

## One Sided Clause and Unfair Trade Practice

The Apex court in a consumer empowering judgment (Pioneer Urban Land & Infrastructure Ltd v Govindan Raghavan) has held that incorporation of one-sided clauses in an agreement between builders and flat purchasers constitutes an unfair trade practice falling under Section 2 (r) of the Consumer Protection Act, 1986

### **Brief Facts**

- The Appellant/ Builder launched a residential project in Gurugram. The Respondent/Flat Purchaser entered into an Apartment Buyer's Agreement with the Builder to purchase an apartment in the said project.
- Per clause 11.2, the Builder was to make all efforts to apply for the Occupancy Certificate within 39 months from the date of excavation (with a grace period of 180 days) and offer possession of the flat to the Respondent. The Builder failed to apply for the Occupancy Certificate as per the stipulations in the Agreement and subsequently the Purchaser approached the National Forum.

### **National Consumer Disputes Redressal Commission**

- Hon'ble NCDRC passed an ex parte Interim Order restraining the Builder from cancelling the allotment made in favor of the Purchaser. Lis pendens Builder obtained the Occupancy Certificate and issued a Possession Letter to the Purchaser.
- While the Builder sought direction to the Purchaser to take possession of the flat, the Purchaser's case was that due to inordinate delay of almost 3 years, it had already taken an alternate property and was no longer interested in taking possession.

The National Forum opined in favor of the Purchaser and held that, keeping in view the delay of 3 years in procuring the Occupancy Certificate, the Purchaser could not be compelled to take possession at such a belated stage.



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Further, the grounds urged by the Builder for delay were not justified and clauses in the agreement were held to be wholly one sided, unfair and not binding on the Purchaser.

**Supreme Court of India**

- The Apex Court upheld the decision of the National Forum. It was opined that the Purchaser made a clear case of deficiency of service on the part of the Builder and the Purchaser was justified in terminating the Apartment Buyer’s Agreement by filing a consumer Complaint. Further rightly so, the Purchaser cannot be compelled to accept the possession whenever it is offered by the Builder.
- The purchaser was legally entitled to seek refund of the money deposited along with compensation.
- A perusal of the Agreement revealed stark incongruities between remedies available to both parties, all of which constituted ‘unfair trade practices’ under section 2(r) of the Consumer Protection Act, 1986

	<b>CLAUSE IN RELATION TO BUILDER</b>	<b>CLAUSE IN RELATION TO PURCHASER</b>
<b>Interest Rate</b>	Builder was not required to pay equivalent Interest to the Purchaser for delay in handing over possession. Flat purchaser was entitled to Interest @9% p.a. only.	Builder could charge Interest @18% p.a. from the Purchaser for delayed payments
<b>Cancellation of Allotment</b>	A Purchaser had to wait for a period of 12 months after the end of grace period, before serving termination notice of 90 days on the Builder, and even thereafter, the Builder got 90 days to refund only the actual installment paid by Purchaser. In any case of delay, interest remained at 9% only.	Builder could cancel the allotment and terminate the Agreement if any installment remained in arrears for more than 30 days
<b>Termination</b>	On default by the Builder, if the Purchaser failed to exercise his right of termination within the time limit provided in the agreement, then he was no entitled to terminate the Agreement.	If Purchaser failed to rectify the default within 30 days of the Termination Notice, then Agreement Automatically stood cancelled. Builder had the right to forfeit the entire amount of Earnest Money towards liquidated damages.

- It was held that the terms of a contract will not be final and binding, if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the Agreement were declared ex-facie one-sided, unfair, and unreasonable. Appeals were dismissed accordingly.