

Date of registration : 15.06.2021  
Date of order : 17.10.2022

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL  
COMMISSION NO.I, VISAKHAPATNAM : AP**

**PRESENT:** Smt.Gudla Tanuja, B.Com., M.A.(HRSA), LL.M., (Ph.D)  
President

Sri Varri Krishna Murthy, M.A., M.B.A., A.I.I.I.,  
(Associateship in Insurance Institute of India)  
Member

Ms.Rahimunnisa Begum, M.Com., LL.M., M.HRM(Ph.D)  
Woman Member

Monday the 17<sup>th</sup> October, 2022

**Consumer Complaint No. 121/2021**

Between :

Dr. Vikas Pandey S/o Late Mohan Pandey, D.No.2-69, Rajeev Nagar,  
Visakhapatnam-530040.

... Complainant

And

The General Manager/Managing Director, Four Points by Sheraton, Survey  
No.169/1A,1B, OMR (Old Mahabulipuram Road), Rajiv Gandhi Salai,  
Kumaran Nagar, Sholinganallur, Chennai, Tamil Naidu-600119

... Opposite Party

This case came up for hearing on before the Commission. Heard the  
Complainant on 29.09.2022 and the Opposite Party on 07.10.2022. The  
Counsel on behalf of the Complainant is Sri P.Srinivasa Appa Rao and the  
Counsel for the Opposite Party is Sri S.V.S.S.Sivaram. This Commission  
pronounced the following:-

**ORDER**

*(Per Sri. V. Krishna Murthy, Hon'ble Member on behalf of the bench)*

1. The Complaint a resident of Visakhapatnam submitted that the OP was  
running a Star Hotel by name and style of "Four Points of Sheraton" had  
reserved Hotel Room through the app [www.makemytrip.com](http://www.makemytrip.com). He booked a  
room from 13.12.2020 to 16.12.2020 for 3 adults for 3 nights. He paid an  
amount of Rs.9,769/- was paid on line through SBI account. The  
complainant booked the hotel mainly on seeing the brand name of "Four  
Points by Sheraton" and though the location of hotel was far away from his  
work place. But to his dismay the complainant began to find deficiencies in  
the facilities of room as well as services of the Hotel such as (1) The luggage  
reached to their room 712 (7<sup>th</sup> floor) after an hour that too after many a follow  
up (2) The telephone provided in the room was not functioning. He had to go  
all the way down to the reception and request him to make the telephone  
functional then the receptionist gave his mobile number for assistance. He

was reluctant to get the telephone in the room repaired. (3) The TV was not functioning and after repeated complaints to the reception could set it right after 48 hours after check in the hotel. (4) Though they knew that the complainant along with associates is 3 persons and had booked a room for 3 days stay in the hotel, yet he had to keep on asking several times even for the basic requirements such as room cleaning and changing of Lenin etc. (5) The mini bar fridge was found empty though complainant is privileged to have necessary items which were missing. (6) The centralised system of air conditioning was not working efficiently due to which complainant found the room quite hot all the time during their stay as the hotel administration failed to attend. (7) The complimentary breakfast was also insufficient besides providing stale food. (8) The staff are very skeletal in number which resulted in an exorbitant delay in providing services both in the restaurant as well as for housekeeping besides being reckless in behaviour. Neither the room nor the toilets was cleaned during the complainants stay for 3 days. The complainant in his Evidence Affidavit cited Orissa Life Irrigation Corporation Ltd Vs. Birakishore Raut (1991) 2 CPJ 213 (NC) in support of his complaint he also mentioned Honourable Supreme Court in “Trimex International FZE Ltd Dubai Vs. Vedanta Aluminium Ltd” (2010) 3 SCC 1 has held that e-mails exchanged between parties regarding mutual obligations constitute a contract and in (2015) 1 SCC 429 (General Motors (India) Pvt Ltd Vs – Ashok Ramnik Lal Total and Anr) as per which “The Act was a piece of social legislation to provide a forum to the consumers who are taken for a ride by suppliers of goods and services. The redress is provided to a consumer against any deficiency in service as against any loss or injury arising out of “Unfair Trade Practice”. Hence, the complaint of complainant. The complainant prayed for (1) Hotel Fare (2) Compensation for mental agony (3) Compensation for deficiency in service (4) Costs of the complainant amounting to Rs.9,769, Rs.10,00,000/-, Rs 10,00,000/- and Rs 25,000 respectively.

Version of Opposite Party:

2. The Opposite Party denied all the allegations raised by the Complainant in his Complaint and that the Complainant was guilty of ‘suggestio falsi’ and ‘suppressio veri’. The Complainant also concealed the fact that he visited the hotel of the Opposite party during the Covid-19 outbreak and the stay of the guests at hotel were governed by Covid-19 protocol. He also suppressed the fact that he did not avail any service from the answering respondent i.e. General Manager/Managing Director of the Hotel of the Opposite Party Hotel.

He also failed to establish how the answering Opposite Party was liable to provide any service to the Complainant in personal capacity and that the Complainant was not maintainable before the Hon'ble Commission as there was no cause of action in favour of the Complainant and against the Opposite Party. Further the alleged Complainant had a stay in a hotel named "Four Points By Sheraton" and as alleged by the Complainant that he availed certain services from the said hotel but not from the answering Opposite party in person. So far as the Opposite Party was concerned he had neither rendered any service to the Complainant nor the Consumer qua the Opposite Party. Further it was a settled law that the Hon'ble Commission would entertain the Complaints filed only by the Consumers. Here the Complainant ought to have disclosed inter-alia certain facts such as :-

- (i) Present business/profession/occupation
- (ii) Present income from respective sources, supported by income tax returns and assessment orders relating thereto, for the last three years prior to the said investments
- (iii) Details of the total asset both moveable and immovable, together with the value of each such asset owned by them and members of their family
- (iv) Purpose for which the property was purchased?
- (v) Whether the property from which they are presently running their business is self-owned or rented?

3. Under the circumstances the burden lies on the Complainant to prove that he falls under the meaning of Consumer Under Sec.2(7) of the present Act. Further the Complainant failed to prove that the Opposite Party had adopted an unfair or restrictive trade practices or has provided defective goods and that there has been any deficiency in service and that there was no cause of action under the act and consequently the Hon'ble Commission had no jurisdiction and that in no case deficiency in service can be alleged unless it is first alleged and proved that the trade practice is for the purpose of promoting the sale or services as contemplated in Section 2(11) and (47) of the Act of 2019, which defines Unfair Trade Practice. Further it was pertinent to mention that in the captioned matter the hotel room was booked by the Complainant through a portal named "Make My Trip" and not through the website directly. Hence the Hotel was not at all responsible for the assurance given by various portals. Further the website "Make My Trip" had a descriptive disclaimer which gave the right to the service provider to run or not to render services as shown in the website and that the Opposite Party had not accepted any money from the Complainant and therefore the Opposite Party

was not liable to render any service to the Complainant. All the services accepted by him were to render by 'Make My Trip' and that the Hon'ble Commission did not have a territorial jurisdiction to entertain the present complaint as he had availed services from 'Make My Trip' for which exclusive jurisdiction of courts of New Delhi could be availed. Further, that cause of action had arisen in Chennai which is the local jurisdiction of courts of Chennai and hence the Courts of Chennai only had the jurisdiction to entertain the present Complaint. Opposite Party also denied that there was any deficiency in the hotel room as alleged. Further submitted that Opposite Party had not executed any agreement or contract of any document with the Complainant that would make him liable for any act or abstinence which amounts to contravention under the Act of 2019. Opposite party also submitted that at the relevant time they were bound by Covid-19 protocols. Therefore, denying that the Complainant is entitled for any amount as claimed in the Complaint. The Complainant was not at all entitled to any prayer as sought by him in the light of the above facts and therefore the Complaint was not maintainable and liable to be dismissed, in favour of the the Opposite Party and against the Complainant.

Marking of documents as per available records.

4. During the course of enquiry Exs. A1 to A4 are marked for the Complainant and no documents are marked on behalf of Opposite Party. Heard both the parties, perused all the documents submitted by the Complainant and Opposite Parties.

5. The following issues come forward before the Commission:-

- (1) Whether there is any deficiency of service on the part of the Ops?
- (2) If so, to what extent?

6. Point No.1: Perused the material placed on record by both the parties and heard the Complainant in person but the Counsel of Opposite Party reported that no hearing from his side and hence to be treated as heard. There was no dispute that the Complainant paid an amount of Rs.9,769/- for his stay along with 2 adults for 3 Nights One room i.e. from 13.12.2020 to 16.12.2020 (Ex.A2 & A3). It is also not in dispute that the Hotel "Four Points by Sheraton" is booked through the website "Make My Trip" (Ex.A2).

7. The Opposite Party alleged that the Complainant does not come under the purview of Consumer under Sec.2(7) of 2019 Act and also disputed the allegations made by the Complainant with regard to interfere & restrictive

trade practices and provided defective goods are false under the definition of Sec.2(11) and (47) of the Act 2019. He also defended that the website Make My Trip has a descriptive disclaimer which gives the right to the service provider not to render the services as shown on the website. The Opposite Party further defended that they have not accepted any money from the complainant, therefore not liable to render any service to the Complainant and that the Hon'ble Commission does not have the territorial jurisdiction to entertain the present complaint and that the Complainant availed the services of 'Make My Trip' which has exclusive jurisdiction of Courts of New Delhi. Further, the alleged cause of action has arisen within the local jurisdiction of the Courts of Chennai and therefore, the Courts of Chennai has the jurisdiction to entertain the present complaint.

8. Mr.Parvez Nisar Damad S/o Nisar Hasan Damad, resident of Chennai filed an Affidavit and alleged that the Hotel is managed by the Opposite Party during the Covid-19 Pandemic and during that period stay of the guests at hotel were governed by Covid-19 protocol and that the General Manager of the Hotel is not at all liable for the above complaint and that the Complainant is a habitual litigant and as various consumer complaint pending against various service providers alleging that the services were not up to the standards. Some of the consumer cases which are baseless pertaining to the Complainant are mentioned below:

Sl.No.	Case No.	Complainant	Respondent
1.	CC/125/2022	Dr.Vikas Pandey	Manipal Cigna Health Insurance
2.	CC/129/2022	Dr.Vikas Pandey	The Branch Manager/Authorized Signatory, IDFC First Bank
3.	CC/131/2022	Dr.Vikas Pandey	Managing Director/Authorized Signatory, Agri Gold Farm Estates India Private Limited
4.	CC/135/2022	Dr.Vikas Pandey	Medicover Hospital (Unit III), Rep by its Managing Director

9. In the present case after careful analysis and meticulous observation made by us as per Ex.A2, it is visible that the Complainant booked a room on 12.12.2020 for 3 Nights stay i.e. from 13.12.2020/3.00 pm to 16.12.2020/12.00 pm for 3 guests i.e. Palakurthi Srinivasa Apparao, Kolavennu Kanaka Kumar besides the Complainant and booked through 'Make My Trip' for which an amount of Rs.9,769/- was paid. As per Ex.A3 Tax

Invoice is given on the name of Palakurthi Srinivasa Apparao who was one of the guests stayed in the hotel along with the Complainant. Wherein the Hotel name is mentioned as Four Points By Sheraton, Chennai period of stay from 13.12.2020 to 16.12.2020 for an amount of Rs.9,768/- with booking ID No.NH7215761511652 and Invoice No.M06HL21101131973 dated 13.12.2020 as per Ex.A3, and as per Ex.A4 it is observed that an email dt17.12.2020 was sent to the Complainant by the Hotel manager Mr.Parvez Nisar of Four Points by Sheraton Chennai as per the contents of the mail the Hotel Manager apologised for the discomfort experienced by the Complainant during the visit to the hotel (Ex.A4).

10. As per Ex.A2, A3, A4 it is visible that the Complainant stayed during the said period and there was clear deficiency of service of the hotel management. With regard to the allegations made by the Opposite Party that the Complainant is not a consumer does not fall under the definition of a Consumer as per the present Act, where as it is observed that the Complainant very much false under the purview of the Consumer under Sec.2 (7) (ii) and also defences submitted by the Opposite Party that they did not commit an offence of unfair trade practice under Sec.2(47) of Consumer Act 2019. Whereas, as per Sec. 2(47) mentioned in the Opposite Party's Written version it is visible that it is an offence and unfair trade practice with regard to supply of the provision of any services as per Sec.2(47)(b) as falsely represented that the goods are of a particular standard, quality, quantity, grade, composition, style or model; was not maintained by the Opposite Party as per the contents of the Complaint and Ex.A4.

11. With regard to the contentions made against Complainant about the modus operandi in the Written Arguments of OP, it is believed that he is a President of Consumer Rights Organisation and he has been rendering service to the Public holding the post. Hence, the contention of the Opposite Party does not have legal legs to stand.

12. It is also alleged that the Hon'ble Commission has no jurisdiction to entertain the complaint and that only courts of Delhi or at Chennai fall under the jurisdiction to entertain the present complaint. As Chennai is the legal jurisdiction and Delhi being exclusive jurisdiction of Courts of New Delhi for Make My Trip. Whereas the Complainant can institute a complaint in the Consumer Court, where he resides as per Sec.34. The Opposite Party mentioned in his Written version that he was bound by Covid-19 protocols and he ought to adhere to the protocols but since the allotment has been

made by his own management. The Opposite Party ought to have rendered prompt customary services for which he apologize vide Ex.A4 and in his Written Arguments para 12 mentions that it is a general apology. Keeping in view of the above facts this point No.1 is answered in favour of the Complainant.

13. Point No.2: Therefore the Complainant is entitled to receive amounts paid by him Rs.9,769/- and Rs.20,000/- towards compensation for mental agony and deficiency in service and Rs.5,000/- towards costs of the Complaint.

14. In the result the Complaint is allowed in part, directing the Opposite Party to pay Rs.9,769/- (Rupees Nine thousand seven hundred and sixty nine only) to the Complainant besides Rs.20,000/- (Rupees Twenty thousand only) towards compensation and costs of Rs.5,000/- (Rupees Five thousand only). Time for compliance one month from the date of receipt of this notice.

*Dictated to the Shorthand Writer, transcribed by him, corrected and pronounced by us in the open Forum on this the 17<sup>th</sup> day of October, 2022.*

Sd/-  
Woman Member

Sd/-  
President

Sd/-  
Member

#### APPENDIX OF EVIDENCE

##### Exhibits Marked for the Complainant:

Doc.No.	Date	Description	Remarks
Ex.A1	16.12.2020	Receiving copy of written complaint given to Opposite Party by the Complainant	Original
Ex.A2	12.12.2020	Booking details from Make My Trip	Attested copy
Ex.A3	13.12.2020	Invoice	Attested copy
Ex.A4	17.12.2020	Email communication and apologies mail from Opposite Party	Attested copy

##### Exhibits Marked for the Opposite Parties: -NIL-

Sd/-  
Woman Member

Sd/-  
President

Sd/-  
Member

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