

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAMDated this the 28th day of February 2025.

Filed on: 26/10/2021

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member

Smt.Sreevidhia.T.N

Member

C.C No. 389/2021**COMPLAINANT:**

Retd. Colonel Raju, T.C 2071 (4) "Jyothi", TRA-32 B, Thozhuvankode Lane,
Vattiyookavu.P.O, Pin-695013, Thiruvananthapuram.

(Adv. Cicily.K.K, N. Paravur)

Vs

OPPOSITE PARTIES:

1. Bastin Joseph, Managing Director, Fortune Destination Management Pvt. Ltd, 1st
Floor, Mannamthara Tower, Paramara Road, Ernakulam North, Cochin-682018.

2. Fortune Destination Management Pvt. Ltd, 1st Floor, Mannamthara Tower,
Paramara Road, Ernakulam North, Cochin-682018. Rep by Bastine Joseph,
Managing Director, Neelamkavil (H), Velur.P.O, Thrissur-680601.

3. Sumesh.K.K, Manager, Fortune Destination Management Pvt. Ltd, Floor,
Mannamthara Tower, Paramara Road, Ernakulam North, Cochin-682018.

*(Adv. U.K.Devidas, S-2, Ruby Court View, Poothullil Lane, Kochi-18)***F I N A L O R D E R****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 complainant, a retired Colonel from the Indian Army residing in Thiruvananthapuram, booked a 16-day American tour for himself and his wife through the respondent travel agency, paying an advance of ₹1,88,500/-. The trip, scheduled for May 5, 2020, was cancelled due to the COVID-19 pandemic. Despite

repeated requests, the travel agency refused to refund the amount, instead issuing a credit shell of ₹1,49,792/- without consulting the complainant.

The complainant had personally borne the expenses for obtaining his visa, yet the agency deducted a visa fee of ₹23,040 from the advance. The agency failed to provide evidence that the collected amount was spent on airline tickets and accommodations, despite the Hon'ble Supreme Court's directive for airlines to refund cancelled tickets. The agency also settled similar complaints with other customers but refused to refund the complainant.

The complainant, through a legal notice, sought a refund of ₹1,65,510/- along with 12% interest from May 15, 2020, and compensation for hardships and court expenses. As the agency failed to respond, the complainant approached the consumer commission for redress.

2. NOTICE:

The Commission issued a notice to the first opposite party, who subsequently filed their version on 18.12.2021. Notices were also issued to the second and third opposite parties, both of whom were served on **24.03.2023**. However, as the second and third opposite parties failed to file their versions within the statutory period as per the proceedings, the Commission proceeded **ex-parte** against them.

3. THE VERSION OF THE OPPOSITE PARTY:

The company asserts that the complaint suffers from misjoinder and nonjoinder of necessary parties. The complainant and his wife had booked an **American tour scheduled for 05.05.2020**, for which they paid **₹1,88,500/-**. However, due to the **COVID-19 pandemic**, the tour was cancelled, which was beyond the company's control. The opposite party contends that as per the tour package terms and conditions, no refund is due in such circumstances. The company had already spent the amount on airfare, accommodation, transportation, and other arrangements with no refunds received from service providers.

Despite no contractual obligation, the company issued a **Credit Shell Certificate** to the complainant, deducting only visa processing charges. The complainant has not surrendered this certificate but still filed the complaint. The opposite party maintains that there was **no deficiency in service**, and the complainant is not a consumer under the **Consumer Protection Act**. The complaint, being speculative and baseless, should be dismissed with costs.

4. EVIDENCE:

The complainant submitted a proof affidavit along with three documents. The documents in the complaint are marked as **Exhibits A1 to A3.**

Exhibit A1: Certificate of Credit dated 15.05.2020, issued in the name of the complainant by the opposing party institution.

Exhibit A2: Notice sent by the complainant to the opposite party through his lawyer on 20.04.2021.

Exhibit A3: Acknowledgment of receipt of the notice by the opposite party.

5. POINTS FOR CONSIDERATION:

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

6. ARGUMENT NOTES FILED BY THE COMPLAINANT:

The complainant, a retired Colonel from the Indian Army residing in Thiruvananthapuram, booked a 16-day American tour for himself and his wife through the respondent travel agency based on an advertisement in the newspaper. The tour was scheduled for May 5, 2020, with a cost of ₹3,20,000 per person. At the time of booking, he paid an advance of ₹94,250 per person, totaling ₹1,88,500/-.

As per the agency's recommendation, the complainant personally visited the American Consulate in Chennai in March 2020

at his own expense to obtain a visa, which was successfully granted. However, due to the COVID-19 pandemic, the government imposed a lockdown in March 2020, leading to the cancellation of the tour. The defendant informed the complainant of this cancellation but refused to refund the advance amount. Instead, the agency claimed the money was spent on booking airline tickets and accommodations.

On May 15, 2020, the defendant unilaterally issued a credit shell certificate (**Ext A1**) for ₹1,49,792/- in the complainant's name, stating that the amount was deposited in the travel agency's account and could be used for a future American tour within five years. The complainant was neither consulted nor agreed to this arrangement. Consequently, he sent a legal notice demanding the refund of ₹1,88,500/-, with the visa fee of ₹23,040/- deducted, leaving a balance of ₹1,65,460/-, along with interest. However, the defendant neither responded nor refunded the amount, compelling the complainant to approach this commission.

The defendant's response to the complaint was contradictory and baseless. In their petition, the defendant raised objections regarding misjoinder and nonjoinder. To address this, the complainant added the opposite party and its manager, K.K. Sumesh, who signed the credit shell certificate (**Ext A1**), as additional defendants, which was allowed by the commission.

The defendant admitted that the tour was cancelled due to the global COVID-19 pandemic in 2019 but failed to establish any fault of

the complainant. As per the Hon'ble Supreme Court's directive, airlines were required to refund ticket amounts for cancelled flights, yet the defendant did not provide any evidence that the complainant's advance payment was spent on airline tickets, accommodations, or other travel expenses. The defendant also concealed the fact that the airline refunds had been received.

Without informing or consulting the complainant, the defendant deposited the complainant's advance amount into its institution, an action that remains unexplained. From the amount shown in the credit shell (**Ext A1**), only the visa fee of ₹23,040/- was deducted. The alleged travel expenses of ₹15,668/- were false, as the complainant and his wife personally travelled to Chennai, stayed at their own expense, and attended the visa interview. The defendant provided no evidence of visa-related expenses.

The consumer relationship between the complainant and the opposite party is established through the advertisement in the newspaper and the payment of the advance amount.

Thus, the complainant seeks the refund of ₹1,65,510/-, along with 12% interest from May 15, 2020, until the date of payment. Given his status as a senior citizen, he has endured undue hardships due to the opposite party's actions. Accordingly, the complainant prays for compensation of ₹15,000/- for hardships and ₹20,000/- for court expenses, along with any other relief deemed appropriate by this commission.

We have also noticed that a Notice was issued from the Commission to the second and third opposite parties, but they did not file their version. Hence, the second and third opposite parties set ex-parte. The complainant had produced three documents marked as Exbt.A-1 to A-3. All in support of his case. However, the second and third opposite parties did not make any attempt to appear in the case and participate in the above proceedings before this commission or set aside the ex-prate order passed against it. It was further stated that this illegal, arbitrary and unjustified act of the second and third opposite parties amounted to a deficiency in service, indulgence in unfair trade practice, and caused mental agony and hardship to the complainant.

The second and third 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 second and third opposite parties. We have no reason to disbelieve the words of the complainant. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

We have meticulously considered the detailed submissions of the complainant as well as thoroughly reviewed the entire record of evidence, including the argument notes. It is noted that the opposite

parties have failed to submit any argument notes or participate in the proceedings.

i) Maintainability of the Complaint:

The complaint was filed under Section 35 of the Consumer Protection Act, 2019, which provides remedies to consumers for a deficiency in service. The complainant booked a tour package and paid an advance of ₹1,88,500/- to the opposite party, making him a consumer under Section 2(7) of the Act.

The opposite party contended that the complainant does not qualify as a consumer and that the complaint involves misjoinder and nonjoinder of necessary parties. However, since the complainant availed the service in his capacity and the opposite parties are involved in the business of tour operations, the transaction falls within the ambit of the Consumer Protection Act, 2019. Thus, the complaint is maintainable before this Commission.

ii) Deficiency in Service and Negligence by the Opposite Parties:

The complainant booked a 16-day American tour scheduled for 05.05.2020, but it was cancelled due to the COVID-19 pandemic. The opposite party refused to refund the advance amount and instead issued a Credit Shell Certificate without the complainant's consent. The key deficiencies noted are:

1. Failure to refund the advance payment:

- The opposite party did not provide any documentary evidence proving that the collected amount was spent on airline tickets, accommodations, or other expenses.
- The Hon'ble Supreme Court in Pravasi Legal Cell v. Union of India [(2020) SCC Online SC 652] directed that airlines must refund ticket amounts for cancelled flights due to COVID-19. The opposite party did not comply with this directive.

2. Unilateral decision to issue a Credit Shell Certificate:

The complainant was neither consulted nor given a choice regarding the issuance of the Credit Shell Certificate.

Travel agencies cannot unilaterally deny refunds; they must either refund the amount or offer an alternative with the consumer's consent.

Failure to respond to legal notice:

The complainant issued a legal notice demanding a refund; however, the opposite party failed to respond, constituting negligence and a deficiency in service.

Unfair trade practice:

The opposite party settled similar complaints with other customers but refused to refund the complainant, amounting to discriminatory

treatment and an unfair trade practice under Section 2(47) of the Consumer Protection Act, 2019.

iii) Liability of the Opposite Parties:

- a) The first opposite party (Managing Director) and the second opposite party (Company) are jointly liable, as the transaction was made with the company.
- b) The third opposite party (Manager) is also responsible, as he signed the Credit Shell Certificate (**Exbt A1**) and played a role in denying the refund.

Non-Participation of the Second and Third Opposite Parties:

The second and third opposite parties were served with notice but failed to file their written versions within the statutory period; failure to file a response is deemed an admission of the allegations.

- The opposite party has engaged in deficiency of service and unfair trade practices by refusing a refund without justification.
- The complainant has provided sufficient documentary evidence (**Exhibits A1 to A3**) to substantiate his claims.
- The failure of the second and third opposite parties to participate in the proceedings amounts to an admission of guilt.

The complainant, a retired Colonel who served the nation, trusted the opposite party with his hard-earned money to fulfil a long-cherished dream of traveling with his wife. However, instead of

honouring this trust, the opposite parties not only failed to provide the promised service but also unilaterally withheld his rightful refund, causing him unnecessary stress and hardship. Travel is meant to create memories, not burdens, and it is disheartening that a senior citizen was forced to battle for what was legally and ethically his. The conduct of the opposite party reflects an utter disregard for consumer rights and basic fairness, which cannot be condoned. Justice is not just about laws—it is about restoring faith in ethical business practices, and today, this Commission stands firmly in favour of that principle.

We determine that issue numbers (I) to (IV) are resolved in the complainant's favour due to the significant deficiency in service on the part of the Opposite Parties. Consequently, the complainant has endured considerable inconvenience, mental distress, financial loss, and hardships due to the negligence of the Opposite Parties.

In view of the above facts and circumstances, we hold that the Opposite Parties are liable to compensate the Complainant.

Hence, the prayer is partly allowed as follows:

- I. The Opposite Parties shall refund ₹1,65,510/- (One Lakh Sixty-Five Thousand Five Hundred and Ten Rupees only) to the Complainant.**
- II. The Opposite Parties shall pay ₹10,000/- (Ten Thousand Rupees only) as compensation for mental agony, financial**

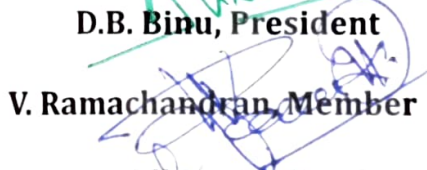
loss, and inconvenience suffered due to the deficiency in service and unfair trade practices.

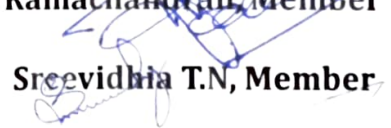
III. The Opposite Parties shall pay ₹5,000/- (Five Thousand Rupees only) towards the cost of the proceedings.

The Opposite Parties are jointly and severally liable for the fulfilment of the above orders. These amounts shall be paid within 45 days from the date of receipt of this order. Failure to comply with Points I and II will attract an interest rate of 9% per annum from the date of filing the complaint (26.10.2021) until full realization of the payment.

Pronounced in the Open Commission this the 28th day of February, 2025.


D.B. Binu, President


V. Ramachandran, Member


Sreevidhya T.N, Member

APPENDIX

Complainant's Evidence:

Exhibit A1: Certificate of Credit dated 15.05.2020, issued in the name of the complainant by the opposing party institution.

Exhibit A2: Notice sent by the complainant to the opposite party through his lawyer on 20.04.2021.

Exhibit A3: Acknowledgment of receipt of the notice by the opposite party.

Opposite Parties' Evidence: Nil

Date of Despatch

By Hand::

By post::