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**(2001) 07 NCDRC CK 0021**

**In the National Consumer Disputes Redressal Commission**

ASHOK KAICKER — APPELLANT

Vs

AMBLEE HOTELS PVT. LTD. — RESPONDENT

**Date of Decision :** 03-07-2001

**Acts Referred:**

**Citation :** 2002 3 CPJ 106

**Hon'ble Judges :** R.K.Anand , R.L.Sudhir J.

**Final Decision :** Application disposed of

## Judgement

1. THE applicants who are a couple engaged in the business of export garments have approached the Monopolies and Restrictive Trade Practices Commission for grant of compensation under Section 12-B of the Monopolies and Restrictive Trade Practices Act, 1969 (the MRTP Act in brief) on the ground that they have suffered financial loss on account of the unfair trade practices adopted by the respondents.

2. THE facts in brief are that the respondents launched a scheme for the membership of ''Amblee Holiday Resorts'' at Srirangapatna, Karnataka through audio visuals and distribution of brochure, etc. THE respondent No. 2 who are the marketing agent of respondent No. 1 organised a publicity campaign to popularise the scheme and gave various assurances to attract the customers. THEse assurances inter alia, included offer of attractive discounts and the facility to enjoy holidays in any of the 2600 RCI resorts in over 76 countries, on getting the membership of respondents No. 1. THE respondents are also stated to have assured that the apartment would be made available with effect from 1995 and that the respondent No. 1 was having affiliation with RCI India Pvt. Ltd. The applicant deposited a total amount of Rs. 1,55,789/- through cheque which include membership fee of Rs. 1,45,509/- and administration fee of Rs. 8,820/-. The respondent No. 2 issued a receipt for the said amount on 13.12.1994. For the membership of ''Amblee Holiday Resorts'' a purchase agreement was also duly signed by the applicant and the respondent No. 1 on 13th October, 1994. Thereafter, Membership Certificate was issued to the applicant on 13.12.1994.

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It has been alleged that while the applicants fulfilled their obligations under the agreement by making full payment of the prescribed amount, the respondents failed to fulfil their part of the obligation as the apartment promised was not made available to them within the stipulated period. Nor were the applicants given any information about the same despite several queries addressed to the respondents. The respondent No. 2, however, sent a reply on 7th June, 1997 in which the responsibility to comply with the various stipulations made in the agreement was put entirely on the respondent No. 1 who was the owner of the resorts in question.

3. THE claim regarding the affiliation of respondent No. 1 with RCI India Pvt. Ltd., also proved untrue when the latter informed the applicants vide letter dated 11th April, 1997 that Amblee Resorts International Private Limited, Srirangapatna, Karnataka had been disaffiliated with effect from April, 1997 and that the membership was not renewed or extended. It has been further stated that in terms of clause 7 of the agreement, the applicants were entitled to another apartment if the one agreed upon was not made available. THE respondent No. 1 however did neither. Thus aggrieved, the applicants have approached the Commission for grant of compensation. The respondent No. 1 neither filed a reply to the notice of compensation nor entered appearance in the Court. In view of this, the proceedings were set ex-parte against respondent No. 1. The respondent No. 2, however, filed a reply and on completion of pleadings, the following issues were framed : (1) Whether the respondents have been or are indulging in the unfair trade practices as alleged in the compensation application ? (2) If so, whether the applicant has suffered any loss or damage on account of the said unfair trade practices ? (3) Relief, if any.

4. THE applicants filed their affidavits of evidence along with supporting documents and even produced a witness for cross-examination but the respondents did not appear in the Court to cross-examine the witness. In view of this, the respondent right to cross-examine the witness was struck off and they were given the liberty to file their affidavits of evidence. While no evidence came forth from respondent No. 1, who had already been set ex-parte, the respondent No. 2 also failed to file the affidavits of evidence despite adequate oppoortunities given. In these circumstances, the right of respondent No. 2 to file evidence was also closed. Ex-parte arguments were finally heard on 15th May, 2001. We have carefully considered the submissions made by the learned Counsel for the applicants and have also perused the documents and other evidence on record. It is evident from record that the applicants and the respondent No. 1 were the signatories to the purchase agreement. Therefore, the obligations arising from the said agreement were to be honoured by the parties to agreement. Respondent No. 2 was merely a marketing agent of respondent No. 1 and therefore, compliance of the purchase agreement was not directly the responsibility of respondent No. 2.

5. COMING to the allegations of unfair trade practices made by the applicants,

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the respondent No. 1 neither filed a written statement denying the allegations, nor even entered appearance in the Court. Therefore, in terms of provisions contained in Order VIII Rule 5 of the Code of Civil Procedure, 1908, the allegations made in the compensation application can be deemed to have been admitted by the respondent No. 1. Further, it is borne out from record that a purchase agreement had been entered into between the respondent No. 1 and the applicants on 13.10.1994 for the purchase of membership of the ''Amblee Holiday Resorts'' situated at Srirangapatna, Karnataka. The said agreement also reveals that the applicant had deposited the full amount of Rs. 1,53,789/- for the purchase of an apartment. A membership certificate dated 13.12.1994 was also issued to the applicants which entitled them to exclusive rights of occupancy in apartment No. 114 each year from 1995 to 2024. The respondent No. 1, however, failed to honour these commitments as a result of which the applicants remained deprived of the facilities to them. This failure on the part of respondent No. 1 is undoubtedly, an unfair trade practice within the meaning of Section 36-A of the MRTP Act. The said unfair trade practice has not only caused financial loss to the applicants, it is also prejudicial to public interest.

6. IN view of the above findings, the respondent No. 1 is directed to refund to the applicants an amount of Rs. 1,53,789/- along with interest at the rate of 12% from the date of deposit till the date of refund. The respondent No. 1 is further directed to ensure compliance of this order within six weeks from the date of receipt of the order and file an affidavit of compliance within six weeks thereafter. Application disposed of.

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