NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

RESERVED ON: 14.07.2026
PRONOUNCED ON: 30.10.2026

REVISION PETITION NO. 259 OF 2022
(Against the Order dated 16th April 2021 in Appeal No. 3097/2016 of the State Consumer Commission Karnataka)
With IA/2279/2022 (Summon In The Record), IA/2278/2022 (Stay), IA/2280/2022 (placing addl. Documents)

1. Country Vacations
2. Country Club (India) Ltd. (Now Known as Country Club Hospitality & Holidays Limited)

Both through its Authorized Representative, Mr. Bharat Reddy, Both having branch office at, No.7, 1st Floor, Jeevan Bheema Nagar Main Road, 10th Main, HAL 3rd Street, Bengaluru 560075.

.....Petitioner(s)

Versus

Sangeeth Bhadran, No.76, SBP Orchid, G2, 2nd Cross, Prashanth Layout, Hopefarm Whitefield, Bangalore-560066

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE A. P. SAHI , PRESIDENT
HON'BLE MR. BHARATKUMAR PANDYA , MEMBER

For the Petitioners : Mr. Vijay Sharma, Advocate

For the Respondent : Mr. P. Harold and Mr. Jaimon Andrews, Advocates

ORDER

PER BHARATKUMAR PANDYA, MEMBER

1. The present Revision Petition has been filed by the Petitioner Country Vacations & Anr. against the order dated 16.04.2021 passed by the State Commission, Karnataka, in First Appeal No. 3097 of 2016 arising out of the order dated 02.08.2016 passed by the District Commission, III Additional Bangalore Urban District Forum, in Complaint Case No. 210 of 2015, which was filed on 31.01.2015. The Petitioners are aggrieved by the impugned order whereby the State Commission allowed the appeal filed by the Respondent/Complainant and set aside the order of the District Commission, directing the Petitioners to refund Rs.90,000/- along with interest @ 6% per annum from the date of filing of the complaint till payment and to pay Rs.5,000/- towards litigation costs.

2. The brief facts of the complainant's case filed before the District Commission are that the complainant received a call from the Opposite Parties on 02.12.2013, pursuant to which he was offered certain holiday/vacation facilities and was called upon to visit the office of the Opposite Parties. The complainant accordingly visited the office of Opposite Party No.1 on 07.12.2013 for collecting the gifts and, on the same day, entered into a Membership Purchase Agreement with the Opposite Parties. According to the complainant, at the time of entering into the agreement, the Opposite Parties represented that the complainant would be entitled to various facilities and benefits, including holiday accommodation, without having to pay maintenance charges for the facilities which were not availed. The complainant alleged that, after receiving and going through the agreement, he noticed certain discrepancies and came to the conclusion that the representations made by the Opposite Parties at the time of obtaining the membership were not in consonance with the actual terms and conditions of the agreement. He accordingly sought cancellation of the membership and refund of the amount paid by him. The complainant stated that he addressed an e-mail dated 28.01.2014 to the Opposite Parties requesting cancellation of the membership and refund of the membership amount of Rs.90,000/-, along with Rs.5,000/- towards expenses incurred by him. It was further alleged that, despite the said request, the Opposite Parties did not cancel the membership or refund the amount. The complainant thereafter sent a further e-mail dated 07.02.2014, bringing the matter to the notice of the Opposite Parties and reiterating his request for cancellation and refund. According to the complainant, he made repeated efforts through telephone calls, e-mails and personal visits to resolve the matter and obtain his membership card/refund, but the Opposite Parties failed to provide any satisfactory response. The complainant further alleged that he had to make repeated visits and incur expenditure in pursuing the matter. He also alleged that, despite the passage of considerable time, the Opposite Parties did not properly provide the facilities and benefits which, according to him, had been represented to him at the time of obtaining the membership. The complainant specifically alleged that he had been assured, inter alia, of holiday/vacation benefits, discounts and other facilities, but that the actual terms and manner of providing such facilities were different from what had been represented to him. The complainant thereafter addressed further communications dated 27.03.2014, 28.04.2014, 09.05.2014, 05.07.2014, 12.07.2014, 14.07.2014 and 20.07.2014, requesting the Opposite Parties to resolve the dispute and refund the membership amount. It was alleged that the Opposite Parties failed to provide an

amicable resolution and did not refund the amount despite repeated requests. The complainant also alleged that the Opposite Parties had adopted unfair trade practices by making false and misleading representations regarding the membership benefits and thereafter failing to honour the assurances allegedly given at the time of enrolment. He therefore issued a notice dated 21.08.2014, calling upon the Opposite Parties to cancel the membership and refund the amount of Rs.90,000/-, besides claiming compensation for the alleged deficiency in service and the expenses incurred by him. The complainant filed Consumer Complaint No. 210/2015 before the III Additional Bangalore Urban District Forum, Bengaluru, praying, inter alia, refund of Rs.95,000/-, comprising Rs.90,000/- paid towards membership and Rs.5,000/- towards costs/expenses, along with compensation and other appropriate reliefs on account of the alleged deficiency in service and unfair trade practice on the part of the Opposite Parties.

3. The Opposite Parties, in their written statement before the District Commission, denied the allegations of deficiency in service, unfair trade practice and misrepresentation and contended that the Complainant had voluntarily entered into the Membership Purchase Agreement dated 07.12.2013 after fully understanding its terms and conditions and paid a membership fee of Rs.90,000/-. They submitted that the facilities and benefits under the membership were available to the Complainant in accordance with the terms of the agreement and that no false promise or assurance, as alleged, had been made. It was further contended that the membership fee was non-refundable as per the contractual terms, and that the Complainant had not produced any cogent evidence to establish the alleged oral representations or any deficiency in service. The Opposite Parties also relied upon the terms and conditions of the membership, including the obligations of the member, and contended that the Complainant could not seek refund contrary to the agreed contractual terms. Accordingly, they denied any liability and prayed for dismissal of the complaint.

4. After hearing both parties and considering the pleadings, evidence and material available on record, the District Commission held that the Complainant had failed to produce any cogent evidence to establish that the Opposite Parties had induced him to purchase the membership by adopting any unfair trade practice or that there was any deficiency in service on their part. Accordingly, finding no sufficient ground to grant the reliefs sought by the Complainant, the District Commission dismissed the complaint vide order dated 02.08.2016. The District Consumer Commission order is reproduced hereinbelow:

"9. As looking into the averments in the complaint, the Complainant being dissatisfied with false assurance of the Opposite Parties, he requested for cancellation of the Membership Purchase Agreement and for full refund of the Purchase amount.

10. To substantiate this fact, the Complainant produced the mail dt.09.05.2014 addressed to Imran of Opposite Parties and by sending this mail the Complainant requested for refund of Rs.95,000/- at the earliest. In the said mail, he mentioned that on 17th December 2015, he had no enough time to read the agreement given by the Opposite Parties officials. The Opposite Parties officials just read the important points in that agreement and asked him to sign. So even from by looking into this mail also it is crystal clear that the Complainant before signing the Membership Purchase Agreement, the Opposite Parties officials read the contention of the Complainant then only the Complainant signed the agreement this falsify files the contention taken by the Complainant that the Complainant was coaxed to make a purchase of membership by paying Rs.90,000/- and also produced another mail dt.21.04.2014 this mail sent by the Complainant to the Opposite Parties officials and in this mail he clearly mentioned that he has not started using any facilities and requested to refund the amount, so from this evidence of the Complainant himself it clearly shows that the Complainant had not taken any service facility from the Opposite Parties that there is a deficiency of service on the part of the Opposite Parties and also absolutely there is no evidence to show that the Opposite Parties induced the Complainant to purchase the membership by adopting unfair trade practice. Opposite Parties in terms of the agreement, the Complainant had paid a sum of Rs.90,000/- in terms of the purchase agreement. The Complainant is entitled for Holiday Vacation for 6 Night 7 days in year for a period of 5 years and Club Membership of life time, subject to the terms and conditions in the Purchase Agreement. The Opposite Parties upon receipt of the amount issued Permanent Laminated Club Membership Cards to the Complainant and the dependents and also it is the defence that they are Opposite Parties always ready to provide the packages to the Complainant, there should be 30 days in advance booking to be made to make necessary arrangements. To substantiate their defence one Mr.Girish Kumar V.N, working as Manager in the Opposite Parties-company filed his affidavit and reiterated the same and also produced the Purchase Agreement for Club and Vacation Membership and also laminated Membership Card in the name of the Complainant and Membership No.#DT41#2139 and also free gift voucher issued to the Complainant. So from this evidence it is very clear that in terms of the Purchase Membership Agreement, the Opposite Parties have issued the membership card to the Complainant and also gift voucher and they are ready to give all the facilities to the Complainant but on the other hand, the Complainant without taking any facility from the Opposite Parties and for the reason best known to the Complainant. The Complainant himself demanded for refund of the membership amount without any valid reason and also the Complainant has not placed any evidence to On the other hand, it is defence of the show that there is deficiency of service on the part of the Opposite Parties. As well as, the Opposite Parties by practicing unfair trade practice induced the Complainant to purchase the membership agreement of the Opposite Parties-Company. Thereby, the Complainant failed to prove that there is deficiency of service by the Opposite Parties. Hence, this point is held in the Negative.

11. POINT NO.2: In the result, for the foregoing reasons, we proceed to pass the following order:

ORDER

The complaint is dismissed. With no costs. Supply free copy of this order to both the party."

5. Aggrieved by the order dated 02.08.2016 passed by the III Additional Bangalore Urban District Forum, Bengaluru, the Complainant/Appellant, Sangeeth Bhadran, filed First Appeal No. 3097/2016 before the Karnataka State Commission, Bengaluru, challenging the dismissal of the complaint. The principal grounds raised by the Appellant were that the District Commission had failed to properly appreciate the evidence on record and the allegations of false assurances and misrepresentation made by the

Opposite Parties, and had erred in holding that there was no evidence of unfair trade practice or deficiency in service. It was further contended that the Opposite Parties had failed to establish that the facilities and benefits promised under the membership agreement were actually made available to the Complainant. After hearing both parties and considering the material on record, the State Commission allowed the appeal and passed the following order, which is reproduced hereinbelow:

> "4. Let us come to understand the case of the complainant commission below. The and enquiry held by the appellant/complainant submitted her affidavit evidence at the time of enquiry, besides production of courier receipt, correspondence letter dated 21.08.2014, various mails, purchase agreement for club and vacation membership dated 07.12.2013 and billionaire vacations agreement dated 07.12.2013. On the contrary, OP has also placed purchase agreement dated 07.12.2013, membership card, gift voucher, confirmation letter of the member and balance statement at Rs.50,000/-. Thus, from these materials, it is made clear that, any terms of the membership agreement, the OPs have issued membership card to the complainant/appellant, besides issuance of gift voucher. Thus upon examination of these documents Commission below is of the opinion that, when OPs are ready to give all the facilities to the complainant, without availing any facilities, complainant sought for refund of membership amount, which could not be allowed without any valid reason, thereby recorded finding that, there is no deficiency or unfair trade practice on the part of OPs, thereby dismissed the complaint.
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> 5. It is not in dispute that, complainant has paid Rs.90,000/- on 07.12.2013 at the time of entering into an agreement while obtaining membership of OP. It is to be noted herein that, OPs have failed to prove that, they have made all necessary arrangements membership card. Merely because in their version they have stated that, they are ready to give all the facilities to the complainant, is not a ground to hold that, such facilities as agreed under the membership card is already extended to the complainant. There is nothing on record to show that, the facilities to be extended under the membership card is extended and the complainant did not avail such facilities. to avail facilities under the
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> 6.MER In the above such circumstances, viewed from any angle, impugned order passed by District Commission could not be said recorded in right perception of facts, as such is liable to be set aside. Accordingly, we proceed to allow the appeal. Accordingly, set aside the order dated 02.08.2016 passed in CC-210/2015 by III Additional Bangalore Urban District Consumer Disputes Redressal Commission.
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> 7. Consequently directed OP-Respondent herein to refund Rs.90,000/- along with interest @ 6% p.a from the date of complaint till payment and do pay Rs.5000/- towards litigation costs.
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> 8. Send copy of this order to the District Commission and to the parties."

6. Aggrieved by the order dated 16.04.2021 passed by the Karnataka State Commission, Bengaluru, the OP/Petitioners, Country Vacations & Anr., filed the present Revision Petition, inter alia, on the grounds that the State Commission (i) failed to consider that the Complainant had not established any deficiency in service or unfair trade practice; (ii) failed to appreciate the contractual terms regarding the non-refundable membership fee and payment of annual maintenance charges; and (iii) proceeded on facts which, according to the Petitioners, did not pertain to the present case. The

Petitioners also challenged the impugned order on the ground that they were not afforded an adequate opportunity to file their reply before the State Commission.

7. We have heard the learned counsel for both the parties and carefully perused the record. It is submitted on behalf of the petitioner that the State Commission has erred in setting aside the well-reasoned order of the District Commission and in allowing the complaint by re-writing the agreement entered into between the parties. The complainant consciously entered into an agreement of membership by paying the requisite fee, which, under the agreement was expressly non-refundable. The complainant was also provided the gift vouchers as promised. With regard to provisioning of services, there cannot be any valid finding of deficiency in service of the petitioner in as much as the complainant has not even attempted to avail any service for booking a vacation or use of the club facility as per his entitlement as promised under the agreement and hence the burden of establishing deficiency has not at all been discharged by the complainant. The complainant alleged unfair terms of the contract or unfair trade practice but again without placing any positive evidence on record. It is trite law that the terms of the agreement have to be read as they are and that the courts cannot create a new contract between the parties. The mandatory annual maintenance charges have also not been paid by the complainant-respondent, and being a defaulter himself, could not have succeeded in alleging deficiency in service as was rightly held by the District Forum. Reliance is placed on the following judgments:

(1) *SGS India Ltd. vs. Dolphin International Ltd. 2021 SCC Online SC 879 (Paras 19-22)*

> *19. The onus of proof of deficiency in service is on the complainant in the complaints under the Consumer Protection Act. 1986. It is the complainant who had approached the Commission, therefore, without any proof of deficiency, the opposite party cannot be held responsible for deficiency in service. In a judgment reported as Ravneet Singh Bagga v. KLM Royal Dutch Airlines, this court held that the burden of proving the deficiency in service is upon the person who alleges it.*
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> > *"6. The deficiency in service cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service. The burden of proving the deficiency in service is upon the person who alleges it. The complainant has, on facts, been found to have not established any wilful fault, imperfection, shortcoming or inadequacy in the service of the respondent....."*
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> *20. This Court in a Judgment reported as Indigo Airlines v. Kalpana Rani Debbarmas, held the the initial onus to substantiate the factum of deficiency in service committed by the opposite party was primarily on the complaint. This Court held as under:-*
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> > *"28. In our opinion, the approach of the Consumer Fora is in complete disregard of the principles of pleadings and burden of proof. First, the material facts constituting deficiency in service are blissfully absent in the complaint as filed. Second, the initial*

onus to substantiate the factum of deficiency in service committed by the ground staff of the Airlines at the airport after issuing boarding passes was primarily on the respondents. That has not been discharged by them. The Consumer Fora, however, went on to unjustly shift the onus on the appellants because of their failure to produce any evidence. In law, the burden of proof would shift on the appellants only after the respondents/complainants had discharged their initial burden in establishing the factum of deficiency in service."

21. The Commission has referred to the samples collected at the time of dispatch of consignments to Netherlands but the report of such samples has not been produced by the appellant to hold that the appellant is deficient in providing services therefore, drawn adverse inference against the appellant.

22. The onus of proof that there was deficiency in service is on the complainant. If the complainant is able to discharge its initial onus, the burden would then shift to the respondent in the complaint. The rule of evidence before the civil proceedings is that the onus would lie on the person who would fail if no evidence is led by the other side. Therefore, the initial burden of proof of deficiency in service was on the complainant, but having failed to prove that the result of the sample retained by the appellant at the time of consignment was materially different than what was certified by the appellant, the burden of proof would not shift on the appellant. Thus, the Commission has erred in law to draw adverse inference against the appellant."

(2) Vikram Greentech (I) Ltd. & Anr. vs. New India Assurance Co. Ltd. (2009) 5 SCC 599 (Para 18)

"18. The endeavour of the court must always be to interpret the words in which the contract is expressed by the parties. The court while construing the terms of policy is not expected to venture into extra liberalism that may result in rewriting the contract or substituting the terms which were not intended by the parties. The insured cannot claim anything more than what is covered by the insurance policy."

(3) S.P. Chengalvaraya Naidu vs. Jagannath 1994 SCC (1) 1

(4) Champa Arora & Ors. vs. Shiv Lal Arora & Ors. 2001 SCC Online Del 912

7.1 On the other hand, it is submitted on behalf of the complainant that he was invited to a promotional meeting where an attractive presentation about the services and facilities offered was made and based thereon the agreement dated 07.12.2013 was signed on the very day and payment of membership charges of Rs. 90000 was made in terms of the agreement. However, on closer scrutiny of the agreement, he came to the conclusion that the terms of the agreement were at variance with what was represented and therefore immediately sent a mail on 28.01.2014 to the Opposite Parties requesting cancellation of the membership and refund of the membership amount of Rs.90,000/-, along with Rs.5,000/- towards expenses incurred by him. The complainant thereafter sent a further e-mail dated 07.02.2014 reiterating his request for cancellation and refund. According to the complainant, he made repeated efforts through telephone calls, e-mails and personal visits to resolve the matter and obtain his membership card/refund, but the Opposite Parties failed to provide any satisfactory response. The complainant had specifically alleged that he had been assured, inter alia, of holiday/vacation benefits, discounts and

other facilities, but that the actual terms and manner of providing such facilities were different from what had been represented to him. The complainant thereafter addressed further communications dated 27.03.2014, 28.04.2014, 09.05.2014, 05.07.2014, 12.07.2014, 14.07.2014 and 20.07.2014, requesting the Opposite Parties to resolve the dispute and refund the membership amount, but to no avail. It is submitted that such adamant, one-sided and unfair conduct of the petitioner is in itself a deficiency in service. Moreover, after coaxing the customer into an agreement through over-pitching the benefits and making him sign the agreement on the very day of presentation by alluring him through offer of gift vouchers, and thus irretrievably extracting money from him before he grasps the true import of the transaction, without there being any possibility of getting released from the long-term commitment, is an unfair trade practice and such "non-refund" clause in the long-term agreement binding the consumer into a life-long obligation of paying the yearly maintenance charges, irrespective of availing the benefits under the agreement, is one-sided and unconscionable as rightly so held by the State Commission, and therefore no interference with the State Commission's order is called for. Reliance is placed on:

(1) *Rajasthan Breweries Ltd. vs. Stroh Brewery Co. (2000) SCC Online Del 481*

> *9. Terminable. The law does not presume perpetuity. A Division Bench of the Hon'ble High Court of Delhi in Rajasthan Breweries Ltd. v. Stroh Brewery Co. [2000 SCC OnLine Del 481] has held, that: -*
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> *"Even in the absence of specific clause authorising and enabling either party to terminate the agreement in the event of happening of the events specified therein, from the very nature of the agreement, which is private commercial transaction, the same could be terminated even without assigning any reason by serving a reasonable notice."*

(2) A Division Bench of the Hon'ble Calcutta High Court in New Central Book Agency (P) Ltd. v. Madhusri Konar [2014 SCC OnLine Cal 18353], held:

> *"Therefore the mere absence of a termination clause cannot lead to the inference that the contract is perpetual."*

8. We have considered the facts of the case and we are inclined to agree with the State Commission. It is true that in terms of the agreement, the complainant-respondent has neither attempted to avail any service as promised under the agreement, nor is there any evidence on record to suggest that such promised facility or vacation or club facility was not existing or made available. However, to therefore hold that there is neither any deficiency in service nor any unfair or unacceptable conduct of the petitioner, nor any one-sided or unfair clause in the agreement, nor is there any exercise of any unfair trade practice on the

complainant by the petitioner would, in the facts of the case, be erroneous. It is an admitted fact that the complainant was invited to the office of the petitioner on 07.12.2013 and was obviously pitched the benefits and Membership agreement was signed on the same day; and payment of consideration towards future promised services, to be availed over a relatively long period of time, was made. Within a short period of 1.5 months thereafter, during which time, the complainant has admittedly not taken any benefit under the agreement, the complainant requested to let him opt out of the agreement and accordingly sought refund. The petitioner declined such request for refund by relying on the "no refund" clause in the agreement. The agreement has a recurring liability clause under which the maintenance charges per year is payable by the member. In these facts, and upon consideration of the nature of service, the long term nature of the agreement, and other attendant circumstances, we are of the view that the over-all conduct of the petitioner in firstly extracting or obtaining the membership fee by inviting the customer and pitching the benefit, and then declining to refund the same, even when the same is requested within a short and reasonable time and without availing any benefit under the agreement, is patently unfair and unjust. In our opinion, the respondent was required to be refunded after perhaps deducting pro-rata charges for 1.5 months, and may be some additional reasonable administrative charges or some earnest amount. As such, in the facts of the case, the very "no refund" clause in the agreement has to be held to be one-sided and unfair. The scenario could perhaps have been different had the complainant himself, by availing any benefit under the agreement, or by otherwise acting in furtherance of the contract, implemented the agreement so as to signify his satisfaction about the agreement. But in the present case, when the complainant acted expeditiously within only 1.5 months in wanting to opt out of the agreement which he found at variance with what was represented or pitched, or otherwise unfair or unacceptable, he needed to be held entitled for refund, as rightly done by the State Commission, though for different reasons. In our opinion, the unfairness of the conduct of the petitioner and the one-sidedness of the "no refund" clause are palpably evident, more so when there is no benefit taken by the complainant and the non-refund would unjustly and disproportionately enrich the petitioner. No jurisdictional or other error is therefore found in the order of the State Commission.

9. We find no merit in the revision petition and the same is accordingly dismissed.

Sd/-

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(A.P. SAHI, J.)
PRESIDENT

Sd/-

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(BHARAT KUMAR PANDYA)
MEMBER

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