

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM  
ERNAKULAM**

**Complaint Case No. CC/21/481  
( Date of Filing : 06 Dec 2021 )**

1. CYRIL K JAMES  
KARINTHOLIL HOUSE , KALIYAR P.O IDUKKI .....Complainant(s)  
Versus

1. MALAYSIA AIRLINES  
JB NAGAR ANDHERI KURLA ROAD, ANDHERI (E),  
MUMBAI .....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. D.B BINU PRESIDENT  
HON'BLE MR. RAMACHANDRAN .V MEMBER  
HON'BLE MRS. SREEVIDHIA T.N MEMBER**

**PRESENT:**

**Dated : 20 Jul 2023**

**Final Order / Judgement**

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM**

Dated this the 20<sup>th</sup> day of July

2023.

Filed on: 06/12/2021

**PRESENT**

Shri.D.B.Binu	President
Shri.V.Ramachandran	Member Smt.Sreevidhia.T.N
Member	

**CC. No.481/2021**

**COMPLAINANT**

Cyril K. James, S/o K.U.Chacko, Karintholil House, Kaliyar P.O, Idukki-685607.

(Rep. by Adv. Umar Farook, Faby's, 43/2344, Dr. palpu Lane, SRM Road, Ernakulam 18)

**VS**

**OPPOSITE PARTIES**

1. Malaysia Airlines, STIC Travel Pvt. Ltd., B 505, Citi Point, JB Nagar, Andheri - Kurla Road, Andheri (E), Mumbai- 400059 Rep. by its Country Manager South Asia- Amit Mehta .

2. Australia Travel Services, 66/1740, Lamy Arcade, Peoli Lane, Kacherippady, Ernakulam-682018. Represented by its Proprietor- Prathish Mathew

## **FINAL ORDER**

### **D.B. Binu, President.**

#### **1. A brief statement of facts of this complaint is as stated below:**

The complaint was filed under Section 35 of the Consumer Protection Act, 2019. The brief facts, as averred in the complaint, are that the 1st opposite party is an airline that has been conducting sales promotions through different Media. The 2nd opposite party has been functioning as an authorized travel service provider for the past several years. The complainant engaged with an airline (1st opposite party) and an authorized travel service provider (2nd opposite party) who were conducting sales promotions. The complainant was attracted to the promotions and approached the 2nd opposite party, who assured them of a hassle-free journey to Australia on the flight operated by the 1st opposite party. The complainant transferred an amount of Rs.1,47,800/- to the 2<sup>nd</sup> opposite party's account for the ticket expenses of a tour to Sydney, Australia for themselves, their wife, and their child.

However, due to the COVID-19 pandemic and subsequent lockdown, all aviation activities were halted, and the scheduled trip was cancelled by the opposite parties. The complainant requested a refund of the amount, as the cancellation was not their fault. Despite the complainant's requests, the opposite parties did not take any steps to refund the money.

According to aviation norms and European regulation EC 261/2004, if an airline cancels a flight and the passenger chooses not to travel, the passenger is entitled to a refund. The opposite parties are obligated to refund the full price of the ticket within seven days in case of a cancelled flight. Furthermore, even for non-refundable tickets, if the flight is cancelled and the passenger cancels the trip as a result, they are entitled to a refund for the unused transportation.

The complainant alleges that both opposite parties are being irresponsible and displaying a negative attitude by not refunding the amount. This has caused the complainant both mental agony and financial loss. The complainant asserts that the opposite parties are liable to indemnify them for the delay in providing a refund, as it constitutes a deficiency in service and unfair trade practices.

The relief sought includes directing the 1st and 2nd opposite parties to refund the amount of Rs.1,47,800/- to the complainant with interest. Additionally, the opposite parties are to pay Rs.1,00,000 as compensation for the mental agony caused by the delay in providing the refund. Furthermore, the opposite parties should bear the costs of the proceeding and pay them to the complainant.

### **2) Notice**

The notices sent to the opposite parties have been successfully served. However, the opposite parties have not filed their versions. Hence, the opposite party is set ex-parte."

### **3) Evidence**

The complainant had filed a proof affidavit and two documents that were marked as Exhibits-A-1- to A-2.

**Exhibit A-1:** Photocopy of the Tickets issued by the 1<sup>st</sup> opposite party and forwarded by the 2nd opposite party.

**Exhibit A-2:** Refund request on 4/9/2020.

### **4) The main points to be analysed in this case are as follows:**

- i) Whether the complaint is maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- iv) Costs of the proceedings if any?

### **5) The issues mentioned above are considered together and are answered as follows:**

In the present case in hand, as per Section 2(7) of the Consumer Protection Act, 2019, a consumer is a person who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment. The complainant produced a copy of the Tickets issued by the 1<sup>st</sup> opposite party and forwarded by the 2nd opposite party (**Exhibit A-1**). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 2019.

The complainant has lodged a case seeking a refund for a cancelled journey and compensation for the deficiency in service caused by the 1st opposite party and other opposite parties involved in the matter.

The learned counsel for the complainant submitted that the 1<sup>st</sup> Opposite party is obligated to refund the complainant, and the 2nd Opposite party is equally liable. However, both opposite parties have shown an irresponsible attitude, causing mental agony and financial loss to the complainant. The complainant seeks indemnification for the delay in providing a refund, citing deficiency in service and unfair trade practices. The complaint seeks a refund for a cancelled journey by the 1st Opposite party, an airline, and the complainant asserts their status as a consumer under the Consumer Protection Act. The 2nd Opposite party, an authorized travel service provider, assured the complainant of a hassle-free journey and received an amount of Rs.1,47,800/- for ticket expenses. Photocopies of the tickets issued by the 1<sup>st</sup> Opposite party and forwarded by the 2nd Opposite party are provided as Exhibit AI. The trip was scheduled from 13/4/2020 to 5/5/2020, but due to the Covid-19 pandemic and subsequent lockdown, the opposite parties cancelled the trip. The complainant requested a refund on 4/9/2020, and subsequent requests were made, as evidenced by Exhibit A2. As per aviation norms and European regulation EC 261/2004, the passenger is entitled to a refund when the airline cancels a flight, regardless of the reason.

The opposite parties' conscious failure to file their written version in spite of having received the Commission's notice to that effect amounts to an admission of the allegations levelled against them. Here, the case of the complainant stands unchallenged by the opposite parties. We have no reason to disbelieve the words of the complainant against the opposite parties. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

The opposite party's inadequate service caused a deficiency, negligence, and failure to meet the complainant's expectations. This resulted in the complainant's mental agony, hardship, and financial loss. These actions demonstrate the opposite party's callousness, negligence, and poor service quality, making them fully responsible.

After considering the facts and evidence presented, as well as the relevant provisions of the law, the following aspects can be considered:

- A. It is established that the opposite parties conducted sales promotions and assured the complainant of a hassle-free journey to Australia. The complainant subsequently transferred a considerable amount of Rs 1,47,800/- for the ticket expenses of the tour.
- B. Due to the Covid-19 pandemic and subsequent lockdown, the opposite parties cancelled the scheduled trip. The complainant requested a refund, but the opposite parties have failed to take any steps to refund the money, despite being obligated to do so.
- C. As per aviation norms and European regulation EC 261/2004, when an airline cancels a flight and the passenger chooses not to travel, a refund is warranted.
- D. The opposite parties' refusal to refund the amount constitutes a deficiency in service, as they are responsible for the cancellation of the trip and the resulting inconvenience, mental agony, and financial loss suffered by the complainant.
- E. Based on the above findings, it is clear that the complainant is entitled to a refund of the ticket price and compensation for the mental agony and financial loss caused by the opposite parties' negligence and deficiency in service.

This order is issued in light of the complainant's consumer rights and the legal responsibilities of the opposing parties. It has been determined that the opposing parties have failed to meet their obligations and have provided inadequate service, thereby justifying the need for appropriate remedies to be granted to the complainant.

We find the issue Nos. (I) to (IV) are found in favour of the complainant for the serious deficiency in service that happened on the side of the opposite parties. Naturally, the complainant had suffered a lot of inconvenience, mental agony, hardships, financial loss, etc. due to the negligence on the part of the opposite parties.

In light of the circumstances, the following orders are issued:

- I. The Opposite Parties shall refund the amount of Rs.1,47,800/- to the complainant.
- II. The Opposite Parties shall pay Rs.50,000/- as compensation to the complainant for the mental agony and financial loss sustained to the complainant due to the reluctant attitude of the opposite parties.
- III. The Opposite Parties shall also pay the complainant Rs.5000/- towards the cost of the proceedings.

The 1<sup>st</sup> and 2<sup>nd</sup> Opposite Parties be jointly and severally liable for the above-mentioned directions which shall be complied with by the Opposite Parties within 30 days from the date of

the receipt of a copy of this order. Failing which the amount ordered vide (i) and (ii) above shall attract interest @9% from the date of receipt of a copy of this order till the date of realization.

Pronounced in the Open Commission on this the 20<sup>th</sup> day of July,2023

Sd/-

D.B.Binu President

Sd/-

V.Ramachandran Member

Sd/-

Sreevidhia TN., Member

Forwarded by Order

Senior Superintendent

### **APPENDIX**

#### **COMPLAINANT'S EVIDENCE**

**Exhibit A-1:** Photocopy of the Tickets issued by the 1<sup>st</sup> opposite party and forwarded by the 2nd opposite party.

**Exhibit A-2:** Refund request on 4/9/2020.

#### **OPPOSITE PARTY'S EVIDENCE**

Nil

Despatch date:

By hand: By post

kp/

**CC No. 481/2021**

**Order Date: 20/07/2023**

**[HON'BLE MR. D.B BINU]  
PRESIDENT**

**[HON'BLE MR. RAMACHANDRAN .V]  
MEMBER**

**[HON'BLE MRS. SREEVIDHIA T.N]  
MEMBER**