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Law of Arbitration in India: Critical Inquiry in Real Estate Disputes

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ABSTRACT

In India, arbitration has become a prominent dispute resolution method, especially in the business sector where parties value efficiency, adaptability and autonomy. However, its use in the real estate sector has been convoluted and frequently disputed. This paper critically analyses Indian arbitration law with an emphasis on real estate disputes, a field that usually involves numerous parties, expensive transactions and the interests of consumers. From the Arbitration Act of 1940 to the Arbitration and Conciliation Act of 1996 and its amendments, it charts the development of arbitration law, emphasizing the move toward a more arbitration-friendly framework. To determine whether arbitration is a practical solution, the study examines the types of real estate disputes, such as builder-buyer disputes, joint development agreements, investor-developer issues and lease disagreements. Arbitration has been limited when consumer rights and public policy are involved, but it has been maintained in business disputes between parties with equal bargaining power. The study critically examines the benefits and drawbacks of arbitration in this field, contrasts India's strategy with global norms and makes reform suggestions. It concludes that for arbitration to be a successful mechanism for resolving real estate disputes in India, a standardized framework that aligns it with statutory protections is required.

Keywords: Arbitration, Real Estate, RERA, Consumer Protection, Judicial Approach

I. INTRODUCTION

Over the past thirty years, India's arbitration law has experienced substantial change and has become a popular alternative to the traditional legal system for settling business disputes. Contractual relationships have increased across a variety of industries because of the Indian economy's explosive growth and the real estate sector is now one of the most litigious³. Complex, high-value and time-sensitive disputes are common in real estate development, builder-buyer transactions and joint venture agreements. Arbitration has been used more as an alternative forum because of its promise of speed, party autonomy and confidentiality, even

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though civil courts and consumer forums are still available to parties who have been wronged⁴. Nonetheless, there are difficulties when using arbitration in real estate disputes. The Arbitration and Conciliation Act of 1996 is sometimes in conflict with the Real Estate (Regulation and Development) Act of 2016 (RERA)⁵ and the Consumer Protection Act of 2019⁶, two statutory frameworks that concurrently govern the sector. Courts have frequently been asked to explain whether private arbitration can be used to settle disputes pertaining to consumer rights, legal requirements or the public interest⁷. In addition to supporting arbitration, court rulings have established important exceptions in the real estate sector. This study critically examines the function and efficacy of arbitration in Indian real estate disputes. It looks at the legal system, the court's methodology and the real-world restrictions on arbitration in this field. The study aims to assess whether arbitration can be a fair and effective method of settling real estate disputes and what changes might be required to improve its efficacy by examining case law and identifying systemic issues.

II. EVOLUTION AND FRAMEWORK OF ARBITRATION LAW IN INDIA

In India, arbitration has a lengthy history as a means of resolving disputes, having its roots in both colonial laws and customs. Panchayats and community-based dispute resolution have historically carried out arbitration-like tasks, but the Arbitration Act of 1899, which was passed during British rule, established the formal legal framework. Although it only applied to the presidency towns, this law was the first to formally recognize arbitration. The later Arbitration Act, 1940, attempted to harmonize the law throughout India, it was widely criticized for its overbearing judicial intervention and inflexible procedures, which rendered arbitration nearly as onerous as litigation.

To bring Indian law into compliance with the UNCITRAL Model Law on International Commercial Arbitration (1985)⁸, the Arbitration and Conciliation Act, 1996⁹, was a significant change. The fundamental ideas of minimal judicial intervention, party autonomy and the enforceability of arbitral awards like court decrees were introduced by the 1996 Act. It included conciliation as a substitute procedure and offered a uniform framework for both domestic and international arbitration. But its effectiveness was weakened by difficulties with

⁴ Sukanya Singha, "Resolving Disputes Through Arbitration in India: Issues & Challenges in International Commercial Arbitration" 44(3) Library of Progress–Library Science, Information Technology & Computer (2024).

⁵ The Real Estate (Regulation and Development) Act, 2016 (Act 16 of 2016).

⁶ The Consumer Protection Act, 2019 (Act 35 of 2019).

⁷ Aishwarya Ajith and Nandita Narayan, "Arbitration and Public Policy in India" (2024).

⁸ The UNCITRAL Model Law on International Commercial Arbitration, 1985.

⁹ The Arbitration and Conciliation Act, 1996 (Act 26 of 1996).

implementation, uneven judicial interpretation and enforcement hold-ups.

The Arbitration and Conciliation (Amendment) Acts of 2015, 2019 and 2021 were important amendments introduced by Parliament in response to these shortcomings. The 2015 amendment prioritized arbitrators' neutrality, established deadlines for arbitral award and attempted to lessen judicial intervention. However, some clauses raised concerns about undue state control, the 2019 amendment created the Arbitration Council of India to advance institutional arbitration¹⁰. The grounds for annulling arbitral awards, especially those involving fraud or corruption, were further clarified by the 2021 amendment. The current legal system is a hybrid model that combines national adaptations with international best practices. Today, arbitration is acknowledged as a parallel dispute resolution system as well as an alternative. However, because of the interaction of consumer protection laws, regulatory statutes such as RERA and the need to protect the public interest, its role in real estate disputes is still up for debate.

III. ARBITRATION IN REAL ESTATE DISPUTES: CHALLENGES

One of the biggest drivers of the Indian economy is the real estate industry, which involves intricate contractual arrangements between investors, landowners, developers, builders and consumers. Conflicts are unavoidable in high-value transactions with numerous stakeholders. Due to the unique nature of real estate disputes and the overlapping statutory regimes governing the industry, arbitration has become a preferred clause in real estate agreements; however, its efficacy is disputed¹¹.

Challenges in Applying Arbitration

Developers, landowners, investors, tenants and individual homebuyers all have intricated contractual relationships that define the real estate industry. Disputes are unavoidable and frequently complex, involving everything from contractual violations to non-compliance with regulations, due to the high stakes and long-term commitments. Assessing the function and extent of arbitration as a dispute resolution mechanism requires an understanding of the nature of these disputes. Notwithstanding its benefits, the use of arbitration in real estate disputes is constrained by several legal and practical issues¹².

¹⁰ Venu Parnami Tuteja and Sanjana Sharma Marwaha, "Arbitration Law and Competition Law: From Distrust to Embrace", in Ipshita Chaturvedi and Anirudh Wadhwa (eds.), *Intellectual Property Rights and Competition Law in India* 218-230 (Routledge, 2024)

¹¹ Saanvi R. Udapa, "Arbitration and Mediation in Real Estate Disputes" 5 *Jus Corpus Law Journal* 146 (2024).

¹² Sukanya Singha, "Resolving Disputes Through Arbitration in India: Issues & Challenges in International Commercial Arbitration," *Library of Progress-Library Science, Information Technology & Computer* 44.3 (2024).

1. Overlap with Consumer Protection Framework

The concurrent jurisdiction of consumer forums under the 2019 Consumer Protection Act is a major obstacle. As "consumers," homebuyers have the right to seek prompt remedies from consumer forums. The Supreme Court affirmed the consumer's right to statutory remedies in *Emaar MGF Land Ltd. v. Aftab Singh*, ruling that consumer disputes cannot be arbitrated even when an arbitration clause is present¹³. This leads to a conflict between the public policy mandate of consumer protection and the autonomy of the parties in arbitration.

2. Interplay with RERA

Real Estate Regulatory Authorities and Appellate Tribunals were established as a sector-specific dispute resolution mechanism with the passage of the Real Estate (Regulation and Development) Act, 2016. RERA requires projects to be registered and gives buyers statutory remedies, such as penalties and refunds. RERA's Section 89 gives the Act supreme authority, casting doubt on the legality of arbitration agreements in builder-buyer contracts¹⁴.

3. Standard Form Contracts and Unequal Bargaining Power

Developers usually draft builder-buyer contracts on their own. Buyers have little to no choice because arbitration clauses are frequently hidden in fine print. This disparity raises concerns about the fairness of sending these kinds of disputes to private arbitration, where individual customers may be harmed by the expense and impartiality of the arbitrators¹⁵.

4. Multiplicity of Forums

The availability of several forums such as civil courts, consumer forums, RERA authorities and arbitral tribunals presents a special difficulty in real estate disputes. Forum shopping is a common practice among parties, which can result in delays, jurisdictional disputes and doubts about the finality of awards¹⁶.

5. Public Policy Considerations

Public interest issues, like homebuyer protection or developer regulation, are often at the centre of real estate disputes. Courts have frequently ruled that disagreements pertaining to fraud, legal infractions or issues impacting the rights of third parties cannot be arbitrated. These further limits arbitration's application in the industry¹⁷.

¹³ *Emaar MGF Land Ltd. v. Aftab Singh* (2019) 12 SCC 751.

¹⁴ The Real Estate (Regulation and Development) Act, 2016 (Act 16 of 2016), s. 89.

¹⁵ Arthur W. Rovine and Arthur W. Rovine, *Contemporary Issues in International Arbitration and Mediation* (Brill, Leiden, 2011).

¹⁶ *Ibid.*

¹⁷ Mesut Akbaba and Giancarlo Capurro (eds.), *International Challenges in Investment Arbitration* (Routledge,

IV. JUDICIAL APPROACH AND CASE LAW ANALYSIS

The arbitrability of real estate disputes has been significantly shaped by the Indian judiciary. Although the 1996 Arbitration and Conciliation Act support party autonomy and little judicial involvement, courts have established exceptions in situations involving consumer protection, statutory remedies, or public policy. A careful balancing act between encouraging arbitration and protecting vulnerable parties, especially homebuyers, is reflected in the judicial approach¹⁸.

Consumer Protection vs. Arbitration

Whether or not real estate consumer disputes can be submitted to arbitration is one of the most important legal issues. At first, there was uncertainty due to contradictory High Court rulings. In *Emaar MGF Land Ltd. v. Aftab Singh* (2019), the Supreme Court upheld the non-arbitrability of consumer disputes, even in cases where builder-buyer agreements contain arbitration clauses¹⁹. The Court emphasized that the remedies available under consumer law are statutory rights granted for the protection of consumers and cannot be revoked by contract. At the same time, the Court made it clear that if consumers choose to arbitrate voluntarily, they still have the choice of going to consumer forums or arbitral tribunals. As a result, arbitration is still legal in theory but has limited application due to the cost and accessibility benefits of consumer forums. This ruling reaffirmed the importance of consumer forums in resolving homebuyers' complaints.

RERA and Arbitration: Overlapping Jurisdiction

The situation became even more complex with the implementation of the Real Estate (Regulation and Development) Act, 2016. RERA offers a specialized forum for the prompt resolution of real estate disputes. RERA's Section 89 grants the Act superseding authority, while Section 79 expressly prohibits civil courts' jurisdiction²⁰. These clauses cast doubt on the arbitrability of RERA-covered disputes.

The Supreme Court ruled in *M/s Imperia Structures Ltd. v. Anil Patni* that consumer forums' jurisdiction is not excluded from the remedies afforded to homebuyers under RERA. Similarly, arbitration cannot supersede RERA's statutory remedies²¹. Nonetheless, the Court left room for interpretation by not explicitly ruling out arbitration. If there isn't a direct conflict, some High

London, 2019).

¹⁸ Saksham Bhatnagar, "Arbitration in Technology Disputes: Addressing Complexities in the Digital Era," *Jus Corpus LJ* 5, 336 (2024).

¹⁹ *Supra* note 11.

²⁰ The Real Estate (Regulation and Development) Act, 2016 (Act 16 of 2016), ss. 79, 89.

²¹ *M/s Imperia Structures Ltd. v. Anil Patni* (2020) 10 SCC 783.

Courts, like the Bombay High Court, have proposed that arbitration may take place concurrently with RERA proceedings. However, uncertainty is maintained by the absence of a consistent judicial position.

Non-Arbitrability and Public Policy Exceptions

Indian courts have maintained for a long time that some types of disputes cannot be arbitrated. A Supreme Court Constitution Bench explained in *Vidya Drolia v. Durga Trading Corporation* that rights in personam (resulting from contractual obligations) are typically arbitrable, but rights in rem (affecting third parties or public rights) are not²². According to this theory, real estate disputes involving specific contractual obligations, like lease disputes or JDAs, may be arbitrable. Arbitration is not appropriate for disputes involving consumer rights or RERA statutory violations, though, as they frequently fall under the purview of rights in rem.

Commercial Real Estate and Arbitration

Commercial real estate conflicts have received more favourable treatment than builder-buyer disputes, which are met with judicial resistance. Courts have typically upheld arbitration clauses in disputes arising from investor-developer contracts or joint development agreements (JDAs), acknowledging that they are commercial in nature and fall under the purview of party autonomy. For instance, the Supreme Court ruled in *Himangni Enterprises v. Kamaljeet Singh Ahluwalia* (2017) that while purely contractual lease disputes not covered by rent control laws may be arbitrated, tenancy disputes under such laws are not²³. The judiciary's readiness to support arbitration in high-value commercial real estate transactions is demonstrated by this distinction.

Enforceability of Arbitral Awards in Real Estate Disputes

The enforcement of arbitral awards is another area under judicial scrutiny. Arbitral awards may be overturned under Section 34 of the Arbitration Act for several reasons, including public policy violations²⁴. Courts have frequently considered awards for fairness in real estate disputes, especially when consumer interests are at stake. For example, awards that fail to penalize unreasonable delays or refund booking amounts have been overturned for violating public policy. The finality and effectiveness of arbitration are compromised, even though this judicial oversight guarantees justice for the weaker parties²⁵.

²² *Vidya Drolia v. Durga Trading Corporation* (2020) 20 SCC 406.

²³ *Himangni Enterprises v. Kamaljeet Singh Ahluwalia* (2017) 10 SCC 706.

²⁴ The Arbitration and Conciliation Act, 1996 (Act 26 of 1996), s. 34.

²⁵ Muhammad Atiab Mahdi, "The Effectiveness of International Commercial Arbitration System and a Critical Analysis?" (2012).

V. CRITICAL ANALYSIS: EFFECTIVENESS AND LIMITATIONS

Arbitration has frequently been presented as the solution to India's overworked legal system. However, its results have been inconsistent in the real estate industry. Although it has some benefits for business stakeholders, its drawbacks are especially apparent in cases involving homebuyers, who make up most claimants²⁶.

Effectiveness of Arbitration in Real Estate

In the real estate industry, arbitration has proven to have certain advantages that make it a workable method in particular types of conflicts. Its effectiveness and adaptability are its main advantages. Under the revised Arbitration and Conciliation Act, arbitration is subject to set deadlines for award delivery, in contrast to traditional litigation, which frequently drags on for years. In real estate disputes, where adjudication delays have a direct impact on project completion, home possession and financial commitments, this is especially crucial²⁷.

The idea of party autonomy is another aspect of its efficacy. Through arbitration, parties can choose arbitrators with specialized expertise in fields like finance, real estate or construction, guaranteeing a more knowledgeable and technically sound decision. This feature is particularly helpful in business disputes where the intricacies of project financing, construction schedules and valuation are at the heart of the conflict, such as joint development agreements and investor-developer disputes. Confidentiality is guaranteed by arbitration, which is important to big developers and investors who don't want to risk bad press or reputational harm from litigation in public courts. Even during heated disagreements, parties can protect business continuity and maintain commercial relationships thanks to arbitration's private nature²⁸.

Limitations and Challenges

Notwithstanding these benefits, arbitration has severe and widespread drawbacks in the real estate industry. The most basic problem is that builders and homebuyers have different bargaining power. Developers typically draft arbitration clauses in builder-buyer agreements on their own, specifying the arbitrators to be used, the arbitration's location and procedural provisions that favour developers. Arbitration turns into a costly and intimidating procedure for individual consumers, who frequently lack the financial and legal means to participate. The very accessibility and fairness that dispute resolution procedures are supposed to ensure are

²⁶ Adil Mehmood Malik, et al., "A Deep Dive into International Commercial Arbitration, The Key Concepts, Major Arbitral Institutions, Potential Benefits and Drawbacks," *Law Research Journal* 3.1, 33–49 (2025).

²⁷ *Ibid.*

²⁸ Allan A. Abwunza, Titus K. Peter, et al., "Explaining the Ineffectiveness of Construction Arbitration," *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* 14.2, 04522009 (2022).

compromised by this²⁹.

The conflict between arbitration and statutory remedies under consumer protection laws and the Real Estate (Regulation and Development) Act, 2016 (RERA) is another major obstacle. The purpose of both frameworks was to protect weaker parties and give them quick and affordable remedies³⁰. Arbitration has become less relevant in consumer-centric disputes because of courts' repeated preference for these statutory remedies. Arbitration frequently falls short of its claims of efficiency and speed. The duration of disputes is prolonged by procedural delays as well as thorough judicial review under Sections 34 and 37 of the Arbitration Act. Consumers are further deterred by the high expense of hiring arbitrators and legal counsel, which makes arbitration a less alluring choice than consumer forums or RERA authorities³¹.

The issue of multiple forums continues to exist as well. There are opportunities for forum shopping and jurisdictional confusion when real estate disputes are brought before consumer forums, RERA authorities, civil courts and arbitral tribunals. Arbitration will continue to play a supporting role in settling the most important conflicts in the industry, especially those involving homebuyers, until these overlapping mechanisms are unified. In the end, arbitration has fallen short of its potential as a universal dispute resolution process in the larger real estate sector, even though it might work well in business real estate transactions involving parties of equal strength³².

VI. CONCLUSION

India's arbitration history shows both advancement and hesitancy. Although India's dispute resolution system has been greatly modernized by the Arbitration and Conciliation Act, 1996 and its later amendments, the use of arbitration in the real estate industry reveals significant limitations. Judicial interpretation has consistently excluded builder-buyer disputes, which make up most real estate conflicts, from arbitration in favour of statutory remedies under RERA and consumer law. Courts have limited the role of private adjudication in cases involving weaker parties by defending this stance on the grounds of consumer protection and public policy³³.

²⁹ Aparna Aggarwal, "A Critical Analysis on Arbitration Clauses and International Contracts," available at SSRN 4529993 (2023) (last visited on 23 August 2025).

³⁰ Mohit Bhardwaj, "Arbitration and International Commercial Arbitration: A Critical Analysis," available at SSRN 4609709 (2023) (last visited on 27 August 2025).

³¹ The Arbitration and Conciliation Act, 1996 (Act 26 of 1996), ss. 34, 37.

³² Shiva Prasad Sharma Paudel, *Assessing Effectiveness of Arbitration in Resolving Construction Contract Disputes in Nepal* (2022) (Unpublished dissertation, Department of Public Administration).

³³ Shadat Mohmed Semakula, "A Critical Analysis of the Arbitration and Conciliation Act of Uganda," *Islamic University in Uganda Journal of Comparative Law* 6.1, 251–280 (2019).

However, in commercial real estate disputes where parties negotiate from positions of relative equality, such as joint development agreements, investor-developer conflicts and high-value leases, arbitration has proven useful. Arbitration has proven to be a reliable substitute for litigation in these situations because it has provided efficiency, flexibility and confidentiality. Thus, the judicial approach is a dual model that is restrictive in consumer-centric disputes but pro-arbitration in commercial contexts.

This dichotomy highlights a more profound policy conundrum. Should statutory and public interest concerns restrict the scope of arbitration, or should it be promoted as a universal dispute resolution mechanism? A one-size-fits-all approach is neither desirable nor practical, according to India's experience. The difficulty is in balancing arbitration with legal and consumer protection frameworks so that fairness is not sacrificed for efficiency.

VII. RECOMMENDATIONS

Given the difficulties noted, specific policy changes and reforms are required to improve arbitration's function in real estate disputes and guarantee that it complies with legal safeguards.

1. Harmonisation of Statutes

Legislative clarification regarding the interactions between the Arbitration Act, RERA and the Consumer Protection Act is the most urgent need. By preventing jurisdictional conflicts and forum shopping, clear statutory guidance would expedite the dispute resolution process.

2. Specialised Real Estate Arbitration Panels

Consumer confidence could be increased or it could be decreased and industry-specific arbitration panels could be established under institutional frameworks. By working in tandem with RERA, these panels could guarantee that arbitral awards are consistent with legal safeguards.

3. Mandatory Disclosure and Fairness of Arbitration Clauses

Stricter scrutiny should be applied to builder-buyer agreements and arbitration clauses should be required to be disclosed in plain, consumer-friendly language. To maintain impartiality and equity throughout the process, developers should not be allowed to select arbitrators on their own.

4. Integration with RERA Mechanisms

A hybrid strategy could be used in place of viewing arbitration and RERA as rival forums. Arbitral tribunals may decide financial and contractual disputes under supervision to safeguard

consumer rights, while RERA authorities may serve as first-level regulators.

5. Cost Regulation and Accessibility

Expensive prices continue to be a big turnoff for buyers. To make arbitration more accessible and affordable for individual homebuyers, institutional arbitration centres ought to implement graded fee structures for real estate disputes.

6. Judicial Restraint and Finality of Awards

Except in cases involving statutory violations or the public interest, courts should refrain from interfering too much with arbitral awards in purely contractual real estate disputes. This would strengthen arbitration's effectiveness and legitimacy as a last resort for decision-making.
