

The incorporation of oppressive and one-sided clauses in a standard form agreement, where the homebuyer has no option but to sign, constitutes an unfair trade practice. Hence, jurisdiction of NCDRC to award reasonable compensation for deficiency in service cannot be curtailed by unfair terms in a builder-buyer agreement

The **Supreme Court** in the case of **Parsvnath Developers vs Mohit Khirbat [Civil Appeal No. 5289 of 2022]** dated **February 20, 2026**, has held that the jurisdiction of consumer fora to award just and reasonable compensation for deficiency in service is statutory and cannot be curtailed or defeated by one-sided and unfair terms in a builder-buyer agreement. The Court clarified that the incorporation of oppressive and one-sided clauses in a standard form agreement, where the homebuyer has no option but to sign, constitutes an unfair trade practice. Accordingly, the Consumer fora are not bound to mechanically enforce a contractual term that stipulates nominal compensation for delay, especially when it results in manifest injustice to the consumer.

Offering possession of a flat without obtaining the mandatory Occupancy Certificate is not a valid offer of possession and amounts to a deficiency in service, asserted the Court, while emphasising that a developer cannot compel a homebuyer to take possession under such circumstances, as the Occupancy Certificate is a statutory pre-condition for lawful delivery.

The Supreme Court observed that the jurisdiction of consumer fora is statutory, not contractual, and is derived from the Consumer Protection Act, 1986. Thus, the power to adjudicate complaints and grant relief for “deficiency in service” under Sections 12, 14, and 22 of the 1986 Act is not limited by the terms of an agreement between the parties.

The Court further observed that housing construction is a “service”, and the failure to deliver possession within the stipulated period constitutes a “deficiency” under the Consumer Protection Act, and noted that the term “compensation” is of wide amplitude and includes redress for mental agony and harassment, not just pecuniary loss. The Court held that the incorporation of such one-sided and unreasonable clauses in a standard form contract, where the purchaser has little to no bargaining power, constitutes an “unfair trade practice” under Section 2(1)(r) of the 1986 Act.

Further, the Court observed that offering possession without a valid Occupancy Certificate is not a lawful offer of possession and constitutes a continuing deficiency in service. A homebuyer cannot be compelled to accept possession in such circumstances, as obtaining the certificate is a statutory pre-condition for lawful delivery. The Court took note of the appellant's persistent non-compliance and failure to secure the Occupancy Certificate despite repeated undertakings given before the Court.