
(2015) 10 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

Case No : 1929 of 2009

RCI INDIA PVT. LTD

APPELLANT

Vs

Mrs. CHANDA SEN & ORS

RESPONDENT

Date of Decision : 30-10-2015

Acts Referred:

Citation : 2016 1 CPR 96

Hon'ble Judges : V.B. Gupta, Prem Narain

Advocate : Saurav Bindal, B.N.Jha, T.K.Mishra

Judgement

1. Aggrieved by the order dated 24.2.2009 of the State Consumer Disputes Redressal Commission, Uttar Pradesh, (in short "the State Commission"), the petitioner, RCI India Pvt. Ltd. has filed this revision petition.

2. In short, the sequence of events is as follows: Respondent Nos.1 and 2 jointly entered into an agreement with respondent No.3, on 5.5.2001 for purchase of timeshare week for 12 years. The respondent Nos.1 and 2 made the payment of Rs.10,000/- at once and 12 E.M.I. of Rs.7,167/- from 7.7.2001 to 7.8.2002. The respondent Nos.1 & 2 were enrolled as RCI member for a period of three years ending on March 24, 2006 and membership card along with the RCI Terms of membership were sent to them in April, 2003.

3. After receiving the RCI membership card, respondent Nos.1 & 2 visited Paris to spend their holidays in the month of May, 2003. The respondent Nos.1 and 2 on their arrival at foreign base contacted over phone to hotel 3219 i.e. Le Saint Germain in Paris for booking as given in booklet of petitioner/opposite parties "The World of RCI Holidays,". There, the respondent Nos.1 and 2 came to know that RCI has no connection with the hotel business. The respondent Nos.1 and 2 from abroad also contacted RCI Bangalore office but no help was extended to them. The respondent Nos.1 and 2, their daughter and son-in-law were put to embarrassment. Ultimately a hotel "Comfort Inn saint Pierree" was booked by the respondent Nos.1 and 2 for their stay for two nights and three days, costing Rs.40,000/-.

4. After return, they took up the matter with the petitioner but not to any avail. Respondent Nos.1 and 2 filed the consumer complaint before the District Consumer Disputes Redressal Forum, Kanpur City, (in short "the District Forum"), which vide its order dated 13.3.2007 allowed the complaint and ordered:- "Complaint is allowed. Opposite party is directed that they should pay a sum of Rs.96009/- to the complainant within two months from this judgment with interest at the rate of 8 percent simple and Rs.1000/- towards cost."

5. Against this order of the District Forum, petitioner filed an appeal before the State Commission, which was dismissed vide order dated 24.02.2009. Against this order of State Commission, the present revision petition has been preferred.

6. We heard learned counsels for both the parties and perused carefully all the documents. Learned counsel for the petitioner argued that under the Timeshare scheme holidays are booked by the petitioner on the basis of availability in various resorts/hotels. The list of hotels given in the booklet is only indicative and it only means that a member can stay there subject to availability of space and the booking has been made by RCI. Individual members are not entitled to go any time and to do their own bookings. In this case, the programme was made by respondent Nos.1 and 2, on their own, and RCI was not informed and was not asked to make bookings. The concerned rules in this regard, which are printed in the booklet are as follows and are very clear: "6. Depositing your Holiday ownership: Notwithstanding anything stated herein a member's right to enjoy the exchange facility will be subject to the Member following exchange procedure provided herein below.

6.1 Before you can request an exchange or receive an exchange confirmation, you must:

6.1.2 Obtain a written allocation of time and resort from the Affiliated Resort and send it to RCI, where your holiday ownership Rights are for an unspecified time or resort (i.e. "floating time"); and

6.1.3 Deposit Holiday Ownership rights with us and we will put them into the RCI pool of exchange accommodation.

6.4 You may withdraw the deposit of your Holiday Resort at any time unless they have already been assigned to another person or unless you have received a confirmed exchange in respect of that deposit.

7. Requesting an Exchange: 7.1. You must pay in advance the exchange fee current on the date of request for each exchange requested. If RCI is unable to confirm an exchange acceptable to you we will hold the exchange fee as a credit to your account against future exchange fees or on your request refund it to you in the same manner in which it was paid. There must be at least one member of

18 years or older in the exchange party or 21 years or older for travel to the USA.

7.3. Our ability to confirm a request is dependent on the availability of Holiday Ownership rights deposited by others in the RCI Pool which are acceptable to you. We therefore cannot guarantee that any particular request for a resort, area, travel date, type or size of accommodation, travel supplier or otherwise relating to your exchange will be met. We will, throughout, offer you alternative choices which may be available. Designated occupancy levels may be subject to change.

7.4. A legally binding contract is formed when the exchange reservation is made. Confirmation of the arrangements will be sent out subsequently by RCI and will be valid only if issued by RCI in writing. You must check on receipt all the details in the confirmation carefully and let us know as soon as possible if anything is incorrect, as subsequent changes to any material aspect of the confirmation may be treated as a cancellation.

13. Limitations of Liability:

13.1 If you or any guest suffers any loss or damage through use of the RCI Exchange Programme, howsoever it may arise, we accept we are liable for the loss or damage up to a maximum amount of the sums received by us for the exchange in connection with which the loss or damage occurred (except in the case of death or personal injury resulting from RCI's negligence when no such limit will apply). In no circumstances will we be liable for loss or damage where the possibility of such loss or damage could not reasonably have been foreseen by us or attributable to RCI. These limitations are also applicable to all associated companies, servants and agents of RCI.

13.2. Any complaints about accommodation or the services provided at an Affiliated Resort should be made at the earliest opportunity to a person in authority at the Affiliated Resort itself. If this does not produce a satisfactory result, the Member or guest should contact the nearest RCI servicing office as soon as possible, RCI accepts no liability to members or their guests for any costs and expenses incurred by them (including without limitation the costs of alternative accommodation) without prior authorization from RCI's office in Bangalore, India or the nearest RCI local servicing office in relation to any complaints about accommodation or the services provided at an Affiliated Resort. In the unlikely event that the Affiliated Resort does not resolve the matter, you should write to RCI's Customer Service department giving full details of the complaint within 30 days of your return. We reserve the right to refuse to consider any complaints made where this procedure has not been followed.

13.3. RCI accepts no liability for the acts and omissions of any third parties including Affiliated Resorts."

7. The learned counsel for the petitioner stated that, as respondent Nos.1 and 2

went to Paris without making prior arrangement in association with RCI, they were bound to face difficulties for which RCI was not responsible. The State Commission and the District Forum have not properly understood the Timeshare scheme and they have not appreciated the terms and conditions of the scheme. Had the respondent Nos.1 and 2 followed the proper guidelines of the scheme and had booked their holiday in association with the RCI, they would not have faced any difficulty. Therefore, order of the District Forum, which has been confirmed by the State Commission, for returning the total membership fee of Rs.96,009/- to the respondent Nos.1 and 2 is not justified. Obviously, there should not have been any compensation or cost awarded to respondent Nos.1 and 2 because they faced the difficulty on account of their not understanding the scheme properly and not acting as per the procedure provided in the scheme. Based on these counts, the order of the State Commission dated 24.02.2009 and District Forum dated 13.03.2007 are liable to be quashed.

8. Learned counsel for the respondent Nos.1 and 2 argued that the scheme was meant for holiday abroad and hotel 3219 i.e. Saint Germain in Paris was listed in the booklet of the petitioner. Respondent Nos.1 and 2 travelled to Paris and believed in good faith that the said hotel should provide them accommodation as they were the RCI card holders. When the hotel denied them booking and informed that the hotel was not a member of the RCI, respondent Nos.1 and 2 were put to lot of harassment in a foreign country whereby they had to spend lot of money in getting an alternative accommodation. It is not only a matter of respondent Nos.1 and 2, it also brings out the fact that RCI has cheated its members by mentioning false names in the list of hotels and resorts. The District Forum has only allowed the refund of the membership fees which was given by respondent Nos.1 and 2 to the petitioner. The State Commission has rightly dismissed the appeal of the petitioner finding no force in the appeal.

9. After hearing the learned counsels for both the parties and after perusing the records, we are of the view that both the parties have erred in the instant case. The Respondent Nos.1 and 2 did not act according to the terms and conditions of the scheme and did not follow thoroughly the procedural guidelines of the scheme. On the other hand, RCI printed at least one hotel in their booklet which was not the member and consumers were befooled. State Commission has mentioned in its order dated 24.2.2009 that the respondent Nos.1 and 2 were to travel to Paris after informing the appellants. The petitioner in his consumer complaint before the District Forum has not given any specific date of giving information to the petitioner. As per the guidelines of the scheme, in case of any difficulty, the members are supposed to call the Bangalore office of the petitioner. However, in this case, the respondents contacted RCI Bangalore office but no help/advice was provided. It is also not clear as to what action was taken by the petitioner or the respondent no.3 on the information of foreign tour given by respondent Nos.1 and 2. Both, the petitioner as well as respondent Nos.1 and 2 have acted irresponsibly in the present case, but as respondent Nos.1 and 2 were members of the scheme of the petitioner, which promised foreign holiday

and respondent Nos.1 and 2 availed the foreign tour in good faith as member of the scheme, the petitioner should have responded quickly and responsibly to the frantic calls and requests made by respondent Nos.1 and 2 from Paris. We are therefore, of the opinion that the total return of membership fees of Rs.96,009/- by the petitioner to the respondent Nos.1 and 2 is not justified, though we also feel that the travel was undertaken by respondent Nos.1 and 2 in good faith treating themselves as members of the RCI and contacted the hotel given in the booklet of the petitioner, but faced lot of harassment and trouble in foreign land. It has been alleged in the complaint that they had to spend Rs.40,000/- for making alternative stay arrangement in Paris. As the main responsibility of RCI was the accommodation overseas, we are of the view that only this amount of Rs.40,000/- spent in making alternative arrangement for accommodation should be compensated by the petitioner.

10. Accordingly, based on the above discussions, the order of the State Commission dated 24.2.2009 and order of the District Forum dated 13.3.2007 are modified and petitioner and respondent No.3 (jointly and severally) are directed to pay Rs.40,000/- (Rupees Forty Thousand) to respondent Nos.1 and 2 along with interest @7% from date of order of District Forum i.e. 13.3.2007 till date of actual payment. The order should be complied within two months.

11. No order as to costs.