
(2011) 02 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

Dinakar Rao

APPELLANT

Vs

Green Fields (India) Pvt. Ltd.

RESPONDENT

Date of Decision : 22-02-2011

Acts Referred:

Citation : 2011 0 CTJ 633 : 2011 0 NCDRC 85 : 2011 2 CPJ 28

Hon'ble Judges : Suresh Chandra J.

Final Decision : Petition is dismissed

Judgement

1. CHALLENGE in this revision petition is to the order dated 14.02.2007 passed by the Karnataka State Consumer Disputes Redressal Commission, Bangalore (State Commission for short) by which the State Commission dismissed the appeal of the complainant, petitioner herein, against the order dated 09.01.2007 of the District Forum.

2. THE factual matrix of this case are that the complainant got a prize on the entry ticket of ICE Exhibition purchased by him in January 1996. In terms of the prize, the opposite parties, respondents herein, offered a time share of one week every year at the place of OP-1. Accepting the offer, the complainant paid a sum of Rs.62,500/- to OP-1 on 25.01.1996. Both the parties entered into a purchase agreement dated 24.01.1996. THE complainant also paid Rs.4500/- towards registration fee and in terms of the purchase agreement, OP-1 as Developer and OP-2 as Marketeer jointly sold the membership of OP-1. A membership certificate was also accordingly issued. THE complainant renewed the membership for three years by paying Rs.4,510/- under receipt dated 09.03.1999 issued by RCI India Pvt. Ltd. Thus, the complainant paid in all an amount of Rs.71,510/- and in terms of the agreement he is entitled to occupy the resort of OP-1 for one week every year from 1997. In clause 5 of the purchase agreement, it is mentioned that OPs 1 & 2 are affiliated to RCI. It was stated by the complainant that RCI revoked the affiliation long ago due to the non-development of the premises of the resort but the cancellation of the affiliation was not intimated to the complainant. Since the facilities in question were under development/

construction, for a few years the OP-1 was informing about the progress thereof particularly regarding the construction of the resort through their In-house newsletter, namely, Rendezvous. This newsletter, however, seems to have stopped since October 2000. On 30.03.2001, the complainant sent a letter to OPs 1 & 2 demanding refund of the amount paid by him with interest @ 24% p.a. since the resort did not come with functional existence even after 5 years. On 12.01.2005, he addressed another letter to OP-1 to reserve a double room from 03.02.2005 to 05.02.2005 for the stay of his family and also to make necessary arrangements for the comfortable stay. In this context, the Managing Director of OP-1 assured complainant of all the arrangements having been made already. However, when the complainant visited the resort with his family, he was shocked to find the pathetic condition of the premises of the resort and also the fact that there was no one to receive him even after waiting for over one hour. There was no kitchen at all nor a cook to prepare the food. On his return from the resort, the complainant issued legal notices dated 21.03.2005 and 11.04.2005 demanding refund of the membership fee and compensation of Rs.5 lakhs. Having failed to get a favourable response to his legal notices, the complainant knocked the doors of the consumer fora by lodging a complaint with the District Forum. On appraisal of the issues and the evidence adduced by the complainant and OP-1 (OPs 2 & 3 having remained absent), the District Forum held that the complainant is not entitled to claim refund of membership fee and other fees stated by him. However, in regard to the deficiency in service, the District Forum allowed the complaint against OP-1 and dismissed the complaint against OPs-2 & 3. While giving relief to the complainant, the District Forum directed OP-1 to pay compensation of Rs.30,000/- together with cost of Rs.1,000/- within a period of 8 weeks failing which, the awarded amount would carry interest @ 10% p.a. Not feeling satisfied with the relief granted by the District Forum, the petitioner carried the same in appeal before the State Commission which vide its impugned order dated 14.02.2007 upheld the order of the District Forum and dismissed the appeal and hence the revision petition by the complainant. We have heard learned counsel for the petitioner and respondent no.1. Notices on respondents 2 & 3 could not be served for want of correct address being furnished by the petitioner. The grievance of the complainant is that even though there is specific declaration to this effect in the purchase agreement signed by the parties in clause 5, the correct position is that respondents - 1 & 2 are not affiliated to RCI and to this extent, the petitioner feels that he has been cheated by the respondents by giving false promises in respect of this affiliation. Not only this, the petitioner suffered immensely in regard to the provisions of time share facility since the facility at Pune remained incomplete for a long time. Thereafter, when the complainant/petitioner chose to visit and use the facility as per the agreement, there was serious negligence and deficiency in service on the part of the OPs because of which the petitioner and his family suffered harassment, agony and also financially. Learned counsel submitted that it was with this background which is borne out from the record that the petitioner had filed a complaint before the District Forum. However, in

spite of the documentary evidence in his favor, the fora below have committed grave error in ignoring the same and giving only partial relief without granting refund of membership fee which came to be paid by the complainant on account of unfair means and tactics adopted by the respondents. He further submitted that the dispute pertaining to property time share is a consumer dispute between the holiday resort and the consumer and the same is maintainable before the consumer fora as per the judgement of the National Commission given in the case of P.V. Sunderason & Anr. Vs. Sterling Holiday Resorts (India) Ltd. [(III) 2003 CPJ 154 (NC)]. He, therefore, contended that the petitioner is entitled for refund of membership fee along with interest. Learned counsel for the respondent no.1 has drawn our attention to the fact that in spite of his submissions in regard to RCI, the petitioner has not included RCI India Pvt. Ltd. as a party to the dispute either before the fora below or before this Commission. He further submitted that as per the purchase agreement, Rs.62,500/- deposited on account of the membership fee is non-refundable and the same fact has not been disputed. He further submitted that there is no misrepresentation by the respondents regarding affiliation of the resort with RCI Inc. and per clause 5, it has not been disputed by the petitioner anywhere that the resort was actually affiliated with RCI Inc. when the purchase agreement was signed. Later on, the affiliation was withdrawn by the RCI but neither it can be called cheating nor it would entitle the petitioner to claim refund of the membership fee in terms of the purchase agreement. In fact, he argued that if the petitioner had felt aggrieved in this regard, he should have made RCI also as a party to the dispute to know the correct factual position in this regard. He further submitted that all allegations regarding the affiliation with the RCI and the information regarding exchange programme with the RCI are baseless since the position in this regard has been made amply clear in the purchase agreement as well as owners declaration which has been duly acknowledged and signed by the petitioner and the same fact is not under dispute. He reiterated that respondent no.1, i.e., Green Fields (India) Pvt. Ltd. which has entered into purchase agreement with the petitioner is bound to abide by the terms and conditions of the purchase agreement and the petitioner should not have any doubt about it. Whatever inconvenience was suffered earlier at the time of his visit to resort at Pune has already been taken due notice by the fora below while awarding damages and cost to the complainant against the respondent. In the circumstances, the revision petition is liable for dismissal.

Having heard the submissions of the counsels of both sides and seen the documents placed on file, we are of the considered view that the fora below have adequately awarded the damages and the cost to the complainant in the matter based on their concurrent findings. So far as the refund of the membership fee is concerned, the purchase agreement signed by the petitioner specifically provides that the same is non-refundable. We also find that the position in respect of affiliation of the resort with the RCI Inc. has been made amply clear in the agreement itself and hence we do not accept the allegation of misrepresentation

or cheating made by the respondents against the petitioner. Consequently, no fault could be found with the impugned orders of the fora below, which are based on documents filed by the parties. The revision petition being devoid of merit is, therefore, liable for dismissal and the same is dismissed accordingly with the parties bearing their own costs.