DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-III: WEST
GOVT. OF NCT OF DELHI
C-150,151, COMMUNITY CENTRE, PANKHA ROAD, JANAK PURI
NEW DELHI-110058

Complaint Case No. 202/2023

In the matter of:

RITA KHASTGIR
C/C3A/436, JANAKPURI
NEW DELHI -110058 …….Complainant

VERSUS

KESAVI TOUR & TRAVELS PVT LTD.
PLOT NO.1, REVENUE SUREY NO.157,
LABHDEEP SOCIETY, MAVDI CHOKDI,
150FT RING ROAD, RAJKOT – 360004 ……. Opposite party

DATE OF INSTITUTION: 09.05.2023
JUDGMENT RESERVED ON: 28.10.2024
DATE OF DECISION : 19.11.2024

CORAM
Ms. Sonica Mehrotra, President
Ms.Richa Jindal, Member
Mr. Anil Kumar Koushal, Member

Present: Complainant in person.
OP ex parte.

ORDER

Per: Anil Kumar Koushal,

Brief facts of the present complaint are as under:

1. The complainant had taken services of OP on 25.2.2020 for arranging her UK trip with family in April/May,2020. For the said purpose, the complainant had paid advance amount for 3 persons of Rs.75,000/- @ Rs.25,000/- per pax. However, due to covid problem all the trips were cancelled by the Government. Thereafter the OP

had given credit note on 01.05.2022 valid for 2 years (from 01.05.22 to 01.05.2024). The complainant had applied to the OP for cancellation of credit note vide letter dated 12.4.2023 as she could not afford the amount the OP was quoting for the new trip being organised by them for UK. However, it is submitted the OP has stopped corresponding with the complainant and not replied to her letter.

2. Complainant submits that the Pre-covid charges per person for the UK trip were Rs.1,22,250/-. However, post covid, the same has been revised to Rs.2,48,850/- per person. There is a difference of Rs.1,26,600/- per person for the UK trip. Further, initially flight was from Delhi to UK and now the OP is saying that the flight will be from Bombay to UK instead of Delhi. This means, Delhi people will have to travel by air to Bombay to join the group. This will entail investment of extra Rs.15,000/- per person.

3. Complainant therefore, prays for refund of her Rs.75,000/- paid to OP at the earliest.

4. Complainant attached with her complaint copies of tour ticket vouchers for all the three persons, three credit notes acknowledging receipt of Rs.25000/- from each of the three family members, letter dated 12.04.2023 sent to OP for refund.

5. On admission of the complaint on 22.5.2023, notice was sent to OP at their Rajkot address as it had closed its operations from its Delhi office. Despite service, OP has neither put in appearance nor filed its response to the complaint. Accordingly vide order dated 16.11.2023, OP was proceeded against ex parte.

6. Complainant filed ex parte evidence and exhibited the documents filed on record. She also filed her written arguments on record. Oral arguments of the

complainant were heard on 28.10.2024. There was no representation on behalf of OP. Accordingly orders in this case were reserved.

7. On perusal of pleadings filed on record, we find that the tour to UK arranged by the complainant and her family from the OP was cancelled due to spread of Corona pandemic. The spread of Covid 19 was globally acknowledged as a Pandemic by the World Health Organisation. The Government of India, in order to contain the spread of COVID-19, had imposed lockdown initially from 25th March 2020 to 14th April 2020 which was later extended upto 03rd May 2020 and continued till 2021 and to some extent till early 2022. A ban was also imposed on operation of all domestic and international flights. There was an issue of refund of air fare during the lockdown period, when domestic and international flights' operations were suspended. The Ministry of Civil Aviation (MoCA), while acknowledging the unusual situation that had arisen due to the lockdown imposed, to contain further spread of COVID¬19 and its consequential effect on the air passengers and airlines, by examining the grievances received from various quarters, issued an advisory to all stake holders in civil aviation sector in the shape of Office Memorandum dated 16th April 2020 to restrict their flight operations and to refund the air fare for the tickets booked during the lock down period by the consumers. Even the Hon'ble Supreme Court in the case of **Pravasi Legal Cell v. Union of India**, 2020 SCC OnLine SC 799, decided on 01.10.2020 passed such directions in this regard, in consultation with the Ministry of Civil Aviation, DGCA, Govermnent of India.

8. We may note here that the complainant has not availed any services from the OP and the OP on the other hand has not demonstrated that it has suffered financially doe to cancellation of the trip of complainant and her family. The

averments of complainant have remained unrebutted due to non-appearance of OP in this case. In **Country Club Fitness And Vacations vs Bijender Singh Budwar,** decided on 1 March, 2023 by Hon'ble SCDRC, Chandigarh, it was observed as under:

> 23. In our considered opinion, in the present case also, the conditions contained in the standard form of contract (Annexure C-1) which provide forfeiting of entire booking amount, in case of cancellation of membership of the holidays scheme after cool off period of 10 days or otherwise, is against the public policy and required to be adjudged as void and ignored, especially, **when it has not been proved by the appellants, as to what loss they have suffered, on account of cancellation of membership of the holidays scheme by the respondent. Apart from it, if this condition is allowed to continue, it will amount to undue enrichment to the appellants, which will go against the interests of the consumer and public policy.** In this view of the matter, we are of the considered view that the terms and conditions of Annexure C-1 on the basis of which, product cash out price of Rs.65,000/- has been forfeited by the appellants, **especially, when no services were provided by them to the respondent, are one-sided, oppressive, unfair and unreasonable and are liable to be ignored and set aside.** Thus, by not refunding the product cash out price of Rs.65,000/-, after deducting some professional charges, especially, when no services were provided to him by the appellants and also at the same time, the appellants have enriched themselves by utilizing the amount paid by the respondent for sufficient time, he has been caused a lot of mental agony, harassment and financial loss, for which the District Commission has adequately compensated him, by way of awarding interest, compensation as well as litigation expense."

9. We are of the view that despite making a request for refund of Rs.75,000/- paid by the complainant to OP as advance, it has arbitrarily not refunded the same to her for no fault of hers. Following the ratio of the aforementioned judgments and keeping in view the fact that the averments of complainant have remained

unrebutted since the OP has chosen not to contest these proceedings, we hold that the OP has been deficient in not refunding the amount deposited with it by the complainant especially when no services have been availed by the complainant from the OP. This amounts to an unfair trade practice followed by the OP against its customers like the complainant. The complaint is accordingly allowed and the OP is directed to refund to the complainant the amount of Rs.75,000/- charged from her towards the UK trip. The OP shall also pay a sum of Rs.5,000/- as litigation expenses to the complainant. Let this order be complied with by the OP within thirty days of receipt of copy of this order.

A copy of this order shall be supplied free of cost, to parties to the dispute in the present complaint, upon a written requisition being made in writing in the name of President of the Commission in terms of Regulation 21 of the Consumer Protection Regulations, 2020 as amended from time to time.

File be consigned to record room after pronouncement of orders.

(Richa Jindal) Member	(Anil Kumar Koushal) Member	(Sonica Mehrotra) President