BLOGS

Breach of Contract under Indian Contract Act

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A breach of contract occurs when one party fails to fulfill their obligations as specified under a contract. Read all about breach of contract here!

Introduction

Now that we have revised all concepts related to the formation and essential aspects of contracts, let us look at what happens when the terms of a binding contract are violated.

When a party to a contract refuses to or fails to fulfill the terms stipulated in the contract, such an action or the lack thereof is called a **breach of contract**. In such a situation, the other party can **file a lawsuit in court, or settle the issue on their own through alternative dispute resolution mechanisms**.

Provisions of the Indian Contract Act

- Section 37 of the Indian Contract Act, 1872 states:"The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law." This means that unless the parties are excused by any law, they must perform their respective promises in the manner specified in the contract.
- Section 39 of the Indian Contract Act, 1872 states:"When one party entirely refuses to perform their part of the contract the other party can put an end to the contract. This is known as repudiation. This can also occur when the contract becomes impossible to perform." The consequences of breaching a contract can be paying damages or penalties. These are given in Section 75 to 78 of the Act.

Essentials of Breach of Contract

These are elements that must be present to satisfy the conditions of breach of contract:

1. Existence of a contract- There must be a valid contract between the both parties which fulfils all requirements of a contract.

2. Failure to execute the contract- One of the parties must have failed to fulfil at least some part of the contract.

Types of Breach of Contract

There can be several types of breach of contract, ranging from violation of one condition to not following any conditions.

1. Anticipatory Breach of contract– This occurs before the time for performing the contract. Anticipatory breach can be implied by the conduct of a party or it can be expressly done by spoken or written words.

In ***Food Corporation v. J. P Kesharwani*** the Supreme Court has observed that if one party modifies the contract and cancels it without informing the other, it amounts to violation of the contract.

2. Actual Breach of contract- This happens during the time for performing the contract. If a party refuses to perform the stipulated term by the due date this will be an actual breach of contract.

Example- Refusing to deliver a good even after receiving payment. Actual breach can also occur if the contract is performed after the time limit has passed.

This was affirmed by Allahabad High Court in ***Bishamber Nath Agarwal v. Kishan Chand***. In a time-bound contract specific actions must be performed in the time and manner stipulated in the contract.

3. Minor Breach of contract- A minor breach occurs when a party to the contract fails to fulfil a part of the obligation. Not delivering milk for 2 days in a contract for delivery in a month is a minor breach of contract.

In ***Rice v Great Yarmouth Borough Council***, the Court held that a minor breach should not be a ground for terminating a contract and common sense should be applied to determine the importance of the breach.

4. Material Breach of contract- This is a serious violation of the terms of contract by a party. An example can be failure to hand over possession of a flat after the buyer completes all formalities. A material breach of contract can lead to termination of contract.

Remedies under Indian Contract Act

The following are the courses of action the non-breaching party can take in case of a breach of contract.

1. Suit for damages- The aggrieved party can ask for compensation from the breaching party for the loss caused due to the breach. In some contracts the amount for breach is already stipulated in the contract. **Section 73** of the act deals with such compensation and states that the party who breached the contract should compensate the other party for losses that occurred in the natural course of things or which the parties knew were likely to arise.

2. Compensation when penalty is stipulated – In **Section 74**, it is clearly stated that in contracts where an amount is specified in case of a breach, such amount must be paid by the breaching party if loss has not actually occurred. **Section 75** states that a party which revokes or ends a contract due to breach is entitled to compensation.

3. Suit for Specific performance – Aggrieved parties can also approach the court to force the other party to fulfil the contract. This is done especially in cases where damages are not enough to recover the loss.

4. Suit for Quantum Meruit – This suit is filed by the aggrieved party to recover the amount that was spent till the contract was breached by the opposite party. For example, a construction company begins constructing a building but the contract is breached. They can file a suit of quantum meruit to recover the costs involved in starting the construction.