

# Reciprocal Promises: Seal a Balanced Deal



**Wednesday wisdom**  
**28-08-2024**



Contract is generally considered as a loaded word which brings in many rights and obligations at the same time. Contracts lay the foundation for agreements between parties, providing a solid framework for their mutual obligations. Sometimes, it so happens that that one party discharges all obligations but the other party simply refuses to cooperate.

In such cases, can the affected party avail any right or an option to seek remedy under the Indian Contract Act, 1872 (ICA)?

ICA deals with this concept as reciprocal promises i.e. both parties are to reciprocate their respective obligations.

The Indian Contract Act defines Reciprocal Promise as “Promises which form the consideration or part of the consideration for each other are called reciprocal promises”

Let's find out more and understand the potential issues properly in contracts with reciprocal promises, through five case studies as listed below:

### **CASE STUDY 1: SIMULTANEOUS OBLIGATIONS**

**Situation:** A and B enters into a contract involving sale of shares of a company. As per the contract, A agrees to transfer the shares to B **upon payment** of the price by B. However, B is not ready and willing to pay the complete price of shares and instead indulges in repeated correspondence to seek transfer citing contractual provisions.

**Result:** A does not transfer the shares considering B's unwillingness to pay for the same simultaneously and states that the transfer of shares and payment for the same are concurrent in nature.

**Remedy:** Section 51 of ICA specifically states that in such contracts that consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

[1] The article reflects general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

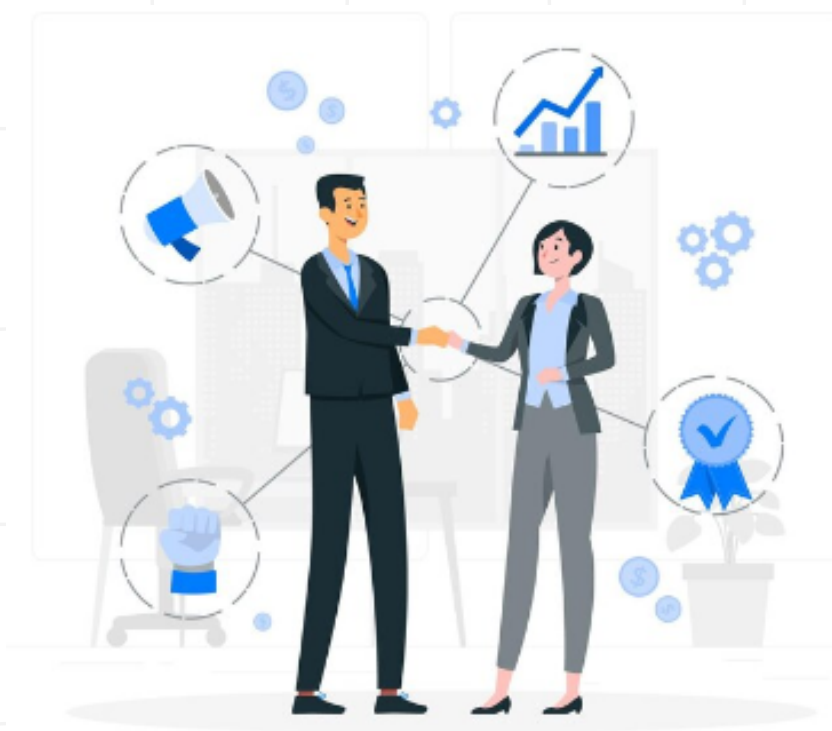
The significance of reciprocal promises was emphasized in the judgement laid down by Supreme Court of India in the case of **Ram Chandra Narayan Nayak versus Karnataka Neeravari Nigam**[2] where a contractor agreed to build irrigation canals in Belgaum, Karnataka, mobilizing labour and equipment for the project.

However, the contract was hindered when the necessary raw material was not supplied by the government body, preventing the contractor from fulfilling their contractual obligations.

Consequently, the earnest money was forfeited by the government.

The contractor challenged this action through arbitration and subsequently appealed to the Supreme Court.

The Apex Court, citing Section 51 of the Indian Contract Act, ruled in favour of the contractor, determining that their obligation to complete the work was contingent upon the government's provision of raw materials. The Hob'ble court held that the contractor cannot be held responsible to perform and was not bound to perform unless the Government supplies the raw material.



[2] (2013) 15 SCC 140

## CASE STUDY 2: ORDER OF PERFORMANCE

**When drafting a contract, what factors should be considered to ensure that the order of performance of reciprocal promises aligns with the parties' intentions?**

**Situation:** A construction company, X, agrees to build a house for a client, Y. The contract specifies that Y will pay X in instalments throughout the construction process, with the final payment due upon completion of the said construction. However, X does not achieve the milestone, as agreed after 2 instalments.

**Result:** Y does not make payment of corresponding instalments as X does not complete the remaining part of the construction.

**Remedy:** In such scenario, the order of performance plays an important role. In this case, the implied order of performance is that X must complete each phase of the construction before Y is obligated to pay the corresponding installment.

This concept is outlined clearly under **Section 52 of ICA** which states that if a contract explicitly dictates the sequence in which promises are to be fulfilled, the parties must adhere to that predetermined order. However, when the contract remains silent on such sequence, the performance of promises should follow an order that is consistent with the overall nature and purpose of the transaction. This interpretation ensures that the contractual obligations are fulfilled in a manner that aligns with the parties' shared expectations.

## CASE STUDY 3: HINDRANCES BY OTHER PARTY

**In a contract, what happens if one party intentionally tries to stop the other from fulfilling their obligations? Is that fair?**

**Situation:** A and B enters into a contract involving mutual promises, i.e. A has to install a software on the hardware to be provided by B for an end client. During the subsistence of the contract, B intentionally does not provide the requisite hardware.

**Result:** A is unable to install the software and faces an action from the end client.

**Remedy:** A has the right to terminate the agreement with B immediately, without being held liable for any compensation to B as B has prevented the agreed performance. Additionally, A is also entitled to claim compensation from B as such an act of B is considered to be a breach of contract. This compensation is intended to cover any financial losses or damages incurred due to the breach of contract.

This concept is outlined in **Section 53 of ICA** which states that a contract which includes mutual obligations, and one party interferes with the other's ability to perform their part, the contract can be terminated by the party who has been prevented. Furthermore, the affected party may claim damages to cover any losses caused by the breach.

#### **CASE STUDY 4: DEPENDENCIES ON THE OTHER PARTY**

**In a contract where one party's performance depends on the other party's fulfilment of their obligations, how does Section 54 protect the interests of the party whose performance is contingent?**

**Situation:** A and B enter into a contract wherein B is required to grant necessary design approvals to B so that B can proceed with product manufacturing. However, B does not provide the necessary approvals within the time frame and thus A cannot complete the production in time.

**Result:** B is restricted from completing the work within the time frame, due to B's refusal to grant approvals.

**Remedy:** A should claim an exclusion of the time taken by B to grant the timely approvals. A is further entitled to claim compensation for any loss caused to A by delayed performance of B.

**Section 54 of ICA** safeguards the interests of a party whose performance is dependent on the other party's fulfilment of their contractual duties. It addresses scenarios where one party's default can prevent the other party from fulfilling their obligations.

The significance of this section was emphasized in the judgement laid down by Supreme Court of India in the case of **Shripati Lakhu Mane V/s The Member Secretary, Maharashtra Water Supply And Sewerage Board & Ors**[3], the appellant, a registered contractor with the Maharashtra government, was awarded a contract for a rural water supply scheme in Ratnagiri District.

The appellant agreed on the terms and conditions for execution of the said work. The respondent vide a letter dated 28.07.1986 informed the appellant to stop working on the work order. However, vide a letter dated 17.12.1986 sent to the respondent instructed the appellant to start execution of work order.

Accordingly, the appellant initiated the work for which the respondent was under a duty to provide CI pipes and cement pipes as agreed under the contract. However, the respondent informed the appellant about the non-availability of said pipes. Later, the respondents wanted a change in the terms of the work order by substituting pipes of different diameter. Despite these challenges, the appellant persisted in their efforts to complete the project. Thereafter, the respondent revised the scope of work to be executed through various letters. Agitated by this, the appellant did not proceed with the agreed work. The respondent threatened to withdraw the contract and impose penalties on the appellant for their alleged failure to fulfil their contractual obligations. Faced with these adverse circumstances, the appellant was forced to seek legal recourse by filing a case in the Trial Court and thereafter in the High Court.

Unsatisfied by the orders passed by these Courts, the appellant moved to the Supreme Court. The Hon'ble Supreme Court after hearing the matter held that *"It is fundamental to the Law of Contract that whenever a material alteration takes place in the terms of the original contract, on account of any act of omission or commission on the part of one of the parties to the contract, it is open to the other party not to perform the original contract. This will not amount to abandonment. Moreover, abandonment is normally understood, in the context of a right and not in the context of a liability or obligation. A party to a contract may abandon his rights under the contract leading to a plea of waiver by the other party, but there is no question of abandoning an obligation. In this case, the appellant refused to perform his obligations under the work order, for reasons stated by him. This refusal to perform the obligations, can perhaps be termed as breach of contract and not abandonment.[4]"*

[3]CIVIL APPEAL NO.556 of 2012; March 30, 2022

[4]Para 19 of Shripati Lakhu Mane V/s The Member Secretary, Maharashtra Water Supply And Sewerage Board & Ors

The Hon'ble court also held that *"The refusal of a contractor to continue to execute the work, unless the reciprocal promises are performed by the other party, cannot be termed as abandonment of contract. A refusal by one party to a contract, may entitle the other party either to sue for breach or to rescind the contract and sue on a quantum meruit for the work already done.[5]"*

## CASE STUDY 5: IMPOSSIBLE AGREEMENTS

**What happens when a contract is based on something that can't be done? Can you think of examples of impossible agreements?**

An agreement to do an act impossible in itself is void. For example, A agrees with B to discover treasure by magic. The agreement is void.

### **a. Contracts terminated by impossible or unlawful events:**

**Situation:** A, a catering company enters into a contract with B, a company involved in arranging public events. A and B agrees to come together for public outdoor event scheduled to take place at a park. However, a few days before the event, the local government issues a severe weather warning, including heavy rain and thunderstorms.

**Result:** Due to the severe weather warning issued by government, the park authorities decide to cancel all public events for safety reasons. The event becomes impossible to continue due to the unforeseen circumstances beyond the control of A and B, the contract becomes void.

**Remedy:** A is not obligated to fulfil its contractual obligations and B is not required to pay for the services that could not be provided.

### **b. Compensation for performance terminated by impossible or unlawful events:**

If a person promises to do something that they know is impossible or illegal, and the other person is unaware about such impossibility or illegality, the person who made the promise must pay for any losses the other person suffers because the promise wasn't fulfilled.

[5] Para 22 of Shripati Lakhu Mane V/s The Member Secretary, Maharashtra Water Supply And Sewerage Board & Ors

## CASE STUDY 6: PARTLY LEGAL AND PARTLY ILLEGAL OBLIGATIONS, BUNDLED IN THE CONTRACT

**Can a contract be partly good and partly bad? What happens when part of an agreement is legal and other part is illegal?**

**Situation:** A and B agree that A shall rent B a house for Rs. 10,000, but also agrees that if B uses the said house as a gambling house, B shall pay rent to A Rs. 50,000.

The first part where the parties agree for sale of house for Rs. 10,000 forms a legal enforceability. However, B's use of the house as a gambling house is a void agreement.





## **CASE STUDY 7: ALTERNATIVE PROMISES**

**When analyzing a contract with alternative promises, what factors should be considered to determine if the legal part of the agreement is enforceable?**

In the case of an alternative promise, one part of a promise/ agreement which is legal can be enforced and the other illegal part cannot be enforced.

For example, A and B agree that A shall pay B Rs.1000 for which B shall deliver to A either rice or opium. The part where delivery of rice is agreed is valid and the one where delivery of opium is involved is a void agreement.

## **CONCLUSION**

Reciprocal promises are vital for effective contracts. Clear communication and specific provisions, such as payment schedules and performance obligations, are essential to avoid disputes. If a breach occurs, prompt written notification is crucial. Accepting performance while claiming non-compliance can hinder legal remedies. Both parties must fulfil their obligations and avoid hindering the other's performance. By carefully drafting contracts and following due process, parties can protect their interests, build strong partnerships, and achieve successful business outcomes.

For any feedback or response on this article, the authors can be reached on [gauri.joshi@ynzgroup.co.in](mailto:gauri.joshi@ynzgroup.co.in) and [atharva.amdekar@ynzgroup.co.in](mailto:atharva.amdekar@ynzgroup.co.in)



**Author: Gauri Joshi**

Gauri Joshi is an Associate at YNZ Legal. By qualification she is Bachelor of Commerce from Mumbai University and Bachelor of Law from SNTD University.

**Co-author: Atharva Amdekar**

Atharva is an associate at YNZ Legal. By qualification he is Bachelor of commerce and Bachelor of Law from Mumbai University

