

**THANE ADDITIONAL DISTRICT CONSUMER DISPUTES
REDRESSAL COMMISSION**

**Room No.428 and 429, Konkan Bhavan Annex Building,
4^tFloor, C.B.D. Belapur, Navi Mumbai- 400 614**

Consumer Complaint No: 61/2021

Complaint Filed on: 15/09/2021

Final Order on: 25/08/2022

Kavita S. Sharma,

... Complainant

V/S

UBER INDIA SYSTEMS PVT. LTD.,

Level – 13, Platinum Techno Park,

Plot No, - 17-18, Sector – 30A, Vashi,

Navi Mumbai, Thane – 400 705,

Mumbai – 400 001

..... Respondent

_BEFORE: HON'BLE PRESIDENT IN-CHAGRE SHRI. R. P. NAGRE

HON'BLE MEMBER SMT. G. M. KAPSE

HON'BLE MEMBER SMT. S. A. PETKAR

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ADVOCATE ON RECORD:

For Complainant: Adv. Ashish Verma /Vaibhav Yelmane.

For Respondent No. 1 AdV Peeush Sharma/Shaurya
Tomar/Tushar Bendale

J U D G M E N T

(Decided on 25/08/2022)

PER HON'BLE MEMBER SMT. S. A. PETKAR

1. This complaint U/S 35(1)(a) of the Consumer Protection Act 2019 is filed by complainant named above alleging deficiency in services on the part of the Opposite Party. The complaint of Complainant is as under:-
2. The complainant is advocate by profession for which she needs to frequently travel outside of Mumbai. On 12 /06/2018 the complainant had a flight from Mumbai to Chennai to attend very crucial meeting departure at 5.50 p.m. from Chhatrapati Shivaji International Airport Mumbai. the complainant booked an Uber Cab from her residence, at around 3.29 p.m. After consider of traffic it will take 1 hours to reached Chhatrapati Shivaji terminals airport from the residence of complainant as distance is around 36 km.
3. The booking was confirmed on over uber mobile app and a car being Maruti Suzuki Wagon R license bearing number MH01CJ1913 was allotted for complainant trip.

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4. The complainant during the travelling from home to airport she faced following difficulties :-
- i) The driver did not appear despite elapsation of considerable time and after repeated call to the driver the driver came after 14 minutes.
 - ii) After coming also the driver was busy on talking over his phone and he did not pay heed to the complainant request to start the cab and proceed it towards the airport. But only after completing his conversation he started the trip.
 - iii) The driver took a wrong turn contrary to the direction given by the mobile application the reason for refill the petrol in the car for which enquired passer by about nearby CNG station which was in remote area of that locality where around 15-20 min wasted by the driver.
 - iv) When before accepting any trip the cap service should be ready with Road worthy car along with necessary fuel.
 - v) By which the driver dropped the compliment at airport at 5.23 p.m. that time the compliment missed her flight for which the compliment had to take a next available flight on her own cost and expenses when there were no any fault from the side of complainant.
 - vi) Also the billing fare was 702.54 which was too high as compared to the estimated fair shown at the time of

booking 563 which was charge due to diversion and long root taken by the driver.

- vii) Only because of the drivers sheer and deliberate negligence and unprofessional conduct the complainant missed her flight.
 - viii) Therefore when the complainant came back from her work she lodged complaint on 19 June 2018 from her Twitter ID but no response from opposite party. but the opposite party realized it mistakes, negligence and finally refunded an amount of fair differences from actual fair that is rupees 139/- in the Uber account of complainant on 20/06/2018.
5. The distance of the airport from the complainant resident which was shown on app was 46 km and the actual distance from the residence of complainant to the airport is only 36 km. But still only by the negligence and non transparent functions of opposite party and its driver the complain caused monetary loss mental torture and harassment also the adverse impact on her profession for which the opponent liable to pay monetary compensation and render unconditional return apology which was not compensate by only refund of fair differences of rupees 139/-.
6. For which the complainant sent legal notice the opposite party also sent rejoinder the opposite party sent reply but no use. Therefore the complainant suffered mental agony due to

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deficient service rendered by opposite party and therefore present complaint file and prayed:-

- a) To direct the Opposite Party to pay to the Complainant the sum of Rs. 2,539/- (Rupees Two Thousand Five Hundred and Thirty Nine only) towards the second fight charges.
- b) To direct the Opposite Party to pay to the Complainant the sum of Rs. 2,00,000/- (Rupees Two Lakhs only) towards the compensation for mental agony, torture and physical harassment caused.
- c) To direct the Opposite Party to pay to the Complainant the sum of Rs. 1,00,000/- (Rupees One Lakh only) towards the compensation for loss of opportunity and work being affected.
- d) To direct the Opposite Party to pay to the Complainant the sum of Rs. 75,000/- (Rupees Seventy five Thousand only) towards the legal and the other expenses for adopting this legal remedy.
- e) To direct the Opposite Party to pay to the Complainant the sum of Rs. 1,00,000/- (Rupees One Lakh only) towards the compensation for wasting of precious time and energy of the Complainant till the date of the present complaint and discomfort caused to the Complainant.

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- f) Pending the hearing and final disposal of the present complaint, this Hon'ble Forum be pleased to direct the Opposite Party to deposit the sum of Rs. 4,77,539/- (Rupees Four Lakhs Seventy Seven Thousand Five Hundred and Thirty Nine.) with this Hon'ble Forum.
- g) For such further and other reliefs as the nature and circumstances of the present Complaint may deem fit and proper.

7. After the complaint was admitted, a notice was issued by Forum/Commission to the opposite party, On receipt of the notice the constituent authority of opposite party appeared and filed written version of the opposite party stated in his reply that:-

- a) The opposite party is a technology service provider that provides a software on Smartphone that is utilized by prospective passenger to request for transportation services and provide of such transportation services. the Uber app provides a common platform to the driver partners and Riders to interact directly with each other for the purpose of availing and providing transportations or taxi services.
- b) The Uber India Acts as a aggregator of transportation services therefore not responsible for default of the driver as

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its role is restricted only to the extent of facilitating a connection between the driver -partner and his customer as all driver partners using the Uber app work as independent contractor and are individually responsible for any act committed by them also any incident taken place during the transport service.

- c) The transaction between the compliment and Uber India governed by the terms and condition which was agreed by customer at the time of availing the service and as per terms and conditions Uber India only provides a technology that helps to arranged and schedule transportation services. Whereas the actual transportation service is provided by driver partners who is independent third party contractor who are not employed by uber or any of its affiliates also Uber India does not guaranteed of the third party provider. And the all user at the time of signing up with the Uber app provides their concern for the terms and condition by clicking on agree button. Which form a electronic form of contract which recognised under the information technology at 2000.
- d) The Uber India has already resolve the grievance short by the compliment by adjusting the final fare and completing the refund in the form of Uber credits toward the compliment account therefore there is no valid consumer

disputes therefore the present complaint is liable to be dismiss.

8. In the light of Averment in the complaint, evidence, and submission made in written argument on behalf of complainant, following points arise for consideration we have recorded our finding thereon for the reason stated below.

POINTS		FINDINGS
01	Whether the complainant has prove that the complainant availed services of opposite party ?	Yes.
02	With the opposite party has given a deficient service to the complainant?	Yes.
03	What Order?	As per Final Order.

REASON FOR FINDINGS

Point Number 1 to 3-

9. The opposite party taken first defense that he provides only technology which help to arranged schedule transportation

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services. And actual transportation service is provided by driver partners who is independent third party contractor who are not employed by Uber or any of its affiliates. Therefore the opposite party cannot give guarantee of third party.

10. The complainant filed his argument that the Uber driver's are the employee of Uber as Uber has superior control over the driver and Uber app. To support his contention he filed on record case decided by UK Supreme Court, Uber BV V/S Aslam(2021) ँ Doe V/S Uber Technologies (2016).
11. The opposite party admitted deficiency in service given to the Complainant, but it was argued that this service was not provided by opposite party therefore he is not liable for compensation. To know the exact position of the opposite party perused the documents on record.
12. From the terms and condition which filed by opposite party at annexure C. The opposite party is Uber India systems private limited is a private limited company who provides services of transportation via Uber app or website and by way o software download in Smartphone passengers can send request for transportation service. The opposite party has control over app which is also not denied by the opposite party.
13. When the passenger send request for transportation on Uber app which is controlled by opposite party the passenger gets

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information and call from driver. And as per terms and condition the Uber India provide service by arrange and Scheduled transportation also arrange Logistic services with the independent third party providers of such services. also from the terms and condition it come to the knowledge that, the opposite party reserved rights to make supplementary terms in connection with services.

14. As per point number 4 of terms and condition that, after given services, the Uber will facilitate payment as applicable charges which collects by third party provider as a agent on behalf of Uber India. Uber reserved rights to charge additional amount for pickup facility provided at various places also charge paid by customer to uber.
15. From the above said points of the terms and condition of opposite party, it is cleared that the Uber app managed and controlled by opposite party also all transaction and services provided via Uber app is managed by opposite party. The complainant had taken services of opposite party by using app and for Transport services, complainant Paid consideration to opposite party as per charged by Uber app and not to the driver who was appointed by Uber India for provide service to the complainant.
16. Therefore from the abovesaid observation, it is proved that the third party contractor is appointed and managed by opposite party for providing services to complainant. Therefore we came to the conclusion that the, complainant is consumer of



opposite party and opposite party provided services by appointing driver as agent, third party contractor and received consideration from complainant.

17. The opposite party has already admitted that, he has given deficient service to the complainant. There for we come to the conclusion that the opposite party is liable for deficient service given by opposite party also liable for compensation.

18. We came to the conclusion that the opposite party is responsible for defective service given to the complainant but the opposite party had accepted His fault and trying to resolve the grievance by adjusting extra fare of rupees 139/- which was paid by the complainant for longer route. Which is not justified for mental agony faced by the complainant. Therefore considering the mental agony faced by the complainant for delay to reached at destination due to negligence and careless behavior of driver of opposite party. The opposite party is liable to pay compensation rupees 10,000/- and the expenses of complaint of rupees 10,000/- which is justified for claim of the complainant.

19. Other demands of the complainant was not specifically proved with the relevant evidence therefore not considered.

20. In the light of above discussion we record our finding on point number 1 to 3 in affirmative and passed following order.



Final order

1. The Consumer Case No. 61/2021 is hereby partly allowed.
2. It is declared that the Opposite Party has given deficiency in service to the Complainant.
3. The Opposite Party directed to pay compensation for mental agony of Rs.10,000/- and also directed to pay litigation costs of Rs 10,000/- to the Complainant.
4. The abovesaid order shall be complied within 45 days from the receipt of copy of order.
5. The copy of order be sent to both the party with free of cost.

Place: Navi Mumbai

Date: 25/08/2022

Petkar
25/8/22
(SMT. S. A. PETKAR)

Kapse
25/08/22
(SMT. G. M. KAPSE)

R. Nagre
25/08/2022
(SHRI.R.P.NAGRE)

MEMBER

MEMBER PRESIDENT IN-CHARGE

THANE ADDITIONAL DISTRICT CONSUMER DISPUTE

REDRESSAL COMMISSION