

## M/S. Hello Travel vs Harish C. Jain & Anr. on 27 February, 2020

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI  
BEFORE: HON'BLE MR. DINESH SINGH, PRESIDING MEMBER  
For the Petitioner : Mr. Alok Shankar, Advocate

REVISION P

Ms. Priyambada Mishra, Advocate For the Respondent :  
Dated : 27 Feb 2020 ORDER

ORDER

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

1. This Revision Petition has been filed under Section 21(b) of The Consumer Protection Act, 1986, hereinafter referred to as the 'Act', challenging the Order dated 30.09.2019 passed by The State Consumer Disputes Redressal Commission, U.T. of Chandigarh, hereinafter referred to as the 'State Commission', in F.A. No. 210 of 2019 arising out of the Order dated 23.07.2019 in C.C. No. 657 of 2018 passed by The District Consumer Disputes Redressal Forum-II, U.T. of Chandigarh, hereinafter referred to as the 'District Forum'.

The Petitioner herein, M/s Hello Travel, was the Opposite Party No. 2 before the District Forum, and is hereinafter being referred to as the 'Travel Portal'.

The Respondent No. 1 herein, Mr. Harish C. Jain, was the Complainant before the District Forum, and is hereinafter being referred to as the 'Complainant'.

The Respondent No. 2 herein, Your Tour Advisor Pvt. Ltd., was the Opposite Party No. 1 before the District Forum, and is hereinafter being referred to as the 'Travel Agency'.

2. Heard arguments on admission, on 24.01.2020 and 05.02.2020, from the learned Counsel for the Travel Portal.

Perused the material on record, including inter alia the Order dated 23.07.2019 of the District Forum and the impugned Order dated 30.09.2019 of the State Commission.

3. The dispute relates to loss and injury caused to the Complainant due to deficient services and unfair & deceptive acts of the Travel Portal and the Travel Agency.

The Complainant's case is that he booked a tour package for Rs. 61,200/- with the Travel Agency through the Travel Portal. After paying an advance of Rs. 20,000/-, to the Travel Agency, through the Travel Portal, he did not receive the hotel vouchers and other documents. His advance of Rs.

20,000/- was not refunded. Correspondence made with the Travel Agency and the Travel Portal went unacknowledged and unanswered. He had, then, to make alternative arrangements.

4. The Complainant filed Consumer Complaint No. 657 of 2018 before the District Forum. The District Forum vide its Order dated 23.07.2019 allowed the Complaint.

5. The Travel Portal filed Appeal under Section 15 of the Act before the State Commission. The State Commission vide its Order dated 30.09.2019 dismissed the Appeal.

6. The facts have been appraised by the two Fora below. Both the Fora have returned concurrent findings, that Rs. 20,000/- was paid as advance by the Complainant to the Travel Agency through the Travel Portal, the Travel Agency did not provide the hotel vouchers and related documents, the advance was not refunded, correspondence made by the Complainant with the Travel Agency and the Travel Portal went unacknowledged and unanswered. Both the Fora have determined ingredients of 'deficiency in service' and 'unfair trade practice' on the part of the Travel Agency and the Travel Portal.

7. Within the ambit and scope of Section 21(b), no palpable or crucial error in appreciating the evidence by the two Fora below is visible, as may cause to require de novo re-appreciation of the evidence in revision.

8. The Award made by the District Forum, and as upheld by the State Commission, is as below:

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.

9. The limited point argued before this Commission on 24.01.2020 and 05.02.2020 by the learned Counsel was that the Travel Portal should not have been made liable, jointly and severally, with the Travel Agency, for the compensation of Rs. 10,000/- and the cost of litigation of Rs. 7,000/- ordered to be paid to the Complainant by the District Forum.

10. It may first be noted that the converse inference from the case brought by the Travel Portal before this Commission is that it (implicitly) does not dispute the findings on facts arrived at by the two Fora below.

11. The Travel Portal's contention, that it is not liable, jointly and severally, with the Travel Agency, for compensation and cost of litigation, has been briefly dealt with by the District Forum in para 7 of its Order of 23.07.2019:

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.

12. The State Commission has dealt with this contention in detail in paras 5 to 9 of its Order of 30.09.2019:

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](http://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.

13. It is seen that the Travel Portal is in the business of providing wide-ranging tour and travel services, which inter alia include displaying travel agencies on its website and providing access to them from its website. The Travel Agency herein was also so displayed on the Travel Portal's website, access to the Travel Agency was also so provided from its website.

14. It is further seen that the Travel Portal was not operating gratis. It earned through the services it provided through its website, including inter alia from payments made by (some or all of) the travel agencies displayed on its website (as per its internal policy, categorization, etc.).

15. The Travel Portal was required and expected to exercise the due diligence in displaying travel agencies on its website and providing access to them from its website.

16. It is nowhere on record that a 'disclaimer', to the effect that it was not responsible for deficient services and / or unfair and deceptive acts of the travel agencies displayed on its website and to which access was provided from its website, was put on its website by the Travel Portal for the information of the general public / Consumers.

17. As such, a reasonable man would reasonably conclude that [a] the Travel Portal had exercised its due diligence in respect of the travel agencies displayed on its website and to which access was provided from its website [b] the Travel Portal would be both responsive as well as responsible for deficient services and / or unfair and deceptive acts committed through its website.

18. In the light of the above discussion, the Travel Portal's contention fails.

19. Per se, no jurisdictional error, or a legal principle ignored, or miscarriage of justice, is visible in the State Commission's impugned Order, as may require interference in exercise of the revisional jurisdiction of this Commission.

20. It is well evinced that the Travel Portal as well as the Travel Agency indulged in deficiency in service within the meaning of Section 2(1)(g) & (o) and unfair trade practice within the meaning of Section 2(1)(r) of the Act.

In respect of 'unfair trade practice', it may be noted here that it is a specific provision unique to The Consumer Protection Act, 1986.

Section 2(1)(r) says of "a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:-".

The list provided in Section 2(1)(r) is illustrative and not comprehensive.

That is to say, an unfair method or unfair or deceptive practice, as is judiciously determined, on facts and reasons, on fair and objective appraisal of the evidence and material on record, would qualify as 'unfair trade practice' within the meaning of Section 2(1)(r).

In the instant case, accepting an advance of Rs. 20,000/-, then renegading on honouring the commitment to provide the promised package tour services, wrongly and unlawfully retaining the advance, ignoring the correspondence made by the Complainant, not addressing the Complainant's righteous protests promptly and dutifully, are decidedly unfair and deceptive within the meaning of Section 2(1)(r).

21. The findings (inter alia) of 'unfair trade practice', on the part of both, the Travel Portal and the Travel Agency, sustain.

22. The out-and-out unfair trade practice is not viewed favourably, it necessitates caution and cost.

23. The Revision Petition, being patently ill-conceived and totally bereft of merit, is dismissed with stern advice of caution to the Travel Portal, through its Chief Executive, with imposition of cost of Rs. 1,00,000/-, to be deposited in the Consumer Legal Aid Account of the District Forum, within four weeks of the pronouncement of this Order.

24. The State Commission's impugned Order is upheld.

The Award made by the District Forum is confirmed.

25. The Travel Portal, through its Chief Executive, is directed to ensure timely compliance (paras 23 and 24 above).

26. In case of failure or omission in timely compliance, the District Forum shall undertake execution, for 'Enforcement' under Section 25(3) and for 'Penalties' under Section 27 of the Act, as per the law.

27. A copy each of this Order be sent by the Registry to the Chief Executive of the Travel Portal, to the Travel Agency, to the District Forum and to the Complainant, within three days of its pronouncement.

..... DINESH SINGH PRESIDING MEMBER