

# Supreme Court's Balanced Approach to Damages under Contract Law

October 30, 2018

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Section 73 of the Indian Contract Act, 1872 governs the compensation for damages arising from a breach of contract or failure to discharge obligations resembling those created by contract, while section 74 governs the compensation for damages where penalty is stipulated in the contract. In either case, the courts since the erstwhile Privy Council have adopted a balanced approach to ensure that the damages awarded should not be excessive and must be compensatory in nature.

This post shall venture into the decision rendered by the Supreme Court of India in March this year in *Fortune Infrastructure and Ors. v. Trevor D'Lima and Ors.*, (2018) 5 SCC 442, which has reflected on this principle and held that a balanced approach needs to be used by adjudicatory bodies in determining what is just and fair compensation for contractual damages.

## ***Facts***

The case arose out of a sale deed for acquiring a flat in a residential housing project. The appellants, Fortune Infrastructure, had failed to deliver the flat to the respondents, D'Lima and others, due to which the respondents filed a consumer complaint and approached the National Consumer Disputes Redressal Commission ("NCDRC").

The NCDRC allowed the buyers' plea and directed Fortune Infrastructure to not just refund the consideration of the flat with an annual 10% interest rate and the litigation costs, but to also pay an additional compensation to the buyers of an amount nearly twice the consideration of the flat. A review against the aforesaid order was dismissed by the NCDRC. Fortune Infrastructure approached the Supreme Court which requested the parties to amicably settle the disputes, which was unsuccessful. The principal issue before the Court was what should be 'just and reasonable' compensation for contractual damages.

## ***Analysis***

The Court began by discussing the principle that contractual damages are usually awarded to compensate an injured party to a breach of contract for the loss of her bargain. Interestingly, the Court stated that while this rule holds the field, it is further qualified when it comes to the real estate sector. It noted that in common law a claim for damages

is the 'rule' and specific performance is an 'exception', while on the civil law front specific performance has traditionally been a 'prime remedy' for the breach of contract.

It is necessary to discuss the Court's reliance on its earlier precedent in *Ghaziabad Development Authority v. Balbir Singh*, (2004) 5 SCC 65, where it was held that what was awarded for breach of contract is compensation, i.e., a recompense for the loss or injury which necessarily has to be based on a finding of loss or injury and has to correlate with the amount of loss or injury. It was observed in *Balbir Singh* that there is no hard and fast rule for determining damages and the forum or the commission must determine that there has been deficiency in service which has resulted in loss or injury. Along with recompensing the loss the commission or forum may also compensate for harassment or injury, both mental and physical.

Placing further reliance on *Balbir Singh*, the Court observed that in cases where monies are being simply returned, then the party is suffering a loss inasmuch as she had deposited the money in the hope of getting a flat or plot. She is instead being deprived of that flat or plot. She has been deprived of the benefit of escalation of the price of that flat or plot. Therefore, the compensation in such cases would necessarily have to be higher. However, compensation cannot be uniform in all cases, irrespective of the type of loss or injury suffered by the consumer.

The Court stated that it is settled in law that whenever the builder has refused to perform the contract without valid justification, the buyer is entitled for compensation as she has been deprived of price escalation of the flat. Every breach of contract gives rise to an action for damages. Such amount of damages must be proved with reasonable certainty. Where a party sustains loss by reason of a breach of contract, the damages are to be granted so as to place the suffering party in the same position as if the contract had been performed. In light of the above, the damages other than consequential loss have to be measured at the time of the breach. However, the aforesaid rule is flexible and needs to be assessed in facts and circumstances of individual case.

The Court noted that even in the first appeal to the NCDRC, offers were being made on behalf of Fortune Infrastructure to convey alternative properties, which were refused as being insufficient. Therefore, on the facts and circumstances of this case, the damage need not be determined from the date of breach of contract.

Finally, in light of the present directions by the NCDRC to Fortune Infrastructure, it was held that the claim of the buyers as granted by the NCDRC seems to surpass the actual loss based damages and enter the domain of gain-based remedy. The Court cautioned that while it thinks that it would not be appropriate to grant such damages in the case at hand, it does not recognize any *a priori* limitations on such claim. There is no dispute about the fact that damages for the contractual breach is generally compensatory arising out of the breach. Therefore, the damages awarded should not be excessive and a court or tribunal needs to take a balanced approach so as to ensure right compensation.

## **Conclusion**

Reference may be drawn to the decision of *Pannalal Jankidas v. Mohanlal*, AIR 1951 SC 144, where the Supreme Court for the first time held that the party in breach must compensate in respect of the direct consequences flowing from the breach and not in respect of loss or damage indirectly or remotely caused. This rule is based on the broad principle that the party who has suffered the loss should be placed in the same position, as far as compensation in money can do it, as if the party in breach had performed his contract or fulfilled his duty.

The decision in *Fortune Infrastructure* is in line with the *stare decisis* in *Pannalal Jankidas* and *Balbir Singh* that the damages under contract law needs to be compensatory or restorative in nature and not excessive. Thus, to conclude, an adjudicatory body needs to take a balanced approach while determining damages to be granted.

– *Anujay Shrivastava*