the services; (c) unauthorized access to or alteration of the User and amp; transmissions of data; (d) any other matter relating to the services; including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with availing services from Yatra. Neither shall Yatra be responsible for delay or inability to use/avail the Website or Services, the provision of or failure to provide services by Service Provider, or for any information, software, products, services and related graphics obtained from Yatra, whether based on contract, tort,

negligence, strict liability or otherwise. Further, Yatra shall not be held responsible for non-availability of the website during periodic maintenance operations or any unplanned suspension of access to the services that may occur due to technical reasons or for any reason beyond Yatra's control".

8. The complainant made two bookings for hotels. The first booking ID was 0010107856 for Hotel - Cloud Nine Inside, Varkala for 15th and 16th December 2023 and the second booking ID was 0010106673 for Hotel – Green Garden Ayurveda Resort,, Varkala for 16th and 17th December 2023. The sequence of events are as follows:-

i) That prior to the date of check-in i.e. on 10 December 2023 at Hotel Cloud Nine Inside, the OP identified a disagreement with the hotel on existing contractual clauses pertaining to rates, payments and clauses of agreement. Hence, the Hotel denied the booking. The OP party requested the Hotelier to confirm the booking and assured Hotel that the issue raised would be cleared off before guest checks out but the Hotelier denied for the same.

ii) That the OP immediately shared the concern with the Market Manager who provided an alternative hotel on 12th December 2023. When the OP shared the alternate Hotel with the complainant, the complainant took time and then declined the alternative hotel. The complainant then gave his own preference of alternative hotel on 13th December 2023 and the OP confirmed the alternative hotel "Black Beach Resort" on 14th December 2023 with the customer.

iii) That on the date of check-in i.e. 15th December 2023, the complainant contacted the OP that the new hotel - Black Beach Resort has denied the check-in. When we checked with the hotel, they were unable to find the voucher at their end. The OP immediately re-shared the voucher with the hotel and the hotel confirmed the check-in to the guests. That the OP were given no information that the hotel has made the guest stay in sister property called 'Rachnas' which the OP came to know through this complaint.

iv) That regarding the second booking for Green Garden Ayurveda Resort, Varkala with Booking ID – 0010106673 having check-in on 16th December 2023, the OP identified a disagreement with the hotel on existing contractual clauses pertaining to rates, payments and clauses of agreement on 15th December 2023. Hence, the hotel denied the booking. The OP requested the hotelier to confirm the booking and assured hotel that the issues raised would be cleared off before guests' checks out but the hotelier denied for the same. The OP immediately shared the concern with Market Manger who provided an alternative hotel "Thiruvambadi Beach Retreat" on 16th December 2023. The OP then shared the details with the hotel but the hotel was not responding to our calls. Thereafter, the OP received a call from the complainant informing that "Thiruvambadi Beach Retreat" is sold out and not allowing check-in.

v) In order to assist the complainant, the OP immediately shared another alternate "Akhil Beach Resort". That the OP was not aware that all the passengers are bachelors. The alternative hotel did not allow all bachelor guests. Hence, post confirming with the complainant, we share another alternate "Raja Park Beach Resort" which the complainant agreed on and got checked-in.

9. It is pertinent to note that while the guests have availed the stay, they did have an unpleasant experience. Hence, the OP is willing to offer a compensation of INR 50% against both the bookings to amicably resolve this complaint. That there is no lacuna in the OP complying with its business duties. It is worthy to be mentioned that the OP is one of the world's largest travel booking

companies and has always been at regular service for their customers. It is humbly submitted that the OP party has at every inconvenience promptly assisted the complainant.

10. The complainant has filed affidavit evidence along with 5 documents marked as Ex.P.1 to Ex.P.4. The OP has filed affidavit evidence along with 3 documents marked as Ex.R.1 to Ex.R.3. The complainant and OP file their written arguments.

11. On the basis of above pleadings for our consideration are as follows:-

- i) Whether the complainant proves the deficiency of service on the part of OP's?
- ii) Whether complainant is entitled for the relief?
- iii) What order?

12. Our answers to the above points are as follows:-

Point No.1:-Affirmative.

Point No.2:-Partly Affirmative.

Point No.3:- As per the final order.

REASONS

13. Point No.1&2:-These points are inter-connected to each other and for the sake of convenience, to avoid repetition of facts, these points are taken up together for common discussion.

14. On perusal of the documents submitted by the complainant, in the Ex.P.1 to Ex.P.3, we see it is true that the complainant had booked hotel booking for 15th, 16th and 17th of December 2023 from Yatra. It is also observed that the bookings were cancelled and re-allotted by the OP. We observe that the complainant has faced difficulties during his trip which was well planned in advance through "Yatra" (OP). The complainant has experienced discomfort and difficulties as the booking though were done well in advance were not allotted in time and the complainant had to face mental tension, difficulties, time and energy in getting reallocated with other options of stay which were not to the comfort or up to the mark of the complainant and with no option left had to accept the stay offered by the OP at that unavoidable situation during his trip. This inconvenience faced by the complainant shows the deficiency in service and Unfair Trade Practice of the OP.

15. OP in his contention has submitted affidavit evidence along with 3 documents. OP in his written arguments accepts the allegations made by the complainant and is willing to offer compensation of INR 50% against both the bookings and to amicably resolve the complaint. This shows that the OP has agreed that there was inconvenience faced by the complainant due to the deficiency in service by OP. OP being a well-known and reputed platform for the booking made for travels of the consumers, need to make sure that their consumer/customers are taken care and provide good services, as the consumers/customers of Yatra travel from their place to an unknown placed trusting the service of the OP, for their comfortable stay, safety, etc., during the travels to unknown places. This is a huge responsibility of the OP. Travels are dream destination and memorable moments of the consumers/customers who plan well in advance making time from their work to spend good quality time with their near and dear ones. The discomforts and difficulties during their travel will not only spoil the trip but also they tend to loose the memorable moments,

their leaves from their work schedule and their time. Hence OP by not giving proper services to the complainant has not only shown deficiency in service but also unfair Trade Practice by keeping the consumers safety and time at stake. Therefore OP is directed to pay a compensation of Rs.20,000/- and Rs.5,000/- towards litigation charges.

16. Point No.3:-In view of the discussion referred above, we proceed to pass the following:-

ORDER

- i. Complaint filed by the complainant U/S 35 of Consumer Protection Act, is hereby allowed in part.
- ii. The OP is directed to pay a compensation of Rs.20,000/- and litigation charges of Rs.5,000/- within 45 days from the date of order failing which shall pay an interest of 8% p.a. on Award amount till realization.
- iii. Furnish the copies of the order and return the extra copies of pleadings and documents to the parties, with no cost.

(Dictated to the Stenographer, got it transcribed and corrected, pronounced in the Open Commission on this 25th day of June 2024)

(SUMA ANIL KUMAR)

MEMBER

(K.ANITA SHIVAKUMAR)

MEMBER

(M.SHOBHA)

PRESIDENT

Documents produced by the Complainant-P.W.1 are as follows:

1.	Ex.P.1	Copy of booking of Cloud Nine Inside hotel through Yatra
2.	Ex.P.2	Copy of Green Garden Ayurveda Resort hotel through Yatra
3.	Ex.P.3	Copy of Emails from OP.
4.	Ex.P.4	Certificate U/S 65B of Indian Evidence Act.

Documents produced by the representative of opposite party – R.W.1&2;

1.	Ex.R.1	Copy of Authority letter dated 24.04.2024.
2.	Ex.R.2	Copy of user agreement.
3.	Ex.R.3	Copy of authority letter dated 13.02.2024.

(SUMA ANIL KUMAR)

MEMBER

(K.ANITA SHIVAKUMAR)

MEMBER

(M.SHOBHA)

PRESIDENT

**[HON'BLE MRS. M. SHOBHA]
PRESIDENT**

**[HON'BLE MRS. K ANITHA SHIVAKUMAR]
MEMBER**

**[HON'BLE MRS. SUMA ANIL KUMAR]
MEMBER**