Ram Chemudugunta Vs. the Manager Country Vacations, a Division of Country Club (India) Ltd. and Another

Ram Chemudugunta Vs. the Manager Country Vacations, a Division of Country Club (India) Ltd. and Another

SooperKanoon Citation : sooperkanoon.com/1149043

Court : Andhra Pradesh State Consumer Disputes Redressal Commission SCDRC Hyderabad

Decided On : Dec-27-2013

Judge : The Honourable Mr. R. Lakshminarasimha Rao, Incharge President, the Honourable Mr. Thota Ashok Kumar, Member &Amp; the Honourable Mr. S. Bhujanga Rao, Member

Appeal No. : F.A.No. 991 of 2013 Against C.C.No. 642 of 2012 District Forum-I Hyderabad

Appellant : Ram Chemudugunta

Respondent : The Manager Country Vacations, a Division of Country Club (India) Ltd. and Another

Judgement :

Oral Order: (R. Lakshminarasimha Rao, Incharge President)

1. The unsuccessful complainant is the appellant. The appellant being induced by the respondents joined as member in the respondent no.1 club and to the effect he entered into agreement with the respondents by paying Rs.15,000/- . The respondents staff informed the appellant that he is entitled to claim vacation stay worth Rs.30,000/- at various hospitality facilities at their branches in India. The

appellant after going through the agreement found a biased condition in the agreement at clause 2 wherein it was mentioned œI undertake that this agreement supercedes communication if any, issued by CCIL representatives (including on company letter head or stamp paper) and the benefits and terms of membership listed here and amendments are final and binding on CCIL and myself?. The appellant vide his emails dated 17.2.2012, 20.2.2012, 24.2.2012, 26.3.2012 and 9.5.2012 requested the respondents for refund of the membership fee of Rs.15,000/-. The terms and conditions printed in the agreement are in favour of the respondents. The respondents failed to refund the amount.

2. The respondents resisted the case contending that the appellant agreed to become the member of Country Vacations International Holiday Club Membership and accordingly entered into purchase agreement and paid an amount of Rs.15,000/- and he failed to pay the balance consideration of Rs.1,40,000/- and as such the appellant committed breach of contract and the District Forum has no jurisdiction to entertain the complaint and only the civil court has jurisdiction to entertain the complaint. As per the terms and conditions of the purchase agreement the amount paid by the appellant is non-refundable and the membership fee paid is not a deposit. The respondents had not made any false representations to the appellant. The respondents had not agreed to refund the amount of Rs.15,000/-. The respondents can provide membership cards only after the receipt of total amount towards membership. The appellant failed to fulfil the terms and conditions of the agreement as such he is not entitled to the amount paid by him.

3. The appellant filed his affidavit and the documents, Exs.A1 to A7. The respondents neither filed their affidavits nor the documents on their behalf.

4. The District Forum dismissed the complaint on the premise that as per clause 18 of MoU in the event of default committed by the member and if the full payment is not paid, the member cannot seek refund of the payment and the appellant committed default in not paying the balance consideration of Rs.1,40,000/-.

5. Feeling aggrieved by the order of the District Forum the complainant filed the appeal contending that the terms and conditions mentioned in the membership

agreement are biased in favour of the respondents and that as per the terms and conditions of the agreement if the appellant is not accepted as member by the time he expressed his intention that he is not interested in becoming the member of the respondents club and the respondents cannot withhold the membership amount of Rs.15,000/-.

6. The point for consideration is whether the order of the District Forum is vitiated by mis-appreciation of facts or law?

7. The appellant became member of Country vacations International Holiday Club and entered into agreement with the respondents and paid an amount of Rs.15,000/- and he did not pay the balance amount of Rs.1,40,000/- . As per the terms of the agreement, the appellant is entitled to membership for a period of 10 years in respect of studio accommodation in any resorts of the respondents.

8. The appellant has submitted that the respondents made false promises to him and induced him to enter into the agreement and realizing the unfair trade practice he requested them to refund the amount. The respondents contended the appellant failed to honour the terms of the agreement and pay the balance amount as also he is not entitled to any amount in view of terms of the agreement that the amount paid is not refundable.

9. The appellant has stated that the respondents induced him to join as member and he has stated that on 17.02.2012 his wife received a phone call from the respondent no.1 that she won prizes worth Rs.30,000/- and she was requested to come to the office of the respondent no.1 to collect the prizes and there they found about 30 people who had come on being offered prizes as the appellant and his wife and the respondent no.1 distributed brochures each of which consisting of 7 pages and the respondent no.1 informed him and his wife that either of them have to join as member of the respondent no.1 in order to receive the prizes.

10. The appellant has stated that the respondents made him sign on printed lines and on behalf of the respondent no.1, the respondent no.2 signed the agreement. After he has signed the tract, the respondents had taken the tracts and on reaching home he had gone through the terms and conditions of the agreement

and found them different from the offer mentioned in the agreement. The appellant submitted that the respondents misrepresented the facts to him and induced him to become member of the respondent no.1 and he pointed out the clause in membership agreement and questioned the necessity of such clause in the agreement when the respondents are fair enough in dealings with their members. Clause 2 of the agreement reads as under:

œCovenants of Purchaser:

2. I understand that this agreement SUPERCEDES communication if any, issue by CCIL representatives (including on Company Letter Head or STAMP PAPER) and the benefits and terms of membership listed here and amendments are final and binding on CCIL., and myself?.

11. Referring to the aforementioned clause in the agreement the appellant has submitted that Clause is sufficient to show that the respondents are not fair in representing the things to the people and they make the people sign the agreement offering several benefits. The contention of the respondents that the amount paid by the appellant is not deposit and only fee and it is not refundable holds good only when the respondents made fair representation of their offer and not by inducing the appellant to become the member of the respondent no.1. The statement of the appellant that the respondents offered to refund the amount is not rebutted. The appellant has stated:

?? submit that on 19.02.2012, one Mr.Laxman Mudiraj from the OP NO.1 office called me by his mobile phone NO.9912774586 and informed that the O.P. office decided to refund the membership fee of RS.15,000/- and asked me to give my credit card number. But, I asked him to send a cheque for the said amount. On 20.02.2012, at 7.17 a.m., I have sent another email to the O.P. office informing that Mr.Laxman Mudiraj informed me about the decision to refund the amount, and requested to send cheque. On 20.02.2012 at 8.47 p.m., I have received a mail from the OP NO.1 office informing that they received my mail and stated that someone from their office will be in touch with me. As there was no response from the OP NO.1 office, I have sent a reminder mail on 24.02.2012. Again, on 26/03/2012 I have sent another mail to the customer care of the OP and requested for refund of the membership fee amount. Again, I sent another reminder mail to the customer care of the OP No.1 office on 09.09.05.2012 requesting for refund of the amount of Rs.15,000/- and also informed that if the amount is not refunded, I would approach the Consumer Forum. But, in spite of many requests, the OP has not refunded the amount. There is no response from the OP Office.?

12. The statement of the appellant coupled with the emails would clinchingly establish that the respondents had not provided the benefits they offered to provide him before he became the member of the first respondent club and the respondents had not been fair enough in dealing with the people to become the members of the respondent no.1 as also the respondents failed to keep their promise of paying back the amount to the appellant. All the acts of the respondents would constitute deficiency in service on their part and this Commission holds the respondents liable to pay the amount of Rs.15,000/- to the appellant.

13. In the result, the appeal is allowed setting aside the order of the District Forum. Consequently, the complaint is allowed directing the respondents to pay a sum of Rs.15,000/- together with costs of Rs.3,000/- within four weeks from the date of receipt of the order failing which the amount of Rs.15,000/- would carry interest at 9% p.a. from the date of payment.