

District Consumer Disputes Redressal Commission-I (North District)

[Govt. of NCT of Delhi]

Ground Floor, Court Annexe -2 Building, Tis Hazari Court Complex, Delhi- 110054

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CC No.: 84/2021**In The Matter of****LALLIAN SANGI,****House No.3287, First Floor,****Ranjit Nagar,****New Delhi-110008****...COMPLAINANT****VERSUS****BRANCH MANAGER,****State Bank of India,****Delhi University Branch,****Utility Centre,****Delhi University, Delhi-110007
PARTY****...OPPOSITE****ORDER****11/12/2023****Ashwani Kumar Mehta, Member:**

1. The present complaint has been filed under Section 35 of the Consumer Protection Act, 2019. The brief details of facts, as alleged by the Complainant in the Complaint in hand, are that the complainant is maintaining a saving Bank Account No. 303XXXXX426 with OP Bank at Delhi University Branch, Utility, Centre, DU, Delhi-110007 and the ATM card bearing No. 459XXXXXXXXXX750 was also issued by the OP to the complainant/customer with this account. The complainant had her last transaction of withdrawing Rs.5000/-only through ATM at Bank of Baroda, Connaught Place, New Delhi on 18-08-2017. On 19-08-2017, at about noon the complainant received series of information alerts coming on her registered mobile phone No.882XXXX654 about transactions (withdrawal of funds and purchases altogether coming to total amount of Rs.1,84,587/-) from her aforesaid bank account through ATM transactions done at Mumbai. Since

it has caused the complainant panicky, she immediately rush to the nearest SBI branch at West Patel Nagar for assistance. Instead of assisting the complainant, the officers of SBI, West Patel Nagar branch asked the complainant to contact her concerned branch Manager for necessary action. Accordingly, the complainant visited OP office and met BM, Tulika Sharma for necessary immediate action.

2. It has been alleged that the complainant had furnished her detailed credentials to OP and also filed complaint to the OP vide letter dated 19-08-2017 intimating about fraudulent transactions done through ATM card. Thereafter, the complainant also lodged a police complaint dated 19.08.2017 bearing DD No. 55B with the P.S: Ranjit Nagar, New Delhi for necessary action to be taken against the culprit and for registration of FIR. Thereafter, the complainant was informed by OP vide letter dated 05/09/2017 asking her to lodge complaint with local police authority and to provide OP a copy of the FIR to proceed further action as required and to submit ATM. transaction Dispute form along with the FIR. However, while the complainant was pursuing for registration of FIR in the matter, there was no information received from OP even after various visits and requests. Letters were also submitted to OP on 16-10-2017, 09-11-2017 along with Application Form of the ATM Transaction Dispute. Subsequently, on the efforts of the complainant the police registered FIR bearing No.35/2018 dated 19/01/2018, U/s.420 IPC, PS: Ranjit Nagar, New Delhi and the same was also submitted to OP in addition to the complainant's first complaint vide Letter dated 13/03/2018.

3. It has further been alleged that since the complainant being an ordinary person could not comprehend as to why her account has been fraudulently transacted and money has been illegally withdrawn/stolen despite the original ATM card issued by the OP to the customer lies with the complainant and therefore, the OP being the custodian of the complainant's banking details is answerable for all these lapses. The complainant has been waiting for a long time for the necessary re- imbursement of the amount fraudulently withdrawn from her account till her patient is run out. Therefore the complainant, sent a legal notice dated 07/05/2018 to the OP for immediate refund of the total amount of Rs.1,84,587/- along with interest into her account. In turn, the OP has replied on 15/05/2018 stating that OP was not liable to pay anything to the complainant. The OP has claimed that if there is any omission or commissions also the complainant herself is to be blamed and Banks cannot be liable in the matter in any manner whatsoever. The conduct of OP informing the complainant out-rightly denying their responsibilities while dealing with security of customers banking details including the complainant amounts to cheating and unfair practice of trade which is illegal and violative of the complainant's fundamental rights provided and protected under the constitution of India. The complainant has been rendered totally frustrated and disgusted by the aforesaid acts of unfair practice of trade, and deficiency of service on the part of the opposite party. The above facts and circumstances clearly and equivocally showed that the opposite party is employing unfair trade practices causing undue loss to the complainant.

4. In view of the above facts and circumstances, the complainant has filed this complaint praying for directions to the OP to :-

a. *Pay Rs.1,84,587/- with nterest @ 24% p.a. from the date of fraudulent withdrawal;*

b. *Pay Rs.1,00,000/- as moderate token compensation for the undue mental harassment, trauma, anxiety, disturbance and for suffering financially and physically on account of the unfair trade practices by the opposite party to the complainant;*

and

grant such other relief/s as this Commission may deem fit and proper in the facts and circumstances of the case.

5. In support of the allegations levelled in the complaint, the complainant has also filed copy of the pass Bank book issued in the name of the complainant, copy of the ATM card, copy of complaint to OP dated 19/08/17, copy of complaint to police dated 19/08/17, copy of letter dated 05/09/2017 from OP, Copies of representations dated 16/10/17, 09/11/17 along with Application Form of the ATM Transaction Dispute, copy of letter dated 13/03/18 along with a copy of FIR No.35/18, U/s.420 IPC, PS: Ranjit Nagar, copy of legal notice dated 07/05/18, copy of reply dated 15/05/18 from the OP to the complainant's legal notice and copy of the order dated 29.04.21.

6. Accordingly, notice was issued to the OP and the OP has filed its reply stating that the present complaint is gross misuse of the process of law for unjust gains and the Complainant has misrepresented the material facts before this Hon'ble Commission and has come to this Hon'ble Commission with unclean hands for seeking unlawful gains in unlawful manner and to harass law abiding O.P. The OP has further stated that the OP Bank or any of Its officials are not involved in any wrong doing. The ATM card of the Complainant was never ever reported loss thus giving cause to block it. The ATM card of the Complainant was admittedly with the Complainant. As criminal angle is involved, therefore, the Police have to investigate the matter. The transactions must have been put by Complainant by using ATM card issued to her with secret PIN known only to Complainant, therefore, O.P. is not under any obligation to refund/credit any amount to Complainant. The OP has also contended that there are personal wrongs/negligence/lapses on part of Complainant by having compromised with the security of the ATM card and its PIN, which was her sole and personal responsibility as per the terms and conditions of the Bank for using the ATM services for carrying out transactions in the account of customer opting to use such services of the Bank. No liability, whatsoever, can be imputed, burdened and fastened on the Bank when Complainant has been negligent, whether knowingly or unknowingly, and due to her acts of omission and/or commission has herself facilitated the misuse of her ATM card having compromised with the security of the ATM card and its PIN. Admittedly matter was reported to police but what happened in investigation by police has not been disclosed by the Complainant. Complainant either due to sheer negligence or clever design has let some unknown person defraud her and is mischievously and dishonestly trying to get unlawful and unfair gains by stating bald, false and concocted story put forth to seek unlawful gains to which she is not entitled at all in facts of the case. The Bank cannot be made liable in the matter in any manner, whatsoever.

7. The parties have also filed rejoinder, evidence and arguments in the matter and the complaint has. Accordingly, been examined on merits on the basis of the documents/evidences and material available on records and it has been observed that the complainant has given intimation to Bank as well as Police on the day of reported fraudulent transactions on 19-08-2017 and the copies of the same have also been filed alongwith the complaint. It is also relevant to note from the para 4 and 5 of the reply that the OP has not denied the receipt of such intimation. Besides, the OP has also acknowledged the letter dated 19-08-2017 in the letter dated 05-09-2017 sent to complainant seeking copy of FIR and ATM transaction dispute form.

8. However, on perusal of the reply submitted by the OP, it has been seen that the OP has also tried to shift the responsibility of these fraudulent transactions upon the complainant alleging that the Complainant has compromised with the security of the ATM card and its PIN. The OP has completely failed to rebut the statement of the complainant in para-4 & 5 of the complaint that she has withdrawn Rs.5000/- only through ATM of Bank of Baroda at Connaught Place on 18-08-2017 and on 19-08-2017, at noon, she had received series of information alerts coming on her registered mobile phone No.882XXXX654 about transactions (withdrawal of funds and purchases altogether coming to total amount of Rs.1,84,587/-) from her aforesaid bank account through ATM transactions done at Mumbai. It is also relevant to note that at the same time, she was available in Delhi and had contacted with Bank officer as well as police when she was also carrying ATM card. Had she compromised with the security of the ATM card and its PIN, the ATM card should also not be available with her because the ATM transactions had taken place in Mumbai.

9. In view of the above facts and circumstances, the instructions issued by the Reserve Bank of India vide DBR.No.Leg.BC.78/09.07.005/2017-18 dated 06.07.2017 regarding "Consumer Protection- Limiting Liability of Customers in Unauthorized Electronic Banking Transactions" are relevant in the matter because the OP/bank has not taken any action to conduct investigation in the matter immediately on receipt of the intimation from complainant about fraudulent transactions. The bank was supposed to initiate action to procure the CCTV footage, conduct inquiry and send suitable reply to the complainant after assessing her

liability as per the RBI instructions issued DBR.No.Leg.BC.78/09.07.005/2017-18 dated 06.07.2017 which has not been done by OP in this case. Therefore, the bank is liable to compensate the complainant as per the above instructions dated 06.07.2017 issued by RBI regarding “Consumer Protection- Limiting Liability of Customers in unauthorized Electronic Banking Transactions” which stipulates that:-

(a) Zero Liability of a Customer

6. A customer’s entitlement to zero liability shall arise where the unauthorised transaction occurs in the following events:

- i. Contributory fraud/ negligence/ deficiency on the part of the bank (irrespective of whether or not the transaction is reported by the customer).
- ii. Third party breach where the deficiency lies neither with the bank nor with the customer but lies elsewhere in the system, and the customer notifies the bank within **three working days** of receiving the communication from the bank regarding the unauthorised transaction.

(b) Limited Liability of a Customer

7. A customer shall be liable for the loss occurring due to unauthorised transactions in the following cases:

- i. In cases where the loss is due to negligence by a customer, such as where he has shared the payment credentials, the customer will bear the entire loss until he reports the unauthorised transaction to the bank. Any loss occurring after the reporting of the unauthorised transaction shall be borne by the bank.
- ii. In cases where the responsibility for the unauthorised electronic banking transaction lies neither with the bank nor with the customer, but lies elsewhere in the system and when there is a delay (of **four to seven working days** after receiving the communication from the bank) on the part of the customer in notifying the bank of such a transaction, the per transaction liability of the customer shall be limited to the transaction value or the amount mentioned in Table 1, whichever is lower.

| Table 1 | |
|---|------------------------------|
| Maximum Liability of a Customer under paragraph 7 (ii) | |
| Type of Account | Maximum liability (₹) |
| • BSBID Accounts | 5,000 |
| • All other SB accounts • Pre-paid Payment Instruments and Gift Cards • Current/ Cash Credit/ Overdraft Accounts of MSMEs • Current Accounts/ Cash Credit/ Overdraft Accounts of Individuals with annual average balance (during 365 days preceding the incidence of fraud)/ limit up to Rs.25 lakh • Credit cards with limit up to Rs.5 lakh | 10,000 |
| • All other Current/ Cash Credit/ Overdraft Accounts • Credit cards with limit above Rs.5 lakh | 25,000 |

Further, if the delay in reporting is beyond **seven working days**, the customer liability shall be determined as per the bank’s Board approved policy. Banks shall provide the details of their policy in regard to customers’ liability formulated in pursuance of these directions at the time of opening the accounts. Banks shall also display their approved policy in public domain for wider dissemination. The existing customers must also be individually informed about the bank’s policy.

8. Overall liability of the customer in third party breaches, as detailed in paragraph 6 (ii) and paragraph 7 (ii) above, where the deficiency lies neither with the bank nor with the customer but lies elsewhere in the system, is summarised in the Table 2:

| Table 2 |
|--|
| Summary of Customer’s Liability |
| |

| <i>Time taken to report the fraudulent transaction from the date of receiving the communication</i> | <i>Customer's liability (₹)</i> |
|--|---|
| <i>Within 3 working days</i> | <i>Zero liability</i> |
| <i>Within 4 to 7 working days</i> | <i>The transaction value or the amount mentioned in Table 1, whichever is lower</i> |
| <i>Beyond 7 working days</i> | <i>As per bank's Board approved policy</i> |

The number of working days mentioned in Table 2 shall be counted as per the working schedule of the home branch of the customer excluding the date of receiving the communication.

Reversal Timeline for Zero Liability/ Limited Liability of customer

9. On being notified by the customer, the bank shall credit (shadow reversal) the amount involved in the unauthorised electronic transaction to the customer's account within 10 working days from the date of such notification by the customer (without waiting for settlement of insurance claim, if any). Banks may also at their discretion decide to waive off any customer liability in case of unauthorised electronic banking transactions even in cases of customer negligence. The credit shall be value dated to be as of the date of the unauthorised transaction.

10. Further, banks shall ensure that:

- i. a complaint is resolved and liability of the customer, if any, established within such time, as may be specified in the bank's Board approved policy, but not exceeding 90 days from the date of receipt of the complaint, and the customer is compensated as per provisions of paragraphs 6 to 9 above;*
- ii. where it is unable to resolve the complaint or determine the customer liability, if any, within 90 days, the compensation as prescribed in paragraphs 6 to 9 is paid to the customer; and*
- iii. In case of debit card/ bank account, the customer does not suffer loss of interest, and in case of credit card, the customer does not bear any additional burden of interest.*

10. Taking into consideration the above instructions and reply of the OP, we are of the considered opinion that the OP has not taken any action to assess the liability of the complainant/consumer in unauthorized electronic banking transaction as per the above discussed instructions of the Reserve Bank of India and has tried to shift the liability on the Complainant on the basis of presumptions that the Complainant would have compromised with the security of the ATM card and its PIN for these transactions, without filing any evidence/ CCTV footage of the ATM to prove that the withdrawal was taken by the Complainant or her representative. The OP also not taken any action in terms of the above discussed instructions dated 06/07/2017 issued by the RBI to all scheduled banks to protect the Customer's (who is consumer in this case) liability which proves that the complainant has suffered directly due to deficient service of the OP in terms of the deficiency defined in the Act which includes any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained in relation to any service and includes any act of negligence or omission or commission by such person which causes loss or injury to the consumer.

11. Therefore, we feel appropriate to direct the OP to pay Rs.184587/- (Rupees One Lakh eighty Four Thousand five Hundred Eighty Seven only) within thirty (30) days from the date of this order, with interest at the rate of 9% p.a. from 19-08-2017 (date of fraudulent transaction) till the date of the payment. Besides, the OP is also directed to pay Rs.1,00,000/- (Rupees One Lakh only) as compensation to the Complainant for the mental pain, agony and harassment. It is clarified that if the abovesaid amount is not paid by the OP to the Complainant within the period as directed above, the OP shall be liable to pay interest @12% per annum from the date of expiry of 30 days period.

12. Order be given dasti to the parties in accordance with rules. Order be also uploaded on the website. Thereafter, file be consigned to the record room.

ASHWANI KUMAR MEHTA

Member

DCDRC-1 (North)

HARPREET KAUR CHARYA

Member

DCDRC-1 (North)

DIVYA JYOTI JAIPURIAR

President

DCDRC-1 (North)