

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-III: WEST
GOVT. OF NCT OF DELHI
150-151, C-BLOCK, COMMUNITY CENTRE, PANKHA ROAD, JANAK PURI
NEW DELHI-110058**

Complaint Case No. 127 OF 2022

IN THE MATTER OF:

ASTHA GUPTA

P-48, 1ST FLOOR

VIJAY VIHAR, UTTAM NAGAR,

NEW DELHI – 110059

COMPLAINANT

VERSUS

COUNTRY HOLIDAYS INN & SUITES

3RD FLOOR, BLOCK A , 37, A BLOCK,

SECTOR 63, NOIDA,

UTTAR PRADESH 201301

OPPOSITE PARTY

DATE OF INSTITUTION: 25.03.2022

JUDGMENT RESERVED ON: 03.12.2024

DATE OF DECISION: 13.12.2024

CORAM

Ms. Sonica Mehrotra, President

Ms. Richa Jindal, Member

Mr. Anil Kumar Koushal, Member

PRESENT: Mr. Mohit Gupta, husband of complainant in person

OP ex parte.

ORDER

Per: Anil Kumar Koushal, Member

Factual matrix of the present case is as under:

1. Complainant submits that on 16.01.2021, she had taken a holiday package from the OP on payment of Rs.2,00,000/- with further payment of Rs.8,000/- each year for three years AMC. The payment of Rs.2 lakhs was acknowledged by the OP vide receipt No.CHIS-DL791111 dated 16.1.2016. Payment of Rs.16,000/- towards AMC for two years was acknowledged by the OP vide receipt No.CHIS-DL 792242 dated 24.6.2021.

2. Complainant further submits that according to the aforesaid holiday package, for next thirty(30) years, she was to get seven days six nights stay at any place in the world with breakfast for each day. Further, according to refund policy of OP, on dissatisfaction, the complainant as a member, was free to cancel her membership within seven days of availing the first holiday by writing e-mail. However, when the complainant tried to book a slot for self and family, the OP neither picked up the phone nor did the booking. Messages were also sent to OP on its e-mail, in response to which they told that there was no breakfast facility and they even changed that provision from the terms and conditions from their website. Now the OP is not cancelling the membership nor refunding the total amount of Rs.2,16,000/- received by them. Instead the OP is asking for Rs.90,000/- and in case the same are not paid, the OP will forfeit her already deposited money of Rs.2,16,000/-. Complainant submits that non-

refund of her hard money when no services have been given, amounts to deficiency in service.

3. In the aforesaid circumstances, the complainant prays for refund of Rs.2,16,000/- along with compensation for the mental harassment and agony faced by her so that the OP may not trouble any customer like the complainant in future.

4. Complainant attached copies of payment receipts of Rs.2,16,000/-, refund policy of OP along with offers under the holiday package, whatsapp chats and emails exchanged with the OP.

5. On admission of the complaint on 06.4.2022, notice was issued to the OP. However, despite service, OP neither put in appearance nor filed any reply to the complaint. Accordingly vide order dated 22.07.2023, OP was proceeded against ex parte.

6. Complainant filed ex parte evidence by way of affidavit and exhibited the documents filed on record. Written arguments were also filed by the complainant on record.

7. Oral arguments were heard on 03.12.2024. During arguments, Mr. Mohit Gupta, husband of the complainant submitted that the OP has not refunded the paid amount till date and reiterated the prayers made in the complaint.

8. On perusal of the pleadings filed on record we find that the complainant was disturbed with asking for breakfast charges during the trip to be booked for their stay in a hotel. According to her when the booking of the holiday package was made, she was assured that she does not have to pay anything towards their stay in the hotel so booked and now the OP is backtracking from its promise and come out with the inclusion of breakfast charges in the hotel bookings. Complainant's husband was asked during arguments as to where is the membership agreement entered into with the OP on 16.1.2021. He submitted that the same has till date not been given by the OP and only a membership card was provided. When we surf through the emails placed on record by the complainant, we find that the complainant had asked for list of hotels in Manali, Himachal Pradesh on June 11,2021 but was told to contact only on 1st July, 2021. On 26.06.2021, through email, the complainant had aired her grievance to the OP about the breakfast charges to be collected during their stay in hotels not only in India but also internationally against the assurance to the contrary at the time of taking the membership. Even in the email dated 26.6.2021, the OP reverted to the following effect:

"We are sorry, we can see how must have been frustrating for you- you may contact with Mr. Rahul Arora our Assistant General Manager of Customer Care Department...."

Thereafter same day on 26.6.2021 the complainant sought refund of the amount paid to the OP. Further vide her email dated 27.6.2021 complainant asked the OP not to book any hotel accommodation for her and her family as she was disappointed with fake promises and sought cancellation of membership and refund of the amount of Rs.2,16,000/-. However, vide email dated 07.07.2021, the complainant was informed that the cancellation cannot be processed as per the signed agreement. The complainant again reminded the OP for refund but no reply was received by her from them. Frustrated with the conduct of OP, complainant filed complaint No.2851441 with the National Consumer Helpline on 23.07.2021 but without any success. Hence the present complaint.

9. As noted above, the OP has chosen not to contest these proceedings. Their absence is deemed to be admission of deficiency on their part. As noted hereinabove, the complainant has stated that she has not been provided with the membership agreement till date. We may note that the complainant has not availed any services from the OP in return of payment of Rs.2,16,000/-.

10. In **Country Club Fitness And Vacations vs Bijender Singh Budwar**, decided on 1 March, 2023 by Hon'ble SCDRC, Chandigarh, it was observed as under:

23. In our considered opinion, in the present case also, the conditions contained in the standard form of contract (Annexure C-1) which provide forfeiting of entire booking amount, in case of cancellation of membership of the holidays scheme after cool off period of 10 days or otherwise, is against the public policy and required to be adjudged as void and ignored, especially, **when it has not been proved by the**

appellants, as to what loss they have suffered, on account of cancellation of membership of the holidays scheme by the respondent. Apart from it, if this condition is allowed to continue, it will amount to undue enrichment to the appellants, which will go against the interests of the consumer and public policy. In this view of the matter, we are of the considered view that the terms and conditions of Annexure C-1 on the basis of which, product cash out price of Rs.65,000/- has been forfeited by the appellants, **especially, when no services were provided by them to the respondent, are one-sided, oppressive, unfair and unreasonable and are liable to be ignored and set aside.** Thus, by not refunding the product cash out price of Rs.65,000/-, after deducting some professional charges, especially, when no services were provided to him by the appellants and also at the same time, the appellants have enriched themselves by utilizing the amount paid by the respondent for sufficient time, he has been caused a lot of mental agony, harassment and financial loss, for which the District Commission has adequately compensated him, by way of awarding interest, compensation as well as litigation expense."

11. The upshot of our foregoing discussion is that the OP has arbitrarily not refunded the amount of Rs.2,16,000/- to the complainant despite making a request for refund thereof, by harping on the signed membership agreement as stated in their email dated 07.07.2021, which was never supplied to the complainant. No loss has been occasioned to the OP in seeking cancellation of membership by the complainant as no services from them admittedly have been taken.

12. Following the ratio of the aforementioned judgment and keeping in view the fact that the averments of complainant have remained unrebutted since the OP has chosen not to contest these proceedings, we hold that the OP has been deficient in not refunding the amount deposited with them by the complainant especially when no services have been availed by the complainant from them. The act of OP in withholding

the hard earned money of complainant with them amounts to an unfair trade practice and undue enrichment against their customers like the complainant. The complaint is accordingly allowed and the OP is directed to refund to the complainant the amount of Rs.2,16,000/- along with compensation of Rs.5,000/- towards mental agony and harassment. The OP shall also pay a sum of Rs.5,000/- as litigation expenses to the complainant. Let this order be complied with by the OP within thirty days of receipt of copy of this order.

A copy of this order shall be supplied free of cost, to parties to the dispute in the present complaint, upon a written requisition being made in writing in the name of President of the Commission in terms of Regulation 21 of the Consumer Protection Regulations, 2020 as amended from time to time.

File be consigned to record room after pronouncement of orders.

(Richa Jindal)
Member

(Anil Kumar Koushal)
Member

(Sonica Mehrotra)
President