

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1084 OF 2022

(Against the Order dated 10/05/2022 in Appeal No. 69/2021 of the State Commission
Chandigarh)

1. COUNTRY VACATIONS (A DIVISION OF COUNTRY
CLUB HOSPITALITY & HOLIDAYS LIMITED) (CCHHL)Petitioner(s)

Versus

1. SOOBA SINGH & ANR.Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), PRESIDING
MEMBER**

FOR THE PETITIONER : FOR THE PETITIONER : MR. VIJAY SHARMA, PROXY
COUNSEL

ON BEHALF OF MR. JASMEET SINGH, ADVOCATE

FOR THE RESPONDENT : FOR RESPONDENTS : MR. SEHEL KHAN, ADVOCATE
MR. LALIT SHARMA, ADVOCATE

Dated : 07 February 2024

ORDER

1. The present Revision Petition has been filed by the Petitioner under Section 58(1)(b) of the Consumer Protection Act, 2019 (hereinafter referred to as the "Act") against impugned order dated 10.05.2022, passed by the learned State Consumer Disputes Redressal Commission, U.T. Chandigarh, (hereinafter referred to as the 'State Commission') in First Appeal No. 69 of 2021. In this appeal, the Appeal by Petitioner/Opposite Party was dismissed, thereby affirming the Order dated 09.06.2021 of the District Consumer Disputes Redressal Commission-II, U.T. Chandigarh, (the "District Commission") in CC No. 917 of 2019 wherein the complaint filed by the Complainants/ Respondents was allowed.

2. There was a delay of 10 days in filing the present Revision Petition. In the interest of justice, the delay is condoned.

3. For convenience, the parties are referred to as placed in the original Complaint filed before the District Commission.

4. Brief facts, as per the Complainants were enticed by promises made by Shri Baljinder Singh, an executive of the Opposite Party (OP) and entered into an agreement on 02.09.2018 to take OP membership for Rs.86,000/-. They made a payment of Rs.71,000/- through three

debit card transactions and handed Rs.15,000/- in cash to Shri Baljinder Singh on 17.09.2018. Despite patiently awaiting membership benefits, they discovered that no membership card would be provided. Instead, they were told that they could obtain membership details for an additional undisclosed cost of Rs.5,000/- which was not mentioned in the initial agreement. Subsequently, they paid this amount in cash to the OP, receiving an acknowledgment for only Rs.71,000/- rather than the agreed Rs.86,000/-. The OP then informed them of a mandatory annual administrative charge of Rs.10,500/-, irrespective of facility usage, and outlined benefits such as a 6 nights 7 days holiday under the Season Blue category, Room Type: Studio for 2 Adults and 2 Children under 12 years. The Complainants requested receipts for the Rs.15,000/- and Rs.5,000/- cash payments but were not provided. Despite numerous attempts to avail holiday services, they were denied benefits and eventually sought cancellation of the membership with a refund, to no avail. A legal notice served on 05.07.2019 yielded no response. The Complainant, being aggrieved by the actions as deficient in service and unfair trade practices on the part of OP, filed Consumer Complaint (No. 917 of 2019) seeking a refund of Rs.86,000/- and Rs.5,000/- with 18% p.a. interest, a compensation of Rs.1,00,000/- for mental harassment, and Rs.22,000/- for litigation costs before the District Commission.

5. In its reply, the OP admitted that the Complainants entered into the agreement on 02.09.2018 for Rs.86,000/- and paid Rs.71,000/- in three transactions, contrary to the alleged Rs.86,000/-. According to Clause 10 of the agreement, an annual charge of Rs.10,500/-, excluding taxes, is stipulated and is to be paid in advance every year, irrespective of facility usage. The OP contended that Clause 26 of the agreement grants the Complainants a cool-off period of 10 days from the agreement signing date. During this period, they have the liberty to cancel the agreement and claim a refund, subject to a deduction of Rs.3,800/-. After this specified period, the membership fee becomes non-refundable under any circumstances. The OP firmly denied the remaining allegations, asserting their falsehood. They argue that there is no deficiency in their service, and they request the dismissal of the complaint.

6. The learned District Commission vide order dated 09.06.2021 allowed the complaint and granted the following relief:

“7. The complainants have not been provided any facilities by the OP, as such, they have got every right to get back their money, which they have paid for membership of OP Club. The complainants have also served a notice dated 05.07.2019 upon the OP requesting them to refund the deposited amounts but they did not take any pain to refund the said amount to them. The OP who failed to provide any services to the complainants cannot be allowed to take shelter under agreement Clause to usurp money deposited by them. The OP is liable to pay back the hard-earned money of the complainants i.e. Rs.71,000/- with interest.

8. Keeping into consideration the fair play and interest of justice, the complaint is allowed with direction to the OP to:

- i. ***refund Rs.71,000/- along with interest @ 9% p.a. from the date of its deposit till its realization to the complainants.***
- ii. ***pay a sum of Rs.15,000/- towards compensation for mental agony and physical harassment to the complainants.***
- iii. ***pay a sum of Rs.11,000/- as litigation expenses."***

7. Being aggrieved the District Forum order, the Appellant / OP filed Appeal No. A-69/2021 before the State Commission. The State Commission vide Order dated 10.05.2022 dismissed the Appeal, with the following observation: -

"9. In the wake of the position, as sketched out above, we are dissuaded to interfere with the impugned order rendered by the Ld. Lower Commission. The appeal being bereft of merit is accordingly dismissed.

8. Being dissatisfied by the Impugned Order dated 10.05.2022 passed by the State Commission, the Petitioners / OPs have filed the instant Revision Petition bearing no. 1084 of 2022.

9. The learned Counsel for the Petitioner has argued that the terms of the legally binding agreement should not be altered based on the mere inconvenience of one of the contracting parties. Additionally, there is no evidence on record establishing any deficiency in service on the part of the Petitioner. The Respondent failed to fulfill the obligation of paying the Annual Maintenance Charges as outlined in Clause 10 of the agreement, thereby rendering them ineligible to avail the associated benefits. The petitioner acknowledged payment of Rs.71,000/- by providing receipts for three transactions, but disputed the alleged cash payment of Rs.15,000/- which has not been recorded. Consequently, the present Revision Petition seeks to quash and set aside the State Commission's Order. He relied on the following judicial precedents to support his arguments: -

a. Sanjib Kumar Dey Vs. Chabbi Dey, 2015 SCC OnLine NCDRC 2633.

b. Grasim Industries Vs. Aggarwal Steel, 2009 SCC OnLine SC 1720.

c. Vikram Greentech (I) Ltd. & Anr. vs. New India Assurance Co. Ltd. (2009) 5 SCC 599 and Suraj Mal Ram Niwas Oil Mills (P) Ltd. v. United India Insurance Co. Ltd., (2010) 10 SCC 567.

d. SGS India Vs. Dolphin International Ltd., 2021 SCC OnLine SC 879.

10. On the other hand, the learned Counsel for the Respondents argued that the orders of both fora are well-appraised and reasoned, adequately addressing the pertinent issues central to the dispute in question. He sought to dismiss the present Revision Petition with costs and uphold the Order of the State Commission, in the interest of justice.

11. It is a well settled position in law that revision under Section 58(1)(b) of the Consumer Protection Act, 2019, (*which are pari materia to Section 21(b) the Consumer Protection Act, 1986*) confers very limited jurisdiction on this Commission. In the present case there are concurrent findings of the facts and the revisional jurisdiction of this Commission is limited. I do not find any illegality, material irregularity or jurisdictional error in the impugned Order passed by the State Commission warranting interference in revisional jurisdiction under Section 21(b) of the Consumer Protection Act, 1986. I rely on the decision of the Hon'ble Supreme Court in the case of *'Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd., (2011) 11 SCC 269*.

12. The Hon'ble Supreme Court in *'Sunil Kumar Maity Vs. State Bank of India & Anr. Civil Appeal No. 432 OF 2022* Order dated 21.01.2022, it was held that the revisional Jurisdiction of this Commission is extremely limited by observing as under: -

"9. It is needless to say that the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required."

13. Similarly, in a recent order, the Hon'ble Supreme Court in *Rajiv Shukla Vs. Gold Rush Sales and Services Ltd. (2022) 9 SCC 31* has held that:-

As per Section 21(b) the National Commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Thus, the powers of the National Commission are very limited. Only in a case where it is found that the State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested illegally or with material irregularity, the National Commission would be justified in exercising the revisional jurisdiction. In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record.

- 14. Based on the discussion above, I do not find any merit in the present Revision Petition and the same is dismissed. Consequently, the impugned Order passed by the State Commission is upheld.

- 15. Keeping in view the facts and circumstances of the case, there shall be no order as to costs.

- 16. All pending Applications, if any, stand disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER