

## **M/S Hello Travels vs Harish C Jain on 30 September, 2019**

Daily Order

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

U.T., CHANDIGARH

Appeal No.

:

210 of 2019

Date of Institution

:

19.09.2019

Date of Decision

:

30.09.2019

M/s Hello Travel, E-75, Sector 63, Noida 201309.

.....Appellant/Opposite Party No.2.

Versus

1. Harish C. Jain, HCS, Addl. Collector-cum-S.D.M (Retired) S/o Sh. A.C. Jain,

Respondent No.1/Complainant.

2. Your Tour Advisor Pvt. Ltd., 417, Aditya High Street Lal Kuna, Ghaziabad

2nd Address:-

Sh. Sandeep Kumar, Your Tour Advisor Pvt. Ltd., R/o H.No.9, Manasarover

.....Respondent/Opposite Party No.1.

Appeal under Section 15 of the Consumer Protection Act, 1986

BEFORE: JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT.

MRS. PADMA PANDEY, MEMBER.

MR. RAJESH K. ARYA, MEMBER.

Argued by:

Sh. Harpreet Saini, Advocate for the appellant.

PER RAJESH K. ARYA, MEMBER By filing this appeal, opposite party No.2 (M/s Hello Travel) has laid challenge to order dated 23.07.2019 passed by District Consumer Disputes Redressal Forum-II, U.T., Chandigarh (in short 'the Forum') vide which, the Forum allowed consumer complaint bearing No.657 of 2018, in the following manner:-

"9] In the circumstances, as discussed above, we are of the considered view that the OPs not only remained deficient in providing proper service to the complainant, but also indulged into unfair trade practice and thus, forced the complainant to indulge in avoidable litigation. Therefore, the present complaint is allowed against OPs No.1 & 2 with following directions:-

- a. Opposite Party NO.1 shall refund an amount of Rs.20,000/- to the complainant;
- b. OPs NO.1 & 2 jointly & severally pay an amount of Rs.10,000/- to the complainant for causing mental agony & harassment due to their deficient act coupled with unfair trade practice, along with Rs.7000/-towards litigation expenses.

This order be complied with by the opposite parties, within 45 days from the date of receipt of its certified copy, failing which the OPs shall also be liable to pay additional compensatory cost of Rs.10,000/- apart from the above relief."

2. Before the Forum, it was the case that complainant (respondent No.1 here) approached the appellant i.e. 'Hello Travel' (Opposite Party No.2) online, the search engine for providing of tour package for Goa for 3 nights & 4 days from 27.9.2018 to 30.9.2018 and finalized Opposite Party No.1 for above tour package (Caravela Beach Resort 3 rooms, 7 adults +3 children, taxes, Breakfast + Dinner and personal Tempo Traveller-12 Seater) at a total cost of Rs.61,200/- on 2.8.2018. He paid/transferred an amount of Rs.20,000/- in the account of opposite party No.1 on 2.8.2018 which was acknowledged by it on 13.8.2018. However, even after booking & advance payment, opposite party No.1 did not send Hotel Vouchers & other documents regarding stay/booking at Goa. Despite, numerous emails and telephone calls, nothing was done. Ultimately, the complainant having no alternative, made last minute arrangements and booked another Hotel 'Hard Rock' at Goa by paying Rs.86,864/- for stay for 3 nights & 4 days + Breakfast, Dinner for family for Rs.20,000/- approx. and Transport Vehicle costs Rs.15,680/-. It was the case of the complainant that he had to bear extra charges due to non-performance of deal and negligence on the part of Opposite Party No.1.

3. On the other hand, Opposite Party No.2, in its reply, had stated that it owns and operate an online discovery platform, which works like a Search Engine namely [www.hellotravel.com](http://www.hellotravel.com) wherein different third party business entities like Travel Agencies/Travel Agents List/Host/Advertise their services, and this listing can be viewed by the general public while browsing the HTOPL website. It was further stated that opposite party No.2 does not charge any service charges or any fee from the user who visit its site. It was further stated that no charges were charged from the complainant and the role of opposite party No.2 website is limited to sharing the contact details of one or more travel agent/travel agencies to the traveler.

4. The aforesaid stand of the appellant/Opposite Party No.2 has been rejected by the Forum vide the impugned order. Paras 6 to 8 of the impugned orders, being relevant are extracted hereunder:-

"6] It is the duly sworn averments of the complainant that the OP No.1 even after booking & advance payment, did not send Hotel Vouchers & other documents regarding stay/booking at Goa. The complainant sent emails to OP No.1 on 2.9.2018, 5.9.2018, 12.9.2017 & 26.9.2018 (Ann.C-3 to 6), and even made telephone calls in respect of booked tour package, but nothing was done. The OP No.2 vide email dated 5.9.2018 also reminded OP NO.1 to contact the complainant and resolve the matter. Ultimately, the complainant having no alternative, as air-tickets were already booked for said days, has to make last minute arrangements and booked another Hotel 'Hard Rock' at Goa by paying Rs.86864/- for stay for 3 nights & 4 days + Breakfast, Dinner for family for Rs.20,000/- approx. and Transport Vehicle costs Rs.15,680/- (Ann.C-7). It is also contended that the complainant had to bear extra charges due to non-performance of deal and negligence on the part of Opposite Party No.1.

7] The stand of Opposite Party NO.2 that it has no privity to the negotiations took place between the complainant and Opposite Party NO.1, is not sustainable. The complainant could finalize his deal with Opposite Party No.1 only when the name of Opposite Party No.1 was listed on the platform/portal of Opposite Party NO.2 and hence it is also liable for the act & conduct of Opposite Party NO.1.

8] Also OP No.1 chose not to appear and preferred to be proceeded ex parte, which raises a reasonable presumption that either it admit the claim of the complainant or has nothing to contradict the duly sworn allegations of complainant as contained in the complaint and are therefore correct."

5. In this appeal, the appellant/opposite party No.2 has reiterated its stand as was before the Forum that the appellant was only an intermediary and had not received any benefit from the complainant.

6. It may be stated here that similar question arose for consideration before this Commission in case titled Amazon Seller Services Private Limited Vs. Gopal Krishan, First Appeal No.27 of 2017 decided on 17.02.2017. In the said case, through a web domain(online portal) owned, managed and controlled by Amazon Seller Services Pvt. Ltd., a mobile handset Xiaomi Redmi Note 3 was purchased by Sh. Gopal Krishan on 11.5.2016 for an amount of Rs.9998/-. Payment was made online and the handset was found defective. In the said case, it was observed that it was bounden duty of the facilitator to ensure that goods sold through any individual are manufactured as per quality standard. If the goods purchased through online are found not up to the mark, online portal through which goods were purchased, cannot escape its liability. Further, the contention raised that as per terms and conditions of sale, no liability can be fastened upon the appellant (Amazon), was rejected by this Commission by observing as under:-

"8..... An agent, who sells a product, is duty bound to ensure its quality, and if the product is found defective, agent shall be vicariously liable for the loss caused to the purchaser, alongwith the manufacturer of the product. It was so held by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi in the case titled as

Emerging India Real Assets Pvt. Ltd. & Anr. Vs Kamer Chand & Anr. Revision  
Petition No.765 of 2016 decided on 30.3.2016."

7. Not only above, in a subsequent judgment passed by this Commission in the case of Amazon Seller Services Private Limited Vs. Dinesh & Ors., First Appeal No.21 of 2018 decided on 16.02.2018, above view as expressed in the case of Amazon Seller Services Private Limited Vs. Gopal Krishan (supra) was reiterated.

8. In the instant case also, admittedly, the appellant/opposite party No.2 is an online discovery platform, which works like a Search Engine namely www.hellotravel.com. As such, it also cannot escape its liability and take benefit by merely saying that it is not privy to the negotiation, offer, acceptance/payment which took place between opposite party No.1 and the complainant. It is a kind of selling or service provider platform. It has to ensure the quality of the product coming to its platform for sale or the service, which is being provided through it by third party. By ensuring the quality of product and services hired, through their website/portal, to the complete satisfaction of the consumers, they can fetch more confidence. It is generally seen that lot of complaints qua the products purchased online or services hired are increasing day by day, which is creating a shabby picture of online selling portals/search engines.

9. The appellant/opposite party No.2 failed to provide due service to the respondent No.1/complainant. Once, approached by the complainant, it was the bounden duty and responsibility of the appellant to assist the complainant and provide him alternative arrangement but it tried to escape its liability one way or the other.

10. We agree with the view expressed by the Forum that both the opposite parties i.e. the appellant and opposite party No.1 remained deficient in providing proper service to the complainant and also indulged into unfair trade practice and this, forced the complainant to indulge into avoidable litigation.

11. Hence, we are of the opinion that the order passed by the Forum, being based on the correct appreciation of evidence and law, on the point, does not suffer from any illegality or perversity.

12. For the reasons recorded above, the appeal filed by the appellant is dismissed being devoid of merit, at the preliminary stage, with no order as to costs. The impugned order dated 23.07.2019 passed by District Forum-II, U.T., Chandigarh in Consumer Complaint bearing No.657 of 2018 is upheld.

13. Certified copies of this order, be sent to the parties, free of charge.

14. The file be consigned to Record Room, after completion.

Pronounced.

30.09.2019.

[RAJ SHEKHAR ATTRI] PRESIDENT (PADMA PANDEY) MEMBER (RAJESH K. ARYA)  
MEMBER Ad