

SERVICE DEFICIENCY IN REAL ESTATE: LEGAL FRAMEWORK AND JUDICIAL TRENDS

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ABSTRACT

*The real estate sector in India has undergone transformative legal and regulatory reforms aimed at safeguarding consumer interests and promoting transparency. Despite these advancements, service deficiency remains a persistent concern, often arising from delayed possession, substandard construction quality, biased builder-buyer agreements, hidden charges, and failure to provide promised amenities. The enactment of the Real Estate (Regulation and Development) Act, 2016 (RERA) marked a watershed moment in strengthening accountability and establishing a dedicated grievance redressal mechanism. However, the problem of service deficiency continues to generate extensive litigation before consumer fora, regulatory authorities, and higher courts, thereby shaping an evolving judicial landscape. This article explores the legal framework governing service deficiency in real estate and critically examines key judicial trends that have defined consumer protection jurisprudence in this domain. The concept of service deficiency, as defined under the Consumer Protection Act, 2019, encompasses any fault, imperfection, shortcoming, or inadequacy in the quality, nature, or manner of performance of services. When applied to real estate, deficiency extends to failures in obtaining statutory approvals, deviation from sanctioned plans, and breach of contractual or statutory obligations. RERA furthers this objective by mandating project registration, timely disclosures, standardized agreements, escrow mechanisms for project funds, and stringent penalties for non-compliance. Together, the Consumer Protection Act and RERA establish a dual framework ensuring that homebuyers, as vulnerable stakeholders, are not subjected to exploitative practices. Judicial forums have played a pivotal role in reinforcing this legal protection. Landmark decisions such as *Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan*, *DLF Homes Panchkula Pvt. Ltd. v. D.S. Dhanda*, and *Emaar MGF Land Ltd. v. Amit Puri* underscore the judiciary's strong stance against unfair builder conduct and one-sided contractual clauses. Courts have consistently held that homebuyers cannot be compelled to accept delayed possession or inferior construction and are entitled to refund, interest, and compensation, depending on the nature of deficiency. Further, tribunals have recognized that the imbalance of bargaining power between builder and buyer requires an interpretation that protects consumer rights over commercial convenience. This article argues that while RERA has improved accountability, overlapping jurisdiction between RERA authorities and consumer courts, enforcement challenges, and delays in adjudication still hinder effective relief. It highlights the need for streamlined procedures, digital transparency, standardized builder-buyer agreements, and stricter penal consequences for chronic non-compliance. The discussion also identifies emerging issues such as insolvency proceedings against real estate developers and the changing role of the National Consumer Disputes Redressal Commission (NCDRC), which continue to influence judicial trends. In conclusion, service deficiency in real estate remains a critical area of legal scrutiny. A robust blend of statutory safeguards and proactive judicial interpretation is essential to uphold consumer confidence and ensure responsible real estate development in India. The study therefore contributes to the ongoing dialogue on strengthening consumer-centric jurisprudence*

and enhancing the credibility of one of India's most vital sectors.

Keywords: Real Estate, Deficiency In Service, RERA, Consumer Protection, Regulatory Challenges, Accountability, Service Quality.

INTRODUCTION

The Indian real estate sector, estimated to reach USD 1 trillion by 2030, has transformed from a largely unregulated market into a semi-formalized and legislatively governed industry. However, the proliferation of housing and infrastructure projects has also exposed systemic flaws—ranging from inordinate delays in possession to non-conformity with approved layouts and the use of inferior materials. (K'Akumu, 2023) Definitional problems in the meanings or understandings of real estate: undefined body of knowledge, collegiate dilemma, inadequate classification of real estate occupations, inadequate industry classification and inadequate economic sector positioning.

These deficiencies have generated a large number of disputes before consumer commissions and RERA authorities. The recognition of homebuyers as consumers under the Consumer Protection Act (CPA) and later as allottees under RERA, 2016, has been a watershed development in consumer jurisprudence. This paper examines the concept of service deficiency as applied to real estate, the overlapping legal frameworks, and significant judicial pronouncements shaping this domain. The real estate sector plays a vital role in economic growth, urban development, and investment generation. However, it has increasingly been marred by issues of service deficiencies, regulatory lapses, and consumer dissatisfaction. This study examines the prevalent challenges faced by homebuyers and developers in the real estate sector, with particular emphasis on deficiencies in service such as project delays, non-compliance with contractual terms, substandard construction quality, and misleading advertisements. The research further analyzes the legal and institutional mechanisms available for consumer protection, including the Real Estate (Regulation and Development) Act, 2016 (RERA), Consumer Protection Act, and judicial interventions. Through case studies and stakeholder analysis, the paper identifies systemic gaps in enforcement, transparency, and grievance redressal. Finally, it proposes practical solutions aimed at improving accountability, strengthening regulatory oversight, and enhancing service delivery standards. The findings highlight the need for collaborative efforts among policymakers, real estate developers, and consumers to ensure ethical practices and sustainable sectoral growth. The real estate sector is one of the fastest-growing and most influential components of a modern economy, shaping not only physical infrastructure but also the aspirations and financial security of millions of individuals. As urbanization accelerates and demand for housing and commercial spaces expands, the relationship between builders, developers, and consumers has grown increasingly complex. Within this expanding landscape, issues of service deficiency—such as construction delays, non-delivery of promised amenities, substandard workmanship, and unfair contractual practices—have become prominent sources of dispute. (Nayar, 1996) This is probably one of the most important areas which has not been given due importance in the reforms process. A key factor in the development of the real estate stock of any country is the availability of long term financing at a relatively low cost of capital. The vast majority of Indians still depend on their own savings and other resources for their housing needs. The commercial developments are financed through advance payments by the buyers.

These deficiencies not only erode consumer trust but also undermine the integrity of the real estate market. To address such challenges, a structured legal framework has evolved in India, offering consumers multiple avenues for redressal. Key legislations such as the Consumer Protection Act, 2019 and the Real Estate (Regulation and Development) Act, 2016 (RERA) aim to ensure

transparency, accountability, and timely delivery of real estate projects. RERA, in particular, marks a transformative shift by mandating project registration, regulating advertisements, safeguarding buyer investments, and imposing penalties for non-compliance. Alongside statutory mechanisms, consumer commissions and civil courts continue to play a crucial role in shaping the contours of real estate dispute resolution. Judicial trends over recent years demonstrate a growing commitment to consumer rights, with courts repeatedly emphasizing the fiduciary responsibility of developers and reinforcing strict adherence to contractual obligations. Landmark judgments have clarified the meaning of service deficiency in real estate, strengthened the enforceability of buyer agreements, and established clear precedents for compensation and refund in cases of non-performance. This paper examines the legal framework governing service deficiency in real estate and analyzes emerging judicial trends that are redefining the developer-consumer relationship. Understanding these developments is essential for stakeholders seeking to navigate the sector with greater confidence, fairness, and legal clarity.

Defining “Deficiency in Service” in Real Estate

Statutory Definition: Section 2(1)(g) of the Consumer Protection Act, 2019 defines “deficiency” as: “any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law... or which has been undertaken to be performed by a person in pursuance of a contract or otherwise.”² Builders, developers, and promoters thus qualify as service providers, while homebuyers are consumers entitled to the promised quality, amenities, and possession timelines. Under the Real Estate (Regulation and Development) Act, 2016 (RERA), the concept of “deficiency” refers to any shortcoming, inadequacy, or failure on the part of a promoter, real estate agent, or allottee to fulfill the obligations mandated by the Act, its rules, regulations, or the terms of the agreement for sale. RERA was enacted to promote accountability and transparency in the real estate sector, and the idea of deficiency plays a central role in establishing responsibility and ensuring consumer protection. A promoter is considered deficient when they fail to adhere to statutory duties such as timely completion and delivery of the project, adherence to sanctioned plans, or provision of promised amenities and infrastructure. Delay in handing over possession, failure to obtain completion or occupancy certificates, and deviation from approved layouts are some of the most common forms of deficiency. Additionally, misleading advertisements, false representations about project features, or failure to register a project that requires mandatory registration are treated as violations under the Act. Promoters are also obligated to deposit 70% of project funds collected from allottees into a designated escrow account, and misuse of these funds constitutes another form of deficiency. Real estate agents may be held deficient if they operate without registration, facilitate the sale of unregistered projects, or furnish false information to buyers. RERA also recognizes deficiency on the part of allottees, particularly when they fail to make scheduled payments or violate essential terms of the agreement. When a deficiency is established, RERA authorities have wide powers to grant remedies, including ordering refunds with interest, awarding compensation, directing completion of the project, rectifying structural defects, and imposing penalties on erring parties. (Shalini Rohilla 2016) The Act defines the rights and obligations of all the players in real estate projects. The Act defines the rights and obligations of all the players in the real estate sector, viz., promoters, (builders/developers/development authority such as DDA), allottees (buyers) and real estate agents

Judicial Interpretation

The courts have consistently expanded this definition to include the following as deficiency in

service: In Kamal Sood v. DLF Universal Ltd., I (2007) CPJ 7 (NC), The National Consumer Disputes Redressal Commission (NCDRC) addressed critical issues relating to delay in handing over possession of residential property and the responsibility of real estate developers towards homebuyers. The complainant, Kamal Sood, had booked a residential plot in a project developed by DLF Universal Ltd. and deposited substantial amounts as per the agreement. However, DLF failed to deliver possession within the stipulated time, attributing the delay to reasons such as insufficient external development work and alleged failure of government agencies to provide necessary infrastructure. The central question before the Commission was whether such delays constituted deficiency in service under the Consumer Protection Act, 1986. DLF argued that delays were beyond its control, but the Commission rejected this defense, holding that a developer cannot absolve itself from liability by shifting the burden onto government authorities or unforeseen external factors. The Commission emphasized that the developer had a contractual and statutory duty to ensure timely possession and should have anticipated and managed such contingencies. NCDRC held that undue delay in delivering possession amounted to deficiency in service and unfair trade practice, especially because the developer continued to collect installments without transparency about project progress Chawla & Kumar, (2022). The Commission found that the buyer had suffered financial loss, mental agony, and loss of opportunity due to the developer's conduct. Consequently, it directed DLF to refund the deposited amount with interest and awarded compensation for harassment and litigation costs. This judgment is significant for reinforcing the principle that real estate developers must adhere strictly to project timelines and cannot rely on force majeure-like excuses without substantiated evidence. It laid important jurisprudential groundwork for later cases under consumer law and RERA, strengthening protections for homebuyers and discouraging exploitative builder practices Kotaraphong, (2015).

In Emaar MGF Land Ltd. v. Amit Puri, III (2015) CPJ 288 (NC), the National Consumer Disputes Redressal Commission (NCDRC) dealt with allegations of delay in handing over possession of a residential unit and examined the liability of a real estate developer for failure to fulfill contractual obligations. The complainant, Amit Puri, had booked a flat in one of the developer's projects and paid a substantial portion of the sale consideration. As per the builder-buyer agreement, possession of the unit was to be delivered within a specific period, subject to extensions only for genuine force majeure situations. However, Emaar MGF failed to complete the construction and offer possession even long after the stipulated date had expired. The developer attempted to justify the delay by citing reasons such as approval issues, external development works, and circumstances beyond its control. The Commission, however, found these defenses unconvincing. It held that a developer cannot indefinitely delay possession while retaining the buyers' funds and without providing clear progress updates. The Commission reaffirmed that homebuyers invest their lifetime savings with legitimate expectations of timely possession and that real estate companies must take all necessary steps—administrative, financial, and operational—to fulfil declared commitments. The NCDRC observed that the delay caused substantial loss and mental agony to the complainant, who was deprived not only of the enjoyment of the property but also of rental income or other economic benefits that would have accrued had timely possession been delivered. It concluded that the developer's failure amounted to deficiency in service and unfair trade practice under the Consumer Protection Act, 1986. The Commission ordered Emaar MGF to refund the entire amount deposited by the complainant along with interest and compensation for harassment and litigation expenses. A critical aspect of this judgment is its strong disapproval of one-sided clauses commonly found in builder-buyer agreements, which permit builders to charge interest or penalties for delayed payments by purchasers but provide no meaningful remedy for buyers when the builder defaults Singh et al., (2022).

Legal Framework Governing Service Deficiency

The Consumer Protection Act, 2019

The Consumer Protection Act, 2019, replacing its 1986 predecessor, modernized the dispute redressal system through three-tier commissions—District, State, and National—and recognized housing construction as a form of service. Under Section 39, the commissions may order refund of the price paid, payment of interest, compensation for loss or harassment, or punitive damages. The forums have been instrumental in addressing pre-RERA grievances, offering expeditious relief where civil remedies would otherwise be cumbersome.

The Real Estate (Regulation and Development) Act, 2016

Enacted to promote transparency and efficiency, RERA mandates registration of projects and disclosure of all material particulars. Key provisions include: Section 14: Obligation to adhere to sanctioned plans and specifications .Section 18: Right to refund, interest, and compensation for failure to complete or hand over possession. Section 31: Right of an aggrieved person to lodge a complaint before the Regulatory Authority.Section 38–40: Enforcement of orders and recovery as arrears of land revenue. RERA's primary innovation lies in establishing a specialized regulatory regime with binding orders and deterrent penalties for non-compliance.

(Basanta Kumar) Any structural defect or any defect in the workmanship, quality, services or anything else committed to by the promoters must be brought to the knowledge of the promoter by the allottee within five years from the date of possession; the promoter must rectify such defect without any further charge within 30 days. If he fails to correct such defect within the scheduled time, the aggrieved allottee shall be entitled to receive appropriate compensation as provided in the Act.

Interplay Between RERA and the CPA: A contentious question has been whether RERA ousts the jurisdiction of consumer fora. The Supreme Court in *Imperia Structures Ltd. v. Anil Patni* clarified that remedies under RERA and the CPA are concurrent, and consumers retain the right to approach either forum. Similarly, in *M/s Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroor* the Court reaffirmed the availability of concurrent remedies, ensuring procedural flexibility for consumers. This judicial stance prevents multiplicity from becoming exclusionary, aligning with the legislative intent of consumer empowerment. Anant Kumar (Anand & Kumari, 2023) Real estate is India's second largest industry after agriculture in terms of job creation. The industry is expected to grow at a rate of 30% per year over the next decade. Residential, retail, hospitality and trade are the four sub-sectors that make up the real estate industry. India's real estate sector is expected to reach \$180 billion by 2020. The housing sector alone accounts for 5-6% of the country's gross domestic product (GDP) (Zulki Zulkifli; Noor & Jaya, 2020) A certain thing means no other than the agreement itself, where in an agreement, the object of the agreement must be firm and clear. In various literatures it is stated that the object of the agreement is the achievement or the main agreement. A thing or object in an agreement must be certain, at least the number and type can be determined. Can be in the form of objects that now exist and will later exist, in this case Land and Buildings which are objects (a certain thing) in PBA that are made between Developers and Consumers

Judicial Trends in Service Deficiency

Delay in Possession: The delay in handing over possession remains the most prevalent

instance of deficiency in real estate. Courts have consistently treated unreasonable delay as a breach of contractual and statutory obligations. In DLF Homes Panchkula Pvt. Ltd. v. D.S. Dhanda, the National Commission held the developer liable for refund and interest due to excessive delay without justification. The National Consumer Disputes Redressal Commission (NCDRC) examined a complaint filed by a homebuyer alleging significant delay in delivery of possession of a residential unit. The complainant had booked a flat with DLF Homes and paid substantial amounts as per the builder-buyer agreement. Despite the agreed timeline, the project was not completed, and possession was not offered within a reasonable period. DLF argued that construction was delayed due to reasons beyond its control, including governmental and environmental approvals, and claimed that the buyer was bound by contractual clauses limiting the builder's liability. The NCDRC rejected these defenses and held that the delay amounted to clear deficiency in service. The Commission emphasized that a builder cannot indefinitely postpone possession under the cover of vague or one-sided contractual terms. It further observed that homebuyers invest their lifetime savings and are entitled to timely delivery unless a genuine, unavoidable circumstance is proven—something the builder failed to establish. The Commission directed DLF to refund the deposited amount with appropriate interest and also awarded compensation for mental agony and harassment. The judgment reaffirmed that unreasonable delay by builders constitutes deficiency and that consumer forums can grant meaningful relief to aggrieved homebuyers. Likewise, in Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan, the Supreme Court held that the developer could not rely on one-sided contractual clauses to escape liability for delayed possession. The Supreme Court of India delivered a landmark judgment reinforcing consumer rights in real estate transactions and condemning unfair practices by builders. (Duangkamol Kotaraphon) Once a house has been inhabited for some time, residents may need to renovate to improve the quality of the accommodation as sufficient accommodation is one of basic needs in life. Renovation may be needed when the family expands, which may lead to more members of the family and more residents, or a family member living in the home could want a higher quality residence.

Poor Quality and Deviation from Specifications: Deficiencies relating to poor construction quality and deviation from sanctioned plans are equally significant. In Fortune Infrastructure v. Trevor D'Lima, the Supreme Court held that failure to deliver possession as per promised specifications or deviation from sanctioned plans constitutes deficiency in service and unfair trade practice. Similarly, Kamal Sood v. DLF Universal Ltd. recognized the use of substandard materials as actionable deficiency. Such decisions reinforce that real estate developers are bound not only by contractual terms but also by representations in brochures, advertisements, and promotional materials.

Concurrent remedies? The Supreme Court has played a decisive role in clarifying concurrency of remedies, jurisdictional limits, and the autonomy of buyers in choosing legal forums

Supreme Court on Concurrent Remedies: Right to Approach Consumer Fora Despite RERA: The landmark decision in M/s Imperia Structures Ltd. v. Anil Patni (2020) established that RERA does not bar consumer complaints, nor does it take away remedies under the Consumer Protection Act. The Court held that the two statutes coexist, providing buyers with distinct yet parallel avenues for redress. The judgment emphasized that RERA contains no provision expressly excluding the jurisdiction of consumer fora, and that Section 79 of RERA, which bars civil court jurisdiction, does not apply to consumer disputes because consumer fora are statutory tribunals, not civil courts. Thus, a homebuyer can seek refund, interest, or possession either by filing a complaint under RERA, or by approaching a Consumer Commission, or by initiating proceedings before the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code, where applicable. This plurality of options reflects judicial commitment to protect purchasers from

bargaining inequality and systemic delays inherent in real estate transactions

Service Deficiency in Consumer Law and Builder Liability Under Section 2(42) of the Consumer Protection Act, 2019, service deficiency includes any fault, imperfection, shortcoming, or inadequacy in service performance. The Supreme Court, in decisions such as:

- Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan (2019)
- Ireo Grace Realtech Pvt. Ltd. v. Abhishek Khanna (2021)
- Wing Commander Arifur Rahman Khan v. DLF Southern Homes (2020)

Has repeatedly held that delay in possession and one-sided builder-buyer agreements amount to service deficiency. Builders cannot rely on loosely defined force majeure conditions, nor can they impose arbitrary clauses shielding them from liability while penalizing buyers for small delays. The Court observed that homebuyers are not investors or speculators but ordinary consumers, often spending lifetime earnings, justifying heightened consumer protection.

RERA as a Specialized Forum: Complementary, Not Exclusive ,RERA introduced mechanisms that are not available within consumer fora, including:advance deposit of 70% of project funds in an escrow account,mandatory project registration,daily interest on delayed possession compensation,fast-tracked adjudication, and power to impose penalties and revoke registrations. However, the Supreme Court in Newtech Promoters & Developers v. State of UP (2021) clarified that RERA and its Appellate Tribunal are specialized bodies, but the existence of this mechanism does not oust consumer forums. The Court reiterated that buyer remedies are complementary, not hierarchical

Jurisdictional Interplay with Insolvency Law (NCLT): Where a developer company defaults, homebuyers may also file claims under the Insolvency and Bankruptcy Code (IBC) as financial creditors, a right affirmed in Pioneer Urban Land & Infrastructure Ltd. v. Union of India (2019).The Supreme Court acknowledged the risk that insolvency proceedings—focused on collective resolution—may conflict with individual remedies. Yet, it upheld the provision, allowing either class action by a threshold number of buyers or individual insolvency petitions, subject to safeguards to prevent abusive litigation intended only to pressurize builders.

Can Remedies Be Pursued Simultaneously?

The Supreme Court has affirmed that buyers may pursue multiple remedies, but double compensation for the same cause is not permitted.Thus, while a buyer may:file a consumer complaint for refund/compensation, and also have RERA enforcement of project completion orders,actual monetary relief cannot duplicate independently in both forums.

Limitation and Choice of Forum: Supreme Court's Guiding Principles

Table 1
THE COURT LAID DOWN GUIDING DOCTRINES

Principle	Description
Election of Remedies	Buyers may choose the most effective forum; they are not forced into RERA.
No Ouster of Jurisdiction	Consumer fora jurisdiction survives despite sector-specific law.
Special Law vs. General Law	RERA is special in regulatory structure, but CPA is special in consumer protection—hence both operate concurrently.
Consumer as a Vulnerable Party	Interpretation must favor consumers given bargaining power imbalance.

Significance of Supreme Court Jurisprudence

The Court's decisions have produced several transformative effects:

- Strengthened buyer confidence, crucial in a sector often marred by distrust.
- Promoted legal predictability for both buyers and developers.
- Supported the shift toward transparent real estate governance.
- Reduced the possibility of forum shopping arguments by developers seeking to avoid accountability.

Continuing Issues and Need for Further Clarity

(Narendra Singh* and Mukul Gupta) The real estate industry is extremely competitive and customers attach an immense emotional and financial value to the decision of buying residential property for themselves. Since the purchase of a house is not an ordinary shopping experience as it involves thorough market research and big investment which is not easily reversible. Therefore, customers take into consideration all pre-sales, sales, and post-sales experiences while deciding if they are satisfied with the services of real estate builders or not. In this present era, where word of mouth marketing and reviews on online forums through existing buyers can create or destroy the reputation of real estate builder, the builders need to identify and improve the variables with maximum difference or gap in expectations and actual deliveries affecting satisfaction level of customers in real estate. The sector could benefit from future Supreme Court clarification on harmonizing remedies to reduce procedural complexity. Post-RERA, multiple forums—Consumer Commissions, RERA Authorities, and Civil Courts—possess overlapping jurisdiction. The Supreme Court in *Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh* clarified that: The RERA Authority may decide complaints relating to delay in possession or structural defects and The Adjudicating Officer has jurisdiction to determine compensation claims under Section 18(1). This division ensures institutional clarity and prevents duplication while maintaining the consumer's right to choose the forum.

Insolvency Proceedings and Consumer Rights

The interaction between RERA and the Insolvency and Bankruptcy Code, 2016 (IBC) poses complex challenges. In *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*, the Supreme Court upheld the constitutional validity of amendments treating homebuyers as "financial creditors," enabling them to initiate insolvency proceedings against errant developers. However, the overlap between insolvency proceedings and consumer complaints often creates procedural hurdles. The Court has repeatedly emphasized the need to safeguard the rights of individual allottees within the collective insolvency framework.

Remedies and Enforcement

Remedies under the CPA

Consumer Commissions are empowered to grant:Refund of the consideration paid with interest. Compensation for delay, harassment, or loss. Specific performance or direction to deliver possession. Punitive damages and litigation costs.

Remedies under RERA

Under Section 18 of RERA, allottees are entitled to: Refund of the amount paid with interest. Interest for every month of delay in possession. Compensation for losses sustained.

Enforcement Challenges

Despite favorable orders, enforcement remains problematic. Developers often delay compliance or file appeals to stall execution. RERA authorities are empowered under Section 40 to recover dues as arrears of land revenue; however, practical enforcement remains inconsistent across states.

Challenges and the Way Forward

1. Multiplicity of Forums: Concurrent jurisdiction under RERA, CPA, and IBC leads to procedural confusion.
2. Enforcement Difficulties: Lack of robust mechanisms for executing orders reduces the efficacy of consumer remedies.
3. Insolvency Conflicts: Builder insolvency often frustrates individual claims of allottees.
4. Regulatory Inconsistency: State RERA rules differ in terms of interest rates and enforcement procedures.
5. Limited Consumer Awareness: Many homebuyers remain unaware of available remedies.

A harmonized and technology-driven system integrating RERA and consumer forums could streamline redressal and enhance compliance.

Emerging Judicial Approach

Recent judicial pronouncements indicate a pronounced shift towards consumer-centric interpretation of contractual obligations. The courts have emphasized: Adherence to project timelines as an essential service obligation. Accountability for false representations and marketing claims. Fairness in builder-buyer agreements and Protection of consumer rights despite overlapping regulatory frameworks. This approach reflects a transformation in judicial philosophy—recognizing housing not merely as a commodity but as an instrument of social welfare.

SC Criticizes RERA's Functioning as “Disappointing”

In March 2025, a bench of Justices Surya Kant and N. Kotiswar Singh strongly criticized how RERA authorities are functioning, calling their performance “disappointing.” The Court observed that while RERA was legislated to protect homebuyers and regulate builders, its on-ground implementation has not lived up to its intent. The bench pointed out a “domino effect”: when one project fails, it affects many stakeholders and this systemic failure is not being adequately checked by the existing regulatory mechanism. SC Directs Strengthening of RERA Authorities In a landmark judgment on 12 September 2025 (in Mansi Brar Fernandes v. Shubha Sharma & Others), the Supreme Court made detailed orders to revamp RERA institutions. Adequate staffing and infrastructure: The Court mandated that each state’s RERA must have strong infrastructure and personnel, including at least one legal expert or consumer advocate. The SC gave a 6-month deadline for states to put in place SOPs to ensure that buyer funds are disbursed in line with actual project progress. Once a buyer pays at least 20% of property cost, the transaction must be registered with the local revenue authority—a measure aimed at improving transparency. Contracts that deviate significantly from the model RERA “agreement for sale”—for example, contracts with returns or

buyback clauses—must be supported by a sworn affidavit. Right to Housing as a Fundamental Right under Article 21: In the same Mansi Brar Fernandes case, the Supreme Court went further: it declared the right to housing to be a fundamental right under Article 21 (Right to Life) of the Constitution. The Court held that the State (and regulatory bodies like RERA) have a constitutional duty to protect homebuyers—not just contractual or regulatory obligations. It noted that failure of regulatory authorities (including RERA) is not merely a policy failure but a “legal error unpardonable in law.” It asked for bridge financing mechanisms (like SWAMIH Fund or NARCL) to be expanded so that viable, but stalled, real estate projects can be revived rather than liquidated. A high-level committee is to be formed—chaired by a retired High Court judge and representing ministries, real estate experts, IIMs, NLUs, NITI Aayog, etc.—to recommend systemic reforms.

Analysis and Implications

Regulatory Weakness: The SC’s criticism highlights that simply having a law (RERA) is not enough; its institutions must be efficient, well-resourced, and proactive. By declaring housing a fundamental right, the SC elevates the protection of homebuyers to a constitutional level—potentially changing how regulations are enforced. Directing escrow SOPs and stricter checks on project approval aims to prevent misuse of buyer funds and delay tactics by builders. The push for project-by-project insolvency resolution shows the Court’s understanding that stalled projects and builder insolvency directly impact homebuyers, and remedies should reflect that..The formation of a committee suggests that the SC is not just critiquing but actively seeking structural reform to make RERA more than a paper tiger.

CONCLUSION

The problem of service deficiency in the Indian real estate sector represents a complex intersection of contractual obligations, statutory requirements, and consumer rights. Homebuyers—often deploying their lifetime savings—have historically been at the receiving end of erratic market forces, delayed possession, substandard construction, misleading promises, illegal modifications of sanctioned plans, and the arbitrary imposition of charges. The legal framework governing real estate transactions has therefore evolved not merely as a legislative response, but as a protection-oriented architecture rooted in equity and fairness. The enactment of the Real Estate (Regulation and Development) Act, 2016 (RERA) fundamentally reshaped this landscape. It provided a regulated marketplace that mandated promoter registration, project disclosure, adherence to sanctioned plans, and financial discipline through escrow requirements. RERA’s statutory remedies—refund, interest, compensation, possession, and penalties—represent an unprecedented recalibration of power between developers and allottees. When read together with the Consumer Protection Act, 2019 and its well-established jurisprudence on service deficiency, the framework ensures layered, concurrent, and complementary remedies for aggrieved buyers. Judicial pronouncements of the Supreme Court, the National Consumer Disputes Redressal Commission (NCDRC), and various state RERA authorities have played a defining role in interpreting these legal instruments not in isolation, but in harmony with constitutional values and contractual fairness. A remarkable judicial trend that emerges through cases such as *Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan*, *Emaar MGF Land Ltd. v. Amit Puri*, *DLF Homes Panchkula Pvt. Ltd. v. D.S. Dhanda*, and *M/s Imperia Structures Ltd. v. Anil Patni*, is a consistent recognition that real estate agreements are not standard commercial contracts between parties of equal bargaining power. Courts have held one-sided clauses—especially those permitting indefinite delay without remedy or disproportionately penalizing buyers—to be manifestly unfair and unenforceable. These decisions have strengthened

the understanding that service deficiency cannot be narrowly defined as defective workmanship or technical lapses; it includes procedural unfairness, lack of transparency, abuse of dominance, and violation of legitimate consumer expectations. Judicial developments have also ensured jurisdictional clarity. The Supreme Court has repeatedly affirmed that RERA does not exclude the jurisdiction of consumer fora. Instead, homebuyers may elect the most efficacious remedy, demonstrating a rights-centric jurisprudence rather than a rigid, forum-centric approach. The evolving interaction between RERA and the Insolvency and Bankruptcy Code (IBC) further highlights shifting judicial priorities: while insolvency law aims to revive the corporate debtor, real estate insolvencies now require a project-centric rather than entity-centric resolution model, acknowledging the unique nature of housing investments. Despite this progress, challenges remain. RERA authorities across states demonstrate uneven institutional capacities; implementation is often diluted by administrative gaps and delays in enforcement of orders. A number of state authorities struggle with under-staffing, inadequate digital infrastructure, limited technical expertise, and procedural inconsistency. The persistence of stalled projects, misuse of project funds, and prolonged litigation continues to undermine buyer confidence. The need for a stronger, uniform national enforcement mechanism remains evident. The Supreme Court's recent observations calling the functioning of several RERA bodies "disappointing" and directing states to strengthen regulatory infrastructure reflects ongoing systemic concerns. The Court's recognition of the right to housing as a facet of Article 21 (Right to Life) underscores a jurisprudential shift from property as a commodity to housing as a constitutional entitlement. This positions service deficiency within a broader socio-economic framework, where real estate regulation is not merely a matter of contractual enforcement but an instrument of distributive justice and urban welfare. Looking forward, several reforms can further consolidate the legal response to service deficiency.

Case laws

1. DLF Homes Panchkula Pvt. Ltd. v. D.S. Dhanda, III (2019) CPJ 81 (NC).
2. Fortune Infrastructure v. Trevor D'Lima, (2018) 5 SCC 442.
3. Kamal Sood v. DLF Universal Ltd., I (2007) CPJ 7 (NC).
4. Emaar MGF Land Ltd. v. Amit Puri, III (2015) CPJ 288 (NC).
5. Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan, (2019) 5 SCC 725.
6. Imperia Structures Ltd. v. Anil Patni, (2020) 10 SCC 783.
7. M/s Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroor, (2022) 8 SCC 779.
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