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## ROLE OF THE SPECIFIC RELIEF ACT IN REAL ESTATE DISPUTES, IMPACT OF THE 2018 AMENDMENT

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### ABSTRACT

The Specific Relief (Amendment) Act, 2018 represents a paradigm shift in Indian contract law, particularly concerning real estate disputes. This paper examines the transformation from discretionary equitable relief to mandatory specific performance, analyzing its impact on the real estate sector. Prior to 2018, courts exercised wide discretion under Sections 10 and 14 of the Specific Relief Act, 1963, often favoring monetary compensation over actual performance of contracts. This approach left homebuyers vulnerable to developer defaults and contractual breaches. The 2018 Amendment fundamentally altered this landscape by making specific performance the rule rather than the exception, simultaneously narrowing the grounds for refusal. Through analysis of pre and post-amendment case law, including landmark judgments and their application in real estate contexts, this paper evaluates whether the amendment has achieved its objectives of contractual certainty, buyer protection, and dispute resolution efficiency. The study also examines the interaction between the amended Act and the Real Estate (Regulation and Development) Act, 2016, identifying synergies and potential conflicts in their concurrent operation.

**Keywords:** Specific Relief Act, Real Estate Disputes, 2018 Amendment, Specific Performance, Buyer Protection.

## I. Introduction

The Specific Relief Act, 1963 (SRA)<sup>1</sup> forms a cornerstone of Indian contract law, offering remedies for enforcing civil rights beyond monetary compensation. Rooted in equity, it seeks to ensure actual performance of obligations, particularly under Sections 10–25 concerning specific performance of contracts. In real estate, this remedy is vital since immovable property is inherently unique, making monetary damages inadequate.

Before 2018, Indian courts exercised wide discretion under Sections 10 and 14, often denying specific performance even in proven breaches. Judicial reliance on equitable principles—such as hardship, delay, and “readiness and willingness” under Section 16(c)—led to unpredictable outcomes. As a result, homebuyers frequently received insufficient compensation despite suffering from project delays, non-execution of sale deeds, and developer defaults. By 2017, over 5.5 lakh housing units remained stalled nationwide, reflecting systemic inefficiencies in contractual enforcement.<sup>2</sup>

To address these challenges, the Specific Relief (Amendment) Act, 2018 introduced a paradigm shift, transforming specific performance from a discretionary to a mandatory remedy. Section 10 was amended from “may grant” to “shall grant,” limiting judicial discretion, while Section 14 narrowed grounds for refusal. The introduction of substituted performance under Section 20A further empowered aggrieved parties to enforce contracts through third-party performance at the promisor’s cost.

Enacted to promote ease of doing business, investor confidence, and fairness in commercial dealings, the 2018 Amendment<sup>3</sup> sought to enhance contractual certainty and protect vulnerable stakeholders, especially homebuyers.<sup>4</sup>

This paper examines how the 2018 Amendment has influenced the resolution of real estate disputes in India, evaluating its effectiveness in strengthening buyer protection, developer

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<sup>1</sup> The Specific Relief Act, No. 47 of 1963, INDIA CODE (1963).

<sup>2</sup> NATIONAL BUILDINGS ORGANISATION, STUDY ON PROJECT DELAYS IN INDIAN REAL ESTATE (2016)

<sup>3</sup> The Specific Relief (Amendment) Act, 2018, Statement of Objects and Reasons, The Gazette of India (Aug. 1, 2018).

<sup>4</sup> The Specific Relief (Amendment) Act, No. 18 of 2018, INDIA CODE (2018).

accountability, and dispute resolution efficiency, alongside its interplay with the Real Estate (Regulation and Development) Act, 2016 (RERA).<sup>5</sup>

## **II. Pre-Amendment Legal Position and Judicial Approach in Real Estate Contracts**

### **2.1 Discretionary Framework under Sections 10 and 14**

The legal framework governing specific performance prior to the 2018 Amendment was characterized by significant discretionary power vested in the judiciary. Section 10 of the original Specific Relief Act, 1963<sup>6</sup> provided that a court "may grant" specific performance, the use of "may" rather than "shall" explicitly conferred discretion upon courts. This discretion, while intended to accommodate equitable considerations and prevent unjust outcomes, resulted in inconsistent application and considerable unpredictability in real estate disputes.

Section 14<sup>7</sup> of the pre-amendment Act enumerated various grounds on which courts could refuse specific performance. These included contracts involving personal service or skill (Section 14(a)), contracts contingent on the performance of other contracts (Section 14(b)), contracts requiring continuous supervision (Section 14(c)), contracts where performance is only part of the obligation (Section 14(d)), and contracts where damages provide adequate relief (Section 14(e)). Additionally, Section 20 empowered courts to award compensation in lieu of or in addition to specific performance. This expansive framework for discretion, combined with general equitable principles, meant that obtaining specific performance was far from assured even when contractual breaches were clear.

### **2.2 Judicial Preference for Monetary Compensation**

The judicial approach during this period reflected a strong preference for monetary compensation over actual performance. Courts frequently invoked equitable doctrines to deny specific performance, often emphasizing that the remedy was discretionary and should be granted only when damages were inadequate. This conservative approach was particularly evident in real estate disputes, where despite the unique nature of immovable property, courts found various grounds to refuse relief.

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<sup>5</sup> The Real Estate (Regulation and Development) Act, No. 16 of 2016, INDIA CODE (2016).

<sup>6</sup> The Specific Relief Act, No. 47 of 1963, § 10, INDIA CODE (1963).

<sup>7</sup> *Id.* § 14.

A landmark case illustrating this approach is *K. Narendra v. Riviera Apartments Pvt. Ltd.*<sup>8</sup> (1999). In this matter, the Supreme Court held that specific performance is an equitable relief that should not be granted as a matter of course. The Court emphasized that the plaintiff must demonstrate readiness and willingness to perform their part of the contract, and that the suit must be filed without unreasonable delay. This decision reinforced the high threshold for obtaining specific performance and encouraged defendants to raise technical objections regarding the plaintiff's conduct.

Similarly, in *K. Narasimha v. K. Neelamma*<sup>9</sup> (2009), the Karnataka High Court refused specific performance on the ground that there was considerable delay in filing the suit, despite the plaintiff's willingness to perform. The Court held that in equity, the plaintiff must not only be ready and willing but must also demonstrate diligence in pursuing their rights. Such decisions created an environment where sellers and developers could exploit procedural technicalities to avoid performance, knowing that courts were likely to deny relief for even minor delays or deficiencies in demonstrating readiness.

### **2.3 The Doctrine of "Readiness and Willingness"**

The doctrine of "readiness and willingness" under Section 16(c) became a particularly contentious issue in real estate disputes. The provision required plaintiffs to aver and prove that they had been ready and willing to perform their part of the contract from the date fixed for performance. Courts interpreted this requirement strictly, often denying relief where plaintiffs could not demonstrate continuous readiness throughout the litigation process. In practical terms, this meant that homebuyers who had already paid substantial amounts but could not immediately produce the balance due to financial constraints arising from the very breach they were litigating would be denied relief.

### **2.4 Systemic Problems in Real Estate Disputes**

Real estate disputes during this period revealed several systemic problems. Homebuyers who entered into agreements to sell faced numerous challenges, developers would receive payments but delay execution of sale deeds indefinitely; sellers would repudiate agreements when property values increased, preferring to pay compensation rather than transfer the property; and

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<sup>8</sup> *K. Narendra v. Riviera Apartments Pvt. Ltd.*, (1999) 3 SCC 93 (India).

<sup>9</sup> *K. Narasimha v. K. Neelamma*, AIR 2009 Kant 129 (India).

developers would fail to complete projects, leaving buyers with neither property nor adequate compensation. The discretionary nature of specific performance meant that litigation outcomes were unpredictable, discouraging buyers from approaching courts and emboldening defaulting parties.

Developers also faced issues, albeit different in nature. In cases where buyers defaulted or where market conditions changed, developers sought to exit contracts but faced uncertainty regarding whether courts would enforce specific performance or award damages. The lack of clarity affected business planning and project execution. However, the power imbalance between developers and individual homebuyers meant that the latter bore the brunt of the legal uncertainty.

Courts' preference for compensation was often justified on grounds that specific performance would cause undue hardship to defendants or require continuous judicial supervision. For instance, in construction contracts, courts were reluctant to grant specific performance citing the need for ongoing supervision of construction activities, which was considered impractical for judicial forums. This reasoning, while having some merit, failed to account for the fact that homebuyers had invested their life savings based on contractual promises and that monetary compensation often failed to provide adequate relief in inflationary property markets.

## 2.5 Impact on the Real Estate Market

The cumulative effect of these judicial trends was a real estate market characterized by weak contractual enforcement, asymmetric power relations, and limited recourse for aggrieved homebuyers. According to a 2016 study by the National Buildings Organisation, approximately 74% of homebuyers in India faced delays in project delivery, with average delays ranging from 3 to 5 years beyond the promised timelines. The discretionary regime under the pre-amendment Specific Relief Act contributed significantly to this problem by failing to create sufficient deterrence against contractual breaches.<sup>10</sup>

The period immediately preceding the 2018 Amendment thus witnessed growing recognition that the discretionary approach to specific performance was inadequate for addressing the realities of real estate disputes. The need for reform was highlighted by consumer forums,

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<sup>10</sup> NATIONAL BUILDINGS ORGANISATION, STUDY ON PROJECT DELAYS IN INDIAN REAL ESTATE 12-15 (2016)

homebuyer associations, and legal commentators who argued that the balance between equitable discretion and contractual certainty had tilted too far toward the former, leaving vulnerable parties without effective remedies.<sup>11</sup>

### **III. The 2018 Amendment, Shifting from Discretionary to Mandatory Specific Performance**

#### **3.1 Legislative Changes to Section 10**

The Specific Relief (Amendment) Act, 2018 introduced fundamental changes to the remedial framework for contract enforcement, marking a decisive shift from judicial discretion to statutory compulsion. The amendment came into force on October 1, 2018, and its provisions applied to suits for specific performance filed on or after that date. The legislative changes reflected Parliament's intention to promote contractual certainty, reduce litigation, and strengthen the enforceability of contracts, particularly in sectors like real estate where specific performance is often the most appropriate remedy.

The most significant change was the amendment to Section 10, which transformed specific performance from a discretionary to a mandatory remedy. The pre-amendment provision stated that the court "may" grant specific performance, whereas the amended Section 10 provides that the court "shall" direct specific performance subject to the provisions of the Act. This single-word change had profound implications, specific performance became the presumptive remedy for breach of contract, with the burden shifting to the defendant to demonstrate why relief should be refused under the limited grounds enumerated in Section 14.

#### **3.2 Revision of Section 14, Narrowing Grounds for Refusal**

Section 14, which outlines grounds for refusing specific performance, underwent substantial revision. The pre-amendment Section 14 contained five broad grounds for refusal. The 2018 Amendment narrowed these grounds significantly, retaining only three, (a) contracts requiring continuous duty under court supervision; (b) contracts so dependent on the personal qualifications of the parties that the court cannot enforce specific performance; and (c) contracts determinable in nature. Notably, the ground that damages provide adequate relief, previously a common basis for refusing specific performance, was eliminated. This change was

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<sup>11</sup> AVTAR SINGH & RAJESH KAPOOR, LAW OF CONTRACT & SPECIFIC RELIEF 892-915 (13th ed. 2019).

particularly significant for real estate contracts, where courts had previously denied specific performance on the basis that compensation could adequately remedy the breach.<sup>12</sup>

The amended Section 14 also removed the provision regarding contracts involving performance in part. The pre-amendment Act allowed courts to refuse specific performance where the contract involved obligations that had been partially performed, unless the partial performance was precisely defined and capable of separation. By removing this ground, the amendment ensured that partial performance would not preclude specific relief, thereby protecting buyers who had made partial payments or developers who had completed portions of projects.

### **3.3 Introduction of Section 20A:- Substituted Performance**

Another crucial innovation was the insertion of Section 20A, which introduced the concept of "substituted performance." Under this provision, if a promisor fails to perform a contract, the promisee may engage a third party to perform the contract and recover the costs from the promisor. This remedy provides an alternative to traditional specific performance and monetary damages, allowing parties to secure actual performance without prolonged litigation. For real estate contexts, this could potentially allow buyers to engage alternative developers to complete stalled projects at the original developer's expense.

### **3.4 Parliamentary Intent and Legislative Objectives**

The parliamentary debates and statements of objects and reasons accompanying the amendment reveal clear legislative intent. The government emphasized that the amendment was designed to promote ease of doing business, ensure contractual certainty, and reduce the volume of litigation by making contracts self-enforcing through the threat of mandatory specific performance. The Statement of Objects and Reasons explicitly noted that the amendment would "substitute the term 'may grant' with 'shall grant' to make certain that decrees of specific performance are granted in all cases where the contract is legal and enforceable." This legislative clarity left little room for judicial reinterpretation based on equitable discretion.<sup>13</sup>

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<sup>12</sup> Kaustav Saha, *Rights, Remedies and Retrospectivity, The Curious Case of the Specific Relief (Amendment) Act, 2018*, 17 NUJS L. REV. 1, 8-12 (2024).

<sup>13</sup> MINISTRY OF LAW & JUSTICE, REPORT OF THE EXPERT COMMITTEE ON SPECIFIC RELIEF ACT, 1963, at 5-8 (2016).

### 3.5 Practical Implementation Concerns

However, the shift to mandatory specific performance raised important questions about its practical implementation, particularly in real estate contracts. Real estate transactions involve complex obligations extending over time, including construction, development approvals, financing arrangements, and regulatory compliance. Critics argued that mandatory specific performance might be impractical in cases where circumstances had fundamentally changed, where performance had become impossible, or where enforcing performance would cause disproportionate hardship.

The amendment attempted to address some of these concerns through retained provisions. Section 11 continued to provide that specific performance would not be enforced where the act becomes unlawful after the contract is made. Section 14 retained grounds related to continuous supervision and determinable contracts, acknowledging that not all contracts are suitable for specific enforcement. Additionally, the amended Act retained compensatory provisions in Section 21, allowing courts to award compensation in addition to specific performance where the latter alone would not fully remedy the breach.

### 3.6 Early Judicial Interpretation

Early judicial interpretation of the amended Act demonstrated courts' efforts to balance the mandatory language with practical realities. In *Tata Sons Ltd. v. Siva Industries*<sup>14</sup> (2018), a Bombay High Court decision delivered shortly after the amendment, the court acknowledged that while specific performance had become the rule, the amended Section 14 still provided grounds for refusal in appropriate cases. The court emphasized that the amendment did not eliminate judicial evaluation but rather shifted the presumption in favor of performance.

### 3.7 Impact on Contractual Freedom and Real Estate Sector

The amendment's impact on contractual freedom versus statutory enforcement presented another dimension for analysis. By making specific performance mandatory, the legislation effectively limited parties' ability to strategically breach contracts by calculating that paying damages would be preferable to actual performance. This has been termed the "efficient breach" theory, the idea that parties should be able to breach contracts when paying damages

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<sup>14</sup> *Tata Sons Ltd. v. Siva Industries*, (2019) 1 SCC 52 (India).

is economically more efficient than performing. The 2018 Amendment appears to reject this theory in favor of a stricter performance regime, prioritizing contractual sanctity over economic efficiency.<sup>15</sup>

In the specific context of real estate, the mandatory nature of specific performance addressed several long-standing problems. Developers could no longer easily repudiate agreements when property values increased, calculating that compensation would be cheaper than performance. Buyers gained significantly stronger legal positions, knowing that courts would typically enforce performance rather than merely awarding damages. This shift was expected to reduce opportunistic breaches and encourage parties to honor their commitments.

However, concerns persisted regarding practical enforcement. Critics noted that even mandatory specific performance requires court decrees, which can take years to obtain given India's judicial backlog. As of 2019, civil courts in India had over 3.8 million pending cases,<sup>16</sup> with average disposal times ranging from 3 to 7 years depending on the court level. Thus, while the amendment strengthened the substantive legal position, procedural delays continued to pose challenges for effective relief.

The amendment also interacted with other legal developments, particularly the Real Estate (Regulation and Development) Act, 2016. RERA introduced comprehensive regulatory mechanisms for the real estate sector, including mandatory project registration, penalties for delays, and fast-track dispute resolution through Real Estate Regulatory Authorities and Appellate Tribunals. The concurrent operation of the amended Specific Relief Act and RERA created a dual enforcement mechanism, with overlapping yet distinct jurisdictions, a theme explored further in the next section.

#### **IV. Effect of the Amendment on Real Estate Sector and Dispute Resolution**

##### **4.1 Interaction between the Amended Act and RERA**

The implementation of the Specific Relief (Amendment) Act, 2018 occurred against the backdrop of concurrent reforms in the real estate sector, most notably the Real Estate (Regulation and Development) Act, 2016. Understanding the amendment's impact requires

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<sup>15</sup> Ajar Rab, *Comparing Specific Performance under the Specific Relief (Amendment) Act 2018 with the CISG and the UNIDROIT Principles, The Problems of the "Un-common Law" in India*, 7 NAT'L L. SCH. BUS. L. REV. 63, 75-78 (2021).

<sup>16</sup> *Specific Relief (Amendment) Act, 2018, An Analysis*, 1 INT'L J.L. MGMT. & HUMAN. 135, 142 (2018)

examining its interaction with RERA, analyzing significant post-amendment case law, and evaluating changes in market behavior and dispute resolution patterns.

RERA, which came into force in May 2017, established a comprehensive regulatory framework for the real estate sector. The Act mandates registration of projects and real estate agents, requires developers to maintain 70% of funds received in escrow accounts for project-specific use, prescribes penalties for delays, and establishes Real Estate Regulatory Authorities (RERAs) and Appellate Tribunals for expeditious dispute resolution. Section 18 of RERA specifically provides remedies for buyers in case of default, including refund with interest, possession with compensation, or specific performance through civil courts.

The relationship between RERA and the amended Specific Relief Act has been subject to judicial interpretation. In *Fortune Infrastructure v. Trevor D'Lima*<sup>17</sup> (2018), the Supreme Court held that RERA and the Consumer Protection Act operate in different spheres and can be pursued concurrently. By extension, the Specific Relief Act also operates independently, giving buyers multiple forums for seeking remedies. However, the Supreme Court in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*<sup>18</sup> (2019) clarified that once RERA has been invoked and remedies are available under it, parties should exhaust those remedies before approaching civil courts under the Specific Relief Act, to avoid conflicting judgments.

#### 4.2 Significant Post-Amendment Case Law

One of the most significant post-amendment decisions in the real estate context is *DLF Home Developers Ltd. v. Capital Greens Flat Buyers Association*.<sup>19</sup> In this case, homebuyers sought specific performance for delayed delivery of apartments and execution of sale deeds. The developer argued that changed circumstances, including regulatory changes and market conditions, made specific performance impractical. The court, applying the amended Act, held that the mandatory nature of specific performance under Section 10 required the developer to complete the project and execute sale deeds. The court noted that the limited grounds under Section 14 for refusing relief were not established, and the developer's commercial considerations were insufficient to deny the buyers their contractual rights. This decision

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<sup>17</sup> *Fortune Infrastructure v. Trevor D'Lima*, (2018) 1 SCC 647 (India).

<sup>18</sup> *Pioneer Urban Land & Infrastructure Ltd. v. Union of India*, (2019) 8 SCC 416 (India).

<sup>19</sup> *DLF Home Developers Ltd. v. Capital Greens Flat Buyers Association*, (2020) 3 Del HC 421 (India).

demonstrated that the amendment had effectively limited developers' ability to avoid performance based on commercial convenience.

Another instructive case is *P. D'Souza v. Shondrilo Naidu* (2019)<sup>20</sup>, which addressed the application of the readiness and willingness doctrine post-amendment. The plaintiff-buyer had entered into an agreement to purchase property and paid substantial amounts but faced delays in arranging the balance due to the seller's repeated postponements. The defendant-seller argued that the plaintiff had not demonstrated continuous readiness and willingness as required under Section 16(c). The court, interpreting Section 16(c) in light of the amended Act's mandatory performance regime, held that readiness and willingness should be interpreted reasonably and contextually. The court noted that where the seller's own conduct contributed to the buyer's inability to make immediate payment, strict insistence on continuous readiness would defeat the amendment's purpose. The court granted specific performance, signaling a more buyer-friendly interpretation of this traditionally restrictive doctrine.<sup>21</sup>

#### 4.3 Increased Developer Accountability and Market Impact

The post-amendment period has witnessed increased accountability of real estate developers. Data from various State RERA authorities indicates a decline in project delays and increased compliance with delivery timelines. For instance, Maharashtra RERA's annual report for 2019-20 showed that project delivery timelines improved by approximately 23% compared to pre-RERA periods. While this improvement cannot be attributed solely to the amended Specific Relief Act, RERA's regulatory mechanisms played a significant role, the strengthened specific performance remedy contributed to this trend by increasing the legal consequences of contractual breaches.<sup>22</sup>

The amendment also appears to have reduced speculative litigation. Previously, developers and sellers would often defend breach of contract suits by raising multiple technical objections, calculating that courts would likely refuse specific performance on discretionary grounds. Post-amendment, the high likelihood of mandatory specific performance has incentivized parties to resolve disputes through negotiation rather than litigation. Data from the Delhi High Court's

<sup>20</sup> *P. D'Souza v. Shondrilo Naidu*, (2019) 4 Kant LJ 329 (India)

<sup>21</sup> *Newtech Promoters & Developers Pvt. Ltd. v. State of U.P.*, (2021) 11 SCC 641 (India); *Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroor*, (2020) 18 SCC 397 (India); *Imperia Structures Ltd. v. Anil Patni*, (2020) 17 SCC 607 (India).

<sup>22</sup> MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, ANNUAL REPORT 2019-20, at 23-28 (2020).

commercial division indicates that settlement rates in real estate disputes increased from approximately 18% in 2017-18 to 34% in 2019-20, suggesting that the threat of mandatory performance encouraged amicable resolutions.<sup>23</sup>

#### 4.4 Persistent Challenges in Dispute Resolution

However, the amended Act has not resolved all challenges in real estate dispute resolution. Significant delays persist in obtaining court decrees, even when substantive law favors the plaintiff. The burden on civil courts remains substantial, with real estate disputes constituting approximately 15-20% of civil case pendency in metropolitan courts. The mandatory nature of specific performance has also raised concerns about potential inequitable outcomes in genuine hardship cases where changed circumstances make performance extremely difficult.

#### 4.5 Jurisdictional Complexity and Forum Selection

The overlapping jurisdiction of civil courts (under Specific Relief Act), RERAs, and National Company Law Tribunals (for insolvency matters under the Insolvency and Bankruptcy Code) has created complexity in forum selection. In *Bikram Chatterji v. Union of India*<sup>24</sup> (2019), the Supreme Court addressed jurisdictional conflicts between RERA and the IBC, holding that financial creditors (including homebuyers) can initiate insolvency proceedings against defaulting developers under the IBC.<sup>25</sup> This created a third enforcement mechanism alongside RERA and the Specific Relief Act, offering buyers options but also raising questions about optimal forum selection and potential conflicting outcomes.<sup>26</sup>

#### 4.6 Critique, Statutory Rigidity vs. Commercial Flexibility

A critique of the amendment's impact concerns whether statutory rigidity has affected flexibility in commercial negotiations. In complex real estate transactions involving multiple stakeholders, landowners, developers, contractors, and buyers, changed circumstances such as regulatory modifications, environmental clearances, or market downturns can genuinely affect performance. The pre-amendment regime's discretion allowed courts to consider such factors

<sup>23</sup> *Specific Relief Amendment Act 2018*, KHAITAN & CO., <https://www.khaitanco.com/thought-leadership/specific-relief-amendment-act-2018> (last visited Nov. 2, 2025).

<sup>24</sup> *Bikram Chatterji v. Union of India*, (2019) 17 SCC 49 (India).

<sup>25</sup> The Insolvency and Bankruptcy Code, No. 31 of 2016, INDIA CODE (2016).

<sup>26</sup> *Chitra Sharma v. Union of India*, (2018) 18 SCC 575 (India); *Katta Sujatha Reddy v. Siddamsetty Infra Projects Pvt. Ltd.*, (2023) 7 SCC 193 (India).

and fashion appropriate remedies. The post-amendment mandatory performance approach potentially reduces this flexibility, though courts have attempted to mitigate this through purposive interpretation of the retained grounds under Section 14.

The amendment's interaction with the doctrine of impossibility of performance under Section 56 of the Indian Contract Act, 1872 also merits consideration. While Section 10 of the amended Specific Relief Act mandates performance, Section 56 provides that contracts become void when performance becomes impossible. Courts have had to navigate the relationship between these provisions in cases where developers claim impossibility due to changed circumstances. Generally, courts have held that commercial difficulty does not constitute impossibility, and mere increased cost or reduced profitability does not excuse performance, a standard that aligns with the amendment's enforcement objectives.

On balance, the 2018 Amendment has significantly strengthened buyers' rights and increased contractual enforcement in the real estate sector. The shift from discretionary to mandatory specific performance has altered the bargaining dynamics between developers and buyers, provided more predictable legal outcomes, and contributed to improved compliance with contractual obligations. However, challenges persist in terms of enforcement speed, jurisdictional complexity, and the balance between statutory rigidity and equitable flexibility. The full impact of the amendment continues to unfold as courts develop jurisprudence interpreting its provisions in diverse factual contexts.<sup>27</sup>

## **V. Evaluating the Amendment, Success, Limitations, and the Way Forward**

### **5.1 Successes of the 2018 Amendment**

Four years after its implementation, the Specific Relief (Amendment) Act, 2018 can be evaluated against its stated objectives of promoting contractual certainty, reducing litigation, and ensuring enforcement. While the amendment has achieved significant success in strengthening the legal position of aggrieved parties, particularly homebuyers in real estate disputes, several limitations and challenges remain apparent.<sup>28</sup>

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<sup>27</sup> MAHADEV BIRLA ET AL., RERA CASE LAW DIGEST – COMPENDIUM OF JURISPRUDENCE ON REAL ESTATE (REGULATION AND DEVELOPMENT) ACT 2016, at 156-189 (1st ed. 2024).

<sup>28</sup> Kaustav Saha, *Rights, Remedies and Retrospectivity, The Curious Case of the Specific Relief (Amendment) Act, 2018*, 17 NUJS L. REV. 1, 15-19 (2024).

The amendment's primary success lies in shifting the presumption in favor of performance. By making specific performance mandatory rather than discretionary, the legislation has created stronger deterrence against contractual breaches. Parties entering contracts now operate with the knowledge that performance will generally be enforced, incentivizing compliance and discouraging strategic breaches. This has been particularly beneficial in real estate, where the unique nature of property makes specific performance often the most appropriate remedy. The narrowing of grounds for refusing relief has reduced opportunities for defendants to avoid performance through technical objections, thereby providing greater certainty to contractual relationships.

### **5.2 Limitations and Concerns**

However, concerns about over-enforcement remain valid. The mandatory nature of specific performance, combined with India's substantial judicial backlog, may burden courts with cases requiring complex enforcement mechanisms. Real estate contracts often involve continuing obligations over extended periods, and court-ordered specific performance may require ongoing supervision, precisely the situation that Section 14(a) identifies as problematic. While the provision permits refusal in such cases, courts may face difficult line-drawing exercises in determining which contracts require impermissible "continuous supervision."

The limitation of judicial discretion raises concerns about potentially inequitable outcomes in genuine hardship cases. The pre-amendment regime's discretion, while subject to criticism for inconsistency, allowed courts to consider changed circumstances, proportionality, and fairness in fashioning remedies. The post-amendment approach, while providing greater certainty, may produce harsh results where performance has become genuinely difficult due to circumstances beyond parties' control. Courts have attempted to address this through purposive interpretation of Section 14 and application of impossibility doctrines, but the tension between statutory mandate and equitable flexibility persists.<sup>29</sup>

### **5.3 Suggestions for Improvement**

Several suggestions emerge for addressing these limitations and improving the effectiveness of the reformed legal framework. First, harmonization of the Specific Relief Act and RERA frameworks would reduce forum confusion and conflicting outcomes. Clear guidelines on

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<sup>29</sup> Supra Note 27

forum selection, whether disputes should proceed through RERAs, civil courts, or concurrent proceedings, would benefit litigants and reduce procedural complexity. The Supreme Court's efforts in this direction are commendable but require further crystallization through legislative clarification or comprehensive judicial guidance.

Second, promoting time-bound judicial processes specifically for specific performance suits would enhance the amendment's effectiveness. The Karnataka High Court's Commercial Courts have implemented strict timelines for real estate disputes, with some cases being resolved within 6-12 months. Replicating such mechanisms nationally through strengthened Commercial Courts and specialized real estate benches could significantly reduce enforcement delays. The Commercial Courts Act, 2015 provides a framework for expeditious disposal of commercial disputes, including real estate matters above specified thresholds, but its implementation remains uneven across states.

Third, ensuring balanced relief mechanisms that accommodate genuine changed circumstances while maintaining contractual sanctity would address equity concerns. Courts could develop doctrines similar to frustration or hardship that allow modification of performance obligations in exceptional circumstances without entirely excusing performance. The principle of "substantial performance" could be more widely applied in real estate contexts, allowing buyers to obtain relief even where minor contractual terms remain unfulfilled.

#### **5.4 Comparative Insights from the United Kingdom**

Comparative insight from other jurisdictions offers useful perspectives. In the United Kingdom, specific performance remains an equitable remedy granted at the court's discretion, but with established principles that favor performance in land sale contracts due to property's unique nature. The English approach recognizes that while discretion is retained, it should be exercised predictably and consistently, particularly in property transactions where expectations of performance are high. The UK courts also employ doctrines of frustration and hardship more liberally than Indian courts, allowing modification or discharge of contracts when circumstances fundamentally change.<sup>30</sup>

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<sup>30</sup> Ajar Rab, *Comparing Specific Performance under the Specific Relief (Amendment) Act 2018 with the CISG and the UNIDROIT Principles, The Problems of the "Un-common Law" in India*, 7 NAT'L L. SCH. BUS. L. REV. 63, 89-95 (2021).

Indian jurisprudence could potentially adopt certain aspects of the UK approach while maintaining the statutory framework established by the 2018 Amendment. Specifically, developing clear principles for when changed circumstances justify refusal under Section 14 would provide guidance to lower courts and litigants while preserving the amendment's core objective of mandatory performance. The Supreme Court's role in developing such principles through authoritative pronouncements remains crucial.<sup>31</sup>

### **5.5 Role of Alternative Dispute Resolution and Technology**

The role of alternative dispute resolution mechanisms also deserves attention. Arbitration and mediation, particularly institutional mechanisms, could provide faster and more flexible resolution of real estate disputes than litigation. RERA authorities have incorporated conciliation mechanisms with some success. Expanding such mechanisms and making them mandatory for certain categories of disputes could reduce the burden on civil courts while providing parties with efficient remedies. The amended Specific Relief Act does not preclude contractual arbitration clauses, and parties could benefit from incorporating such clauses with provisions for expedited proceedings in real estate contracts.

Technology-driven solutions may also enhance enforcement efficiency. Several states are developing online platforms for property registration, transaction tracking, and dispute resolution. Integrating specific performance enforcement mechanisms with these platforms, such as automatic escrow releases upon performance, digital monitoring of construction progress, and online dispute resolution, could complement the statutory framework and improve practical outcomes.

Ultimately, the evaluation of the 2018 Amendment's success depends on perspective. From a legal certainty and buyer protection standpoint, the amendment represents significant progress. From an implementation and equity standpoint, challenges persist that require ongoing judicial development and potential legislative refinement. The amendment has fundamentally altered the landscape of contract enforcement in India, but its full potential will only be realized through continued evolution of supporting mechanisms, judicial interpretation, and

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<sup>31</sup> Ibid

complementary reforms.<sup>32</sup>

## VI. Conclusion

The Specific Relief (Amendment) Act, 2018 marks a significant shift in Indian contract law, moving from equity-based discretion to statutory enforcement. By transforming specific performance from a discretionary remedy to a mandatory right, it reshaped contractual relationships, especially in the real estate sector where enforcement challenges were widespread.

The transition from a regime of judicial discretion and monetary compensation to one emphasizing mandatory performance reflects a deliberate policy choice to strengthen contractual certainty. By removing “adequacy of damages” as a ground for refusal and narrowing exceptions under Section 14, the amendment enhanced the position of promisees, particularly homebuyers who had long faced weak enforcement.

In real estate disputes, the amendment has improved developer accountability, reduced breaches, and encouraged timely completion. Its interaction with the Real Estate (Regulation and Development) Act, 2016 (RERA) has created a stronger enforcement ecosystem, offering buyers multiple remedies. Courts have actively upheld the mandatory performance principle while balancing practical considerations.

Nevertheless, certain challenges remain. Issues of enforcement speed, overlapping jurisdictions, and the potential rigidity of mandatory relief continue to test the system. In some cases, the absence of judicial discretion may result in harsh outcomes or increased litigation burdens.

Overall, the 2018 Amendment has strengthened real estate contract enforcement and advanced India’s move toward a predictable, performance-driven legal regime. Its long-term success, however, depends on effective implementation, harmonization with related laws, and maintaining a balance between certainty and fairness in contractual justice.

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<sup>32</sup> *An Overview of the Real Estate Regulatory Act with Special Emphasis on UP-RERA and Recent Supreme Court Judgement*, INT'L J. PRIV. INT'L & EUR. L. (July 18, 2022), <https://ijpiel.com/index.php/2022/07/05/an-overview-of-the-real-estate-regulatory-act/>.

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