
(2007) 04 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

Orphic Resorts Ltd.

APPELLANT

Vs

USHA JAIN

RESPONDENT

Date of Decision : 25-04-2007

Acts Referred:

Citation : 2007 2 CPR 480 : 2007 3 CPJ 321

Hon'ble Judges : K.S.Gupta , P.D.Shenoy J.

Final Decision : Revision Petition dismissed

Judgement

1. PETITIONERS were opposite party Nos. 1 and 2. Respondent No. 1/ complainant had entered into a Time Share Agreement with petitioner No. 1 and paid amount of Rs. 60,600. Under the agreement, respondent No. 1 was entitled to use time-share unit at the resort of petitioner No. 1 at Bhimtal for one week once in a year. Agreement was valid for 10 years. Respondent No. 1 alleged that they intended to use the facility from 16.5.2000 to 18.5.2000 and sent a letter dated 15.4.2000 for issue of coupon to the petitioners. Again they intended to use the facility from 26.5.2001 to 28.5.2001 for which the petitioners were intimated through the letter dated 25.4.2001. Respondent No. 1 did not get any response from the petitioners. Alleging deficiency in service the respondent No. 1 filed complaint against the petitioners and opposite party No. 3/respondent No. 2 seeking certain reliefs. Petitioner contested it by filing written version. It was denied that any of the two letters were received by them. It was alleged that the copies of the two letters filed by respondent No. 1 were fabricated. Respondent No. 2 was proceeded ex parte. Considering the affidavits filed by way of evidence by the parties, the District Forum did not believe the plea taken by the petitioners that the two letters were fabricated by respondent No. 1 and were not sent. Vide order dated 21.2.2005 the Forum allowed the complaint holding the petitioners to be deficient in service with direction to them to refund Rs. 60,600 along with interest @ 12% p.a. from December, 1999 and pay Rs. 5,000 as compensation for mental agony, etc. Dissatisfied with District Forum's order, the petitioners filed appeal which was disposed of by the order dated 23.2.2007 by the State Commission, Delhi reducing the rate of interest to 9% from date of

deposit till payment.

2. SUBMISSION advanced by Mr. Surinder Goel for petitioner whom we have heard on admission, is that respondent No. 1 had entered into an agreement with Bonanza Portfolio, respondent No. 2 to rent out the facility of stay in the resort on 12.8.2000 and, therefore, there was hardly any occasion for respondent No. 1 to have sent the letters dated 15.4.2000 and 25.4.2001. To be noted that in the complaint, respondent No. 1 had also sought refund of Rs. 3,000 paid to respondent No. 2, proprietorship concern of Amit Khanna as he did not take steps to rent out the facility. In our view, on the basis of respondent No. 1 having entered into agreement with respondent No. 2 for the said purpose, it cannot be inferred that respondent No. 1 was not desirous of availing this facility in the resort in 2000 and 2001. Taking note of the affidavits filed by the parties, the District Forum has returned the finding that said two letters were not fabricated and this finding has not been disturbed in appeal by the State Commission. There is no illegality or jurisdictional error in the orders passed by Fora below holding the petitioners to be deficient in service and ordering for refund of the deposited money with interest. Revision petition deserves to be dismissed being without any substance. Dismissed as such. Revision Petition dismissed.