

**Sri S.Nagaraja,**  
No 154, 'A', KHB,  
Surya City,  
Chandapura,  
Bangalore 560081

Dated: 30<sup>th</sup> April 2011

To

The Banking Ombudsman  
C/o Reserve Bank of India  
10/3/8, Nrupathunga Road  
Bangalore-560 001  
Tel.No.22210771/22275629  
Fax No.080-22244047

Dear Sir,

**Sub: Complaint against, Chandapura Branch, Bank of India, Bangalore 560081.**

Details of the complaint are as under:

1. Name of the Complainant:	S.Nagaraja
2. Full Address of the Complainant	No 154, 'A', K HB, Surya City, Chandapura, Bangalore
Pin Code	560081
Phone No/Fax No	9845800687
E Mail	naavi@vsnl.com
3. Complaint against (Name and full address of the branch/bank)	Bank of India, 465-368, Banahally RDA, Chandapura, Bangalore, Karnataka,
Pin code	560081
Phone No/Fax.No	<b>9449219288</b>
4. Particulars of Bank or Credit Card Account (if any)	SB: 848210110000933

5. (a) Date of representation already made by the complainant to the Bank (Please enclose a copy of the representation)	21 <sup>st</sup> March 2011  (Copy enclosed-Annexure B)
(b) Whether any reminder was sent by the complainant? (Please enclose a copy of the reminder)	No
6. Subject matter of the complaint (Please refer to Clause 8 of the scheme)	Non Observance of RBI guidelines on Secure Banking
7. Details of the complaint: (If space is not sufficient, please enclose separate sheet)	Enclosed (Annexure A)
8. Whether any reply (within a period of one month after the Bank concerned received the representation) has been received from the Bank (If yes, please endorse a copy of the reply)	No
9. Nature of Relief sought from the banking Ombudsman (Please enclose a copy of documentary proof, if any, in support of your claim)	Restoration of the amount debited with compensation as indicated.
10. Nature and extent of monetary loss, if any, claimed by the complainant by way of compensation (please refer to clauses 12(5) & 12(6) of the scheme)	Rs 40,600/- with interest upto date at the rate of 18% p.a amounting approximately to Rs 2460/- (upto the date of this application) and expenses of approximately Rs 6000/- and payment of compensation for mental agony approximately at Rs 10000/-, totaling upto Rs 59060/-
11. List of documents enclosed;	1.Original complaint made to the Bank along with copy of

(Please enclose a copy of all documents)	complaint made to Police and the acknowledgement received 2.Copy of the Passbook entries showing the wrongful debits 3.Copy of the ATM card in possession with the customer
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12. Declaration:

(i) I/We, the complainants herein declare that:

A) the information furnished herein above is true and correct and

B) I/We have not concealed or misrepresented any fact stated in the above columns and in the documents submitted herewith

ii) The complaint is filed before expiry of period of one year reckoned in accordance with the provisions of Clause 9(3)(a) and (b) of the scheme

(iii) The subject matter of the present complaint has never been brought before the office of the Banking Ombudsman by me/us or by any of the parties concerned with the subject matter to the best of my/our knowledge

(iv) The subject matter of the present complaint has not been decided by /pending with any forum/court/arbitrator

(v) I /we authorize the Bank to disclose any such information/documents furnished by us to the banking Ombudsman and disclosure whereof in the opinion of the Banking Ombudsman is necessary and is required for Redressal of our complaint

(vi) I/We have noted the contents of the Banking Ombudsman Scheme 2006

Yours faithfully

Signature of the complainant

Nomination: (If the complainant wants to nominate his representative to appear and make submissions on his behalf before the Banking Ombudsman or to the office of the Banking Ombudsman, the following declaration should be submitted,)

I/We the above named complainant's hereby nominate Shri Na.Vijayashankar who is not an advocate and whose address is no 37, 20<sup>th</sup> Main, B S K Stage I, Bangalore 560050 (mob 9343554943) as my representative in all proceedings of this complaint and confirm that any statement, acceptance or rejection made by him/her shall be binding on me/us. He/she has signed below in my presence.

Accepted:

(Signature of Representative)

(Signature of Complainant)

Note: If submitted online, the complaint need not be signed.

## **ANNEXURE A: Details of the Complaint as per para 7 of the complaint**

### **Essence of the Complaint:**

The complaint made to the Bank copy of which is enclosed in Annexure B along with other documents such as the copy of the passbook, acknowledgement of the Police complaint etc explains the event in detail. Hence only the essence of the complaint is provided here.

1. The applicant is a customer of Chandapur branch of Bank of India and maintains an SB account number **848210110000933**.
2. On 4<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> December 2010 as well as on 3<sup>rd</sup> January 2010, 11 debit transactions have been shown in the account as withdrawals made through ATM. Branch informed the customer that the transactions were carried through using an ATM belonging to Canara Bank.
3. Customer has informed the bank that the transactions were not made by him and he does not know how the withdrawals could have occurred. Customer has also told that the ATM card has not been lost and is still in his possession only. A copy of the ATM card is provided as an annexure C to this complaint.
4. Bank has not been able to explain how an ATM withdrawal can take place without a valid card. Bank has also not produced any CCTV footage of the ATM transaction to contend that the transaction was done by the customer himself. Though the ATM may belong to Canara Bank, Canara Bank being an agent of Bank of India in this transaction, we contend that the responsibility for the error lies primarily with the Bank of India notwithstanding the details of the inter-se arrangement between the two banks of which customer is not aware of.
5. The incident reflects that the Bank has allowed withdrawal of the funds from the account without the presence of the Card by perhaps exploiting some bug or inefficiency in the authentication system for ATM withdrawal requests coming from other Banks. It is also possible that the debits which were meant for some other account might have been wrongly accounted for the account of Mr Nagaraja. In either case the incident reflects that Bank has not followed the necessary security precautions to safeguard the funds entrusted to them by the customer.
6. The Reserve Bank of India has given a license to the Bank to carry on business as Bankers and to accept deposits from the public for the purpose of lending. When the customer has deposited a sum of Rs 40,700/- to the Bank, it represents funds lent by the customer to the Bank for the purpose of lending. When the customer requests for withdrawal of the same, the Bank is obliged to repay the same. If the Bank fails to repay the money for any reason other than that the money has already been repaid, it constitutes a violation of the banking principle and violation of the banking license terms. In the instant case the bank is claiming that some body has used the ATM card of the customer along with its PIN and passed an electronic request for repayment of the amount deposited earlier. The Bank acted on the request and dispensed cash.

7. Also, since the customer has denied the transaction, it is necessary for the bank to prove that they had a proper authenticated and valid request from the customer to make the re-payment.

It is apparent from the details that the instruction received by the Bank through the ATM was "Forged". The procedure adopted by the Bank to accept the instructions from an ATM belonging to Canara Bank through an electronic document should have adhered to the laws of the country in the form of Information Technology Act 2000 (ITA 2000) and also the RBI guidelines on Internet and Electronic Banking in general. According to such laws and procedures, the electronic request should have been digitally signed with the use of PKI technology at the ATM and then passed on to Canara Bank which should have endorsed the request with its own digital signature to Bank of India. Bank of India should have acted only on the basis of both the digital signatures being in conformity with the law as well as RBI guidelines. However the bank appears to be using only a PIN and the system is not capable of distinguishing whether a genuine ATM card has been used or not. Hence there is a gross failure of the procedures envisaged by RBI.

8. It is also observed that in several recent instances of fraudulent withdrawal of money from Bank accounts with the use of ATM cards even with a fraudulent transfer of funds from one account to another account, Banking Ombudsman in Gurugaon and Delhi have ruled that the Bank shall repay the amount to the victim customer. One such case was reported in the compendium of cases referred to Banking Ombudsman published by RBI on its website. Two other instances one in Gurugaon and another in Mumbai are recent orders which will reflect in the next year's report of RBI. We suppose that copies of these decisions are available internally with the honourable Ombudsman.

In view of the above we contend that the Bank is liable to compensate the customer as per the provisions of the banking ombudsman scheme 2006 and hence this complaint has been filed.

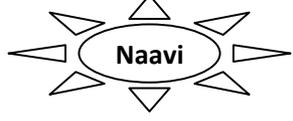
#### **Justification for the amount claimed as compensation**

- a) The total money lost due to unauthorized transactions was Rs 40700/- . Out of this, Rs 100/- has been re credited. Hence the basic loss is Rs 40600/- and is claimed as the basic component of the compensation.
- b) The unauthorized debits occurred the account on 6<sup>th</sup> December 2010 and 7<sup>th</sup> December 2010. Rs 100/- was reversed on 27<sup>th</sup> January 2011. Though the complaint has been pursued since December 2010, Bank has not re credited the amount except for the Rs 100/-. Hence interest is claimed as part of the compensation upto the date of final settlement. As at the date of this application, the interest amount has been put approximately at Rs 2460/- and is calculated at 18% p.a. It is contended that the Bank was aware that the customer had been wrongfully debited right from the date of complaint and has even accepted the fact by returning Rs 100/- which was one of the several wrong debits passed in the account. All along the Bank has enjoyed the benefit of holding back the refund of Rs 40,600/-. Any fund retained by the Bank unfairly results in a wrongful gain by the Bank. Being a financial institution, the Bank re-lends the

money to borrowers at a lending rate appropriate to the customer. The notional benefit that that the bank has earned due to not refunding the amount should therefore be evaluated at the marginal benefit that the bank has gained. The Bank lends at a maximum of around 36% p.a. for consumer loans interest which is the marginal benefit gained by retention of funds not belonging to the Bank. Had the money been credited to the account, Bank would have paid interest at the rate applicable for SB account. Hence Bank has saved the payment of SB interest and also gained interest by re lending of the money. Taking all these into consideration, interest has been claimed at a rate of 18% p.a. Though this is higher than what the customer himself could have earned had the wrong debits not occurred, Bank has no right to enrich itself first by its negligence and then by the delay in responding to the customer's complaint. We therefore request that the interest compensation be considered at 18% p.a. and not at the usual rate applicable to an SB account.

- c) There has been various out of pocket expense that the customer has incurred in pursuing the complaint and though it is difficult to quantify the same, a reasonable estimation of the expenses at Rs 6000/- has been claimed as compensation towards expenses.
- d) It is difficult to place a financial value on the mental harassment and agony caused on the customer by the negligence of the Bank. The customer Mr Nagaraja is a senior citizen and kept the funds for meeting the medical expense of his wife and committed a date for the medical treatment also. At such a critical time finding that the money was not available and he had to run around with the branch and the Police have caused mental harassment and agony which cannot be easily reflected nor compensated in terms of monetary value. However, the insensitivity of the bank in not responding to the complaint and not even bothering to reply to the formal complaint made prior to this application to the Zonal Manager should not go unpunished. In order to ensure that Banks do not disrespect the sentiments involved when a customer loses his money placed in trust with the bank and that the Bank does not take advantage of the normal time taken for resolution of such disputes through even the banking Ombudsman, there is a need to place an exemplary punishment on the Bank. A further compensation of Rs 10000/- has therefore been claimed as a notional compensation towards harassment and mental agony caused by the incident and the lack of immediate and appropriate response from the Bank. The loss has occurred with the use of a "Card" in an ATM machine and we therefore consider that the claim is within the provision of the Banking Ombudsman Scheme 2006.
- e) The total compensation claimed is therefore placed at Rs 59600/- which may need an upward adjustment for interest if the settlement is delayed further.

**Annexure B as per Para 5 of the Complaint**



**Na.Vijayashankar**  
**Techno Legal Information Security Consultant**  
**“Ujvala”, 37/5, 20<sup>th</sup> Main, B.S.K. Stage I, Bangalore 560050**  
**Ph:/Fax:26603490: +919343554943:**  
**E-Mail: [naavi@vsnl.com](mailto:naavi@vsnl.com) :Web: [www.naavi.org](http://www.naavi.org)**

**PAN Number: ABGPV 7111G**

**Date: 21, March, 2011**

**To**

The Zonal Manager  
Bank of India  
11, Bank of India Building  
Kempegowda Road, Bangalore 560009

**Sub:** Complaint Regarding loss of Rs 40700/- suffered by S.Nagaraja, Customer Chandapura Branch

Dear Sir,

I am an authorized representative of Sri S.Nagaraja, residing at No 154, 'A', KHB, Surya City, Chandapura, Bangalore 560081, and holding Savings bank account number, 848210110000933 (here in after referred to as the Customer) and I am lodging this complaint on behalf of the Customer. I am enclosing a copy of the Mandated issued by the Customer on this behalf for your reference.(Annexure IV).

It has been observed that in the Savings Bank account of the Customer, there was a credit balance of Rs 41,397/- as at the close of business on 22<sup>nd</sup> November 2010. On 4<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> December as well as on 3<sup>rd</sup> January 2010, there were a series of 11 transactions as indicated in Annexure I, totaling to an amount of Rs 40,700/- reducing the balance to Rs 697/-. (Copy of passbook enclosed-Annexure II)

All these 11 transactions are not transactions entered into by Mr Nagaraja and he is not aware how the transactions appeared in the account and on what authority the transactions have been put through the account. It is therefore alleged that the account has been maintained erroneously by the Bank and does not faithfully reflect the transactions entered into by the Customer.

As a result of these unauthorized debits appearing in the account, the balance in the account has been reduced by Rs 40,700/- which is the apparent direct loss caused to the Customer as a consequence of the erroneous maintenance of the account.

As a result of such error, the Customer has also suffered a loss of interest on the amount shown in deficit in the account. Further, as a result of the error, the customer has not been able to issue cheques on his account and had to withdraw some cheques issued by him and also make alternate arrangements for his immediate requirements of funds for which he had depended on the amount saved in the account.

In particular, the Customer had saved the funds to be used for medical expenses on his wife and the sudden reduction of the balance and denial of funds caused extreme hardships to him both financially and mentally.

On observing the error, the Customer has contacted the Manager of the Bank on 24<sup>th</sup> January 2011 and lodged a formal complaint. The customer has been orally informed that the transactions represent withdrawal of money through ATM belonging to Canara Bank.

The Customer denies having withdrawn the said amount from ATM. He is in possession of the ATM card and there is no possibility of anybody else having access to the card. We are not aware of what security precautions are taken by the Bank when requests for payments are received from the ATMs belonging to other Banks.

It is understood that every ATM has a CCTV and hence it would not be difficult for the Bank to verify if the Customer's statement is true unless there is further negligence in not maintaining the CCTV in proper form as directed by RBI.

We contend that any negligence or default on this part by Canara Bank would be deemed to be the negligence or default of Bank of India in as much as the relationship of the Customer is only with Bank of India and Canara Bank would be an agent of Bank of India for the purpose of the payment.

It is therefore contended that there is no ground for the disputed transactions not to be reversed immediately.

However, it is regretted to note that the Branch has not yet corrected the error. On the other hand the Branch has advised the customer to lodge a complaint with the Police for a fraud. Hence I am bringing this to your attention for Redressal.

The Customer is not aware if the disputed transactions have arisen due to a computer error or human error or due to a fraud committed by any person either within Bank of India or Canara Bank or outside. If a fraud has occurred, it has occurred in the systems under the control of the Bank and hence it should be the responsibility of the Bank to lodge a Police complaint and pursue the case while restoring my account to the pre-fraud status. This is in accordance with the guidance of RBI regarding Fraud management and the Bank is in default of the said guideline.

Despite this, the Customer has obliged the request of the Bank and lodged a complaint with the Chandapur Police Station reporting the loss of the money and requesting inter alia that investigation should cover officials of the bank at the branch as well as the head office in charge of the IT department including the CEO ultimately responsible for maintenance of the IT systems. (Copy of complaint and acknowledgement enclosed-Annexure III).

Providing secure Banking service is a part of the mandate on the Bank and RBI as well as the law of the land such as Information Technology Act 2000 as amended by Information Technology Amendment Act 2008 which has laid down clear instructions regarding the same.

Not following such mandatory instructions and causing loss thereby to the customer tantamount to conducting Banking business on violation of the instructions of Reserve Bank of India.

Further, not assuming responsibility for errors that may creep in on account of negligence, fraud or otherwise and imposing a responsibility on the Customer to file a complaint with the Police and fight it out is a cruelty on the customers who have trusted the Bank to take care of their hard earned savings.

In case of aged persons such as the subject Customer, the approach of the bank in not immediately redressing the grievance is a matter of grave concern.

If such grievances are not handled expeditiously with understanding of the shock and anguish that a 72 year old customer may feel when his hard earned savings kept aside for medical expenses of self or his spouse in the old age suddenly vanishes from the hands of the otherwise trusted banker, it would be a matter which can be considered as a serious violation of human rights.

It may be recalled that during the last one year there have been many legal and administrative decisions that losses caused to the Customers on account of errors or frauds in the Electronic Banking transactions need to be borne by the bank.

The decision of the Adjudicator of Tamil Nadu in the case of S.Umashankar Vs ICICI Bank, the decision of the District Consumer Forum, Mumbai (Central) in the case of Nikhil Futan Vs HDFC bank, the decision of the Banking ombudsman in the case of N.Vidyashankar Vs Bank of India (in Bangalore Zone itself) are examples of such decisions.

RBI in its annual report of Banking Ombudsman cases has also reported other cases of similar nature where the respective Banks have been ordered to pay compensation to the Customers.

Hence it is imperative that the bank should have acted immediately upon having received the complaint of the customer to redress his grievance.

So far, the complaints at the Branch level have not yielded any response. Only a sum of Rs 100/- being the service charges regarding the disputed ATM transactions have been reversed. The balance of Rs 40,600/- still remains to be reversed along with consequential damages.

I request you therefore to immediately bestow your attention on the matter and ensure the following.

1. Restoration of the amount of Rs 40,600/- erroneously debited to the account excluding the amount of service charges of Rs 100/- already reversed.
2. Payment of interest at 18% p.a. from the date of the disputed transaction till date of reversal on daily product basis as opportunity loss.
3. Payment of compensation for the expenses incurred by me till date towards recovery to the extent of Rs 6,000/-(subject to revision in case of escalation of the dispute)
4. Payment of compensation for mental agony which is nominally put at Rs 10,000/- (subject to revision in case of escalation of the dispute)

I await your quick response in the matter.

Thanking You

Yours Faithfully

(Sd)

Na.Vijayashankar

(For and on Behalf of S.Nagaraja)

CC:

Branch Manager

Bank of India, Chandapur Branch

465-368, Banahally rd, N.R.Govt UP School

Chandapura, Dist Bangalore Rural,Karnataka

PIN: 500081:

Ph: 22959401

**List of Disputed Transactions in the Account of Mr S. Nagaraja**  
**(SB a/c no 848210110000933, Chandapura Branch, Bank of India)**

<b>Date</b>	<b>Particulars</b>	<b>Amount (Rs)</b>
04-12-2010	CWDR//237153/08880058	100.00
06-12-2010	CWDR//635511/08880058	2000.00
06-12-2010	CWDR//652533/08880058	1000.00
06-12-2010	CWDR//670187/08880058	10000.00
06-12-2010	CWDR//278047/08880058	10000.00
06-12-2010	CWDR//284928/08880058	5020.00
07-12-2010	CWDR//741745/08880058	3020.00
07-12-2010	CWDR//747471/08880058	3020.00
07-12-2010	CWDR//753236/08880058	3020.00
07-12-2010	CWDR//759167/08880058	3020.00
07-12-2010	CWDR//167210/08880058	500.00
	<b>Total</b>	<b>40700.00</b>

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Bank of India

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Relationships beyond banking

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**बैंक ऑफ इंडिया**  
Bank of India

*रिश्तों की जमापूँजी*  
Relationships beyond banking

**CHANDAPURA**  
465-368, BANAHALLY ROAD, CHANDAPURA, DISTT. BAN  
KARNATAKA, CHANDAPURA (DISTT. BANGALORE RURAL), 560081

**बचत बैंक खाता पासबुक**  
SAVINGS BANK PASS BOOK

बचत खाता संख्या  
S/B A/c No.

नाम  
NAME

शाखा  
BRANCH

848210110000933  
MR S. NAGARAJA

कृपया पासबुक न मोड़ें / Please do not fold

तारीख Date	विवरण B/F Particulars	चेक संख्या Cheque No.	निकासी राशि Dr. Amt. Withdrawn	जमा राशि Cr. Amt. Deposited	शेष Balance	हस्ताक्षर Initials
2. 23-11-2010	Y/S TRS TO DBD	6209	1,00,000.00		41,397.00	
3. 04-12-2010	CWDR//237153/08880058		100.00		41,297.00	
4. 06-12-2010	CWDR//633511/08880058		2,000.00		39,297.00	
5. 06-12-2010	CWDR//652533/08880058		1,000.00		38,297.00	
6. 06-12-2010	CWDR//670187/08880058		10,000.00		28,297.00	
7. 06-12-2010	CWDR//278047/08880058		10,000.00		18,297.00	
8. 06-12-2010	CWDR//284928/08880058		5,020.00		13,277.00	
9. 07-12-2010	CWDR//741745/08880058		3,020.00		10,257.00	
10. 07-12-2010	CWDR//747471/08880058		3,020.00		7,237.00	
11. 07-12-2010	CWDR//753236/08880058		3,020.00		4,217.00	
12. 07-12-2010	CWDR//759167/08880058		3,020.00		1,197.00	
13. 03-01-2011	CWDR//167210/08880058		500.00		697.00	
14. 06-01-2011	NEFT-VENKATESH KIRAN N			6,000.00	6,697.00	
15. 15-01-2011	MEDRV/SRT MEGA NAR/560120/		159.00		6,538.00	
17. 13-01-2011	TO CASH		1,000.00		5,538.00	
19. 21-01-2011	TO CASH	6210	1,000.00		4,538.00	
20. 27-01-2011	ATM REV/237153 DT. 2010-12-04			100.00	4,638.00	
21. 29-01-2011	TO CASH	6211	1,500.00		3,138.00	

From,

**S. Nagaraja**  
No. 154, 'A'KHB,  
Surya city,  
Chandapura,  
Bangalore – 81.

Date: 24-01-2011

To,

**The Sub Inspector**  
Hebbagodi Police Station,  
Hebbagodi, Bangalore.

**SUB: LOSS OF AMOUNT FROM ATM**

Respected Sir,

Somebody has with drawn amount on 4-12-2010, 6-12-2010, 7-12-2010, 03-01-2011 to the tune of amount **Rs. 40,700/- (Rupees Forty Thousand Seven Hundred Only)** though ATM Card was with me only.

On 13-01-2011 when I went to bank I came to know this fact and on the same day I applied for claims to the Bank Chandapur, Bank of India. Were my SB A/C is maintained and ATM Card Taken.

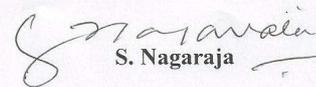
Immediately they applied for claims to their head office and on 21-01-2011 they received information that the transaction was successful (Copy of the same enclosed). Manager Bank of India advised me to get acknowledgement From Hebbagodi Police Station and submit the copy to Bank, So that they may investigate in detail. Hence I am lodging herewith the complaint for the same and I request you kindly to do the needful.

Copy of the Passbook of the transaction is enclosure.

Copy of the Bank Transaction is also enclosure (10 Transaction)

Thanking you,

Yours faithfully

  
**S. Nagaraja**



**ANNEXURE C to Ombudsman Complaint**

**Copy of ATM Card still in possession of the customer**

