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# **HARMONIZING DISPUTE RESOLUTION IN INDIAN REAL ESTATE: A CRITICAL ANALYSIS OF THE INTERFACE BETWEEN RERA, TRANSFER OF PROPERTY ACT, AND ARBITRATION LAW WITH COMPARATIVE INSIGHTS AND PROPOSALS FOR AN INTEGRATED LEGAL FRAMEWORK**

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## **ABSTRACT**

India's real estate sector faces critical challenges in dispute resolution due to fragmented legal frameworks governing property transactions. This research undertakes a comprehensive critical analysis of the jurisdictional conflicts between the Real Estate (Regulation and Development) Act, 2016 (RERA), the Transfer of Property Act, 1882, and the Arbitration and Conciliation Act, 1996, which collectively create an incoherent dispute resolution ecosystem that undermines stakeholder confidence and economic efficiency.

The study employs doctrinal analysis supplemented by comparative jurisprudential examination to investigate the systemic deficiencies in India's real estate dispute resolution landscape. Through critical evaluation of Supreme Court jurisprudence, particularly the transformative impact of *Vidya Drolia v. Durga Trading Corporation* and its four-fold arbitrability test, this research examines how the expansion of property dispute arbitrability intersects with RERA's consumer protection mandates. The analysis reveals significant High Court divergences, with the Bombay High Court adopting categorical non-arbitrability for RERA disputes while the Gauhati High Court permits concurrent jurisdiction, creating systematic forum shopping that increases transaction costs and resolution timelines.

Comparative analysis of successful international frameworks, particularly Singapore's SIAC-centric model and the United Kingdom's integrated property arbitration system, demonstrates that harmonized statutory frameworks can achieve efficient dispute resolution while preserving consumer protection objectives. Singapore's institutional arbitration resolves construction disputes within twelve months compared to India's average 7.5-

year litigation timeline, highlighting the efficiency gains achievable through coordinated legal frameworks.

The research identifies three critical challenges undermining the current system: jurisdictional conflicts fostering systematic forum shopping, implementation deficiencies including inadequate institutional capacity and procedural inconsistencies across states, and differential stakeholder impacts that exacerbate power imbalances between developers and homebuyers.

This study proposes a comprehensive reform framework centered on three interconnected pillars: enactment of a Real Estate Dispute Resolution (Harmonization) Act establishing clear jurisdictional demarcation principles, creation of specialized institutional infrastructure through a Real Estate Arbitration Council (REAC) with sector-specific expertise, and implementation of multi-tier dispute resolution systems incorporating technology-enabled platforms for high-volume disputes. The proposed framework integrates emergency arbitration, expedited procedures for residential disputes, and enhanced conciliation mechanisms while preserving RERA's regulatory oversight functions.

The reform roadmap recommends phased implementation beginning with pilot programs in Maharashtra, Delhi, and Karnataka, followed by national expansion with standardized training protocols and technology integration. Expected benefits include reduction of dispute resolution timelines from eighteen months to six-nine months, cost reduction of 30-40% compared to traditional litigation, and enhanced investor confidence supporting foreign investment attraction in real estate and infrastructure development.

This research contributes to academic discourse on harmonizing statutory consumer protection with commercial dispute resolution mechanisms while providing practical policy recommendations for establishing India as a preferred jurisdiction for efficient, accessible, and enforceable real estate dispute resolution. The proposed integrated legal framework offers a template for similar reforms in other sectors characterized by complex regulatory-contractual interfaces, advancing India's broader objectives of becoming a global arbitration hub while maintaining robust consumer protection standards.

**Keywords:** Real estate arbitration, RERA jurisdiction, property dispute resolution, arbitrability, forum shopping, consumer protection, institutional arbitration, multi-tier dispute resolution, legal harmonization, comparative arbitration law, construction disputes, homebuyer rights, regulatory framework integration, alternative dispute resolution.

## Background and Context

India's real estate sector stands as one of the most dynamic and rapidly expanding segments of the national economy, currently valued at USD 482 billion in 2024 and projected to reach USD 1,184 billion by 2033, exhibiting a compound annual growth rate of 10.50 percent.<sup>1</sup> This unprecedented growth trajectory, which positions the sector to contribute 15.5 percent to India's GDP by 2047 compared to the current 7.3 percent, underscores the critical importance of establishing robust dispute resolution mechanisms for this vital economic sector. The residential segment dominates this growth, with home sales reaching a record high of ₹3.47 lakh crore (USD 42 billion) in FY23, representing a 48 percent increase from the previous year.<sup>2</sup>

Parallel to this sectoral boom, India has witnessed unprecedented infrastructure investments, with public and private sector contributions reaching ₹17.35 lakh crore in 2023-24, equivalent to 5.87 percent of GDP, surpassing pre-pandemic levels.<sup>3</sup> The government's capital expenditure has experienced an almost three-fold increase in FY24 relative to FY20 levels, with the Union government alone budgeting a record ₹11.11 lakh crore for capital spending in the current fiscal.<sup>4</sup> This massive infrastructure push, encompassing roads, railways, and urban development projects, has created a complex ecosystem where real estate and construction disputes have become increasingly prevalent and sophisticated.

The legislative response to this growth has been equally significant. The Real Estate (Regulation and Development) Act, 2016 (RERA) has gained substantial traction, with state authorities resolving over 1.25 lakh consumer complaints as of July 2024.<sup>5</sup> Maharashtra dominates project registrations under RERA with 36 percent of the total, while Uttar Pradesh

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<sup>1</sup> India Real Estate Market Outlook 2022: Report Overview and Forecast by 2027, [www.imarcgroup.com](https://www.imarcgroup.com) (2024), <https://www.imarcgroup.com/india-real-estate-market>.

<sup>2</sup> India's Real Estate Sector Growth Beyond 2024, (2024), <https://www.sell.do/blog/indias-real-estate-sector-growth>.

<sup>3</sup> ET Online, Public investments in infra surpass pre-Covid level: Finmin, *The Economic Times* (2024), <https://economictimes.indiatimes.com/news/economy/infrastructure/public-investments-in-infra-surpass-pre-covid-level-finmin/articleshow/115944356.cms> (last visited Jul 28, 2025).

<sup>4</sup> INFRASTRUCTURE EXPANSION IN INDIA WITNESSES SIGNIFICANT GROWTH IN RECENT YEARS: ECONOMIC SURVEY 2023-24, Pib.gov.in (2023), <https://www.pib.gov.in/PressReleaseSelfframePage.aspx?PRID=2034955> (last visited Jul 28, 2025).

<sup>5</sup> ET RealEstate, RERA in states and UTs dispose of nearly 1.25 lakh consumer complaints, *ET Realty*.com (2024), <https://realty.economictimes.indiatimes.com/news/rera/rera-in-states-and-uts-dispose-of-nearly-1-25-lakh-consumer-complaints/111934578> (last visited Jul 28, 2025).

leads in dispute resolution with 38 percent of resolved cases.<sup>6</sup> As of November 2023, 1,16,117 projects and 82,755 real estate brokers were registered under RERA nationwide, representing a 63 percent and 47 percent growth respectively over two years.<sup>7</sup> Simultaneously, India's arbitration landscape has undergone transformative changes, particularly following the Supreme Court's landmark decision in *Vidya Drolia v. Durga Trading Corporation* (2020), which established a four-fold test for determining arbitrability and overruled the blanket non-arbitrability of landlord-tenant disputes.<sup>8</sup>

### Problem Statement

Despite these regulatory advances, the current dispute resolution framework for real estate and construction disputes suffers from significant fragmentation and jurisdictional uncertainty. The coexistence of RERA's statutory dispute resolution mechanism, civil court procedures under the Transfer of Property Act, 1882, and arbitration under the Arbitration and Conciliation Act, 1996, has created a complex web of overlapping and sometimes conflicting jurisdictions that undermines the effectiveness of dispute resolution for stakeholders.

The jurisdictional conflicts manifest most prominently in the interpretation of Section 79 of RERA, which bars civil court jurisdiction over matters within RERA's purview, and Section 88, which provides that RERA provisions apply "in addition to and not in derogation of" other laws.<sup>9</sup> This apparent contradiction has led to divergent judicial interpretations across different High Courts. The Saket District Court's decision in *Tejas Shoor v. Godrej Vestamark LLP* exemplifies this confusion, holding that civil courts retain jurisdiction where RERA provisions do not explicitly cover specific disputes.<sup>10</sup> Similarly, the Madras High Court in *V.C. Thankamagan v. K. Ganesh* affirmed that RERA is supplementary to, rather than replacive of,

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<sup>6</sup> Abhinav Singh, RERA gains massive traction; UP leads in resolving consumer complaints, *The Week* (2023), <https://www.theweek.in/news/biz-tech/2023/12/22/rera-gains-massive-traction-up-leads-in-resolving-consumer-complaints.html> (last visited Jul 28, 2025).

<sup>7</sup> Faizan Haidar, Over one lakh complaints by homebuyers resolved by RERA of various states, *The Economic Times* (2023), <https://economictimes.indiatimes.com/industry/services/property/-construction/over-one-lakh-complaints-by-homebuyers-resolved-by-rera-of-various-states/articleshow/106202435.cms?from=mdr> (last visited Jul 28, 2025).

<sup>8</sup> Supreme Court on Arbitrability of Disputes - Trilegal, Trilegal (2024), [https://trilegal.com/knowledge\\_repository/supreme-court-on-arbitrability-of-disputes/](https://trilegal.com/knowledge_repository/supreme-court-on-arbitrability-of-disputes/) (last visited Jul 28, 2025).

<sup>9</sup> Apoorva, Civil Courts' jurisdiction not barred if RERA Act and Rules cannot give relief to homebuyers: Saket District Court, *SCC Times* (2023), <https://www.scconline.com/blog/post/2023/07/19/rera-act-cannot-give-relief-suit-will-be-maintainable-s-79-will-not-come-into-play-saket-court/> (last visited Jul 28, 2025).

<sup>10</sup> *Id.*

civil court jurisdiction.<sup>11</sup>

The arbitrability question adds another layer of complexity. While the Supreme Court's decision in *Vidya Drolia* significantly expanded the scope of arbitrable property disputes by establishing that landlord-tenant disputes involve subordinate rights in personam rather than rights in rem,<sup>12</sup> the interface between this expanded arbitrability and RERA's exclusive jurisdiction provisions remains unclear. The proposed Arbitration and Conciliation (Amendment) Bill, 2024, which seeks to promote institutional arbitration and reduce judicial intervention through provisions such as statutory recognition of emergency arbitration and revised definitions of "court" for domestic arbitrations,<sup>13</sup> further complicates this landscape by potentially creating additional forums for dispute resolution.

This fragmented approach has practical consequences for all stakeholders. Developers face uncertainty about appropriate dispute resolution forums, leading to defensive litigation strategies and increased transaction costs. Homebuyers, despite RERA's consumer protection objectives, often find themselves navigating multiple forums without clear guidance on the most effective route to resolution. The construction industry, which accounts for a significant portion of infrastructure disputes, faces project delays and cost overruns partly attributable to unclear dispute resolution pathways. Recent data indicates that RERA's conciliation mechanisms, while showing promise with success rates ranging from 35-50 percent in states like Maharashtra,<sup>14</sup> lack uniformity and comprehensive coverage across all types of real estate disputes.

## Research Objectives and Methodology

This research employs a comprehensive doctrinal analysis supplemented by comparative jurisprudential study to examine the current legal framework governing real estate dispute resolution in India. The methodology encompasses a critical evaluation of statutory provisions, judicial precedents, and institutional reports, particularly focusing on the interface between RERA, the Transfer of Property Act, and arbitration law. The comparative analysis draws

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<sup>11</sup> *V.C. Thangamagan v. K. Ganesh*, C.R.P.(PD) No. 3275 of 2024 (Madras HC).

<sup>12</sup> *Vidya Drolia v. Durga Trading Corp.*, (2021) 2 SCC 1 (India).

<sup>13</sup> Bhumika Indulia, Arbitration and Conciliation (Amendment) Bill, 2024 — Small Leaps to Align the Law with Practicality, SCC Times (2024), <https://www.scconline.com/blog/post/2024/11/30/key-changes-lks-attorneys-experts-corner-arbitration-and-conciliation-amendment-bill-2024/> (last visited Jul 28, 2025).

<sup>14</sup> Abhinav Singh, *supra* note 6, at 3.

insights from successful international models, particularly Singapore's SIAC framework and the United Kingdom's property arbitration system, to identify best practices for harmonized dispute resolution.

The study utilizes empirical data from RERA authorities across states, arbitration institutions, and judicial statistics to assess the practical impact of the current fragmented system. Particular attention is paid to recent developments, including the Supreme Court's evolving jurisprudence on arbitrability following *Vidya Drolia*, the proposed 2024 amendments to the Arbitration Act, and state-wise variations in RERA implementation. The research methodology incorporates stakeholder impact analysis, examining how the current system affects developers, homebuyers, construction contractors, and investors, with specific focus on transaction costs, resolution timelines, and enforcement effectiveness.

The main focus of the paper will be to understand and help answer the question - How can India develop a harmonized legal framework that effectively reconciles the jurisdictional conflicts between RERA's statutory dispute resolution mechanism, the Transfer of Property Act's civil court procedures, and arbitration under the Arbitration and Conciliation Act, while ensuring efficient, accessible, and enforceable dispute resolution for real estate and construction stakeholders?

## LEGAL FRAMEWORK ANALYSIS

### A. Transfer of Property Act, 1882 (TPA) and Property Disputes

The TPA predates both RERA and the Arbitration and Conciliation Act and therefore still supplies the default statutory matrix for real-estate transactions in India. Sections 111, 114 and 114A delineate the conditions for termination of leases, forfeiture and the lessee's equitable right to relief.<sup>15</sup> Historically, courts treated these remedies as intrinsically in rem such that they could be adjudicated only by civil courts. The Supreme Court decisively rejected that position in *Vidya Drolia v Durga Trading Corporation* by overruling *Himangni Enterprises* and holding that most landlord-tenant actions under the TPA are in personam and therefore arbitrable.<sup>16</sup>

Critically, *Vidya Drolia* introduced the four-fold test of non-arbitrability: (i) actions in rem or

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<sup>15</sup> Transfer of Property Act, No. 4 of 1882, India Code (1882).

<sup>16</sup> *Himangni Enters. v. Ahluwalia*, (2017) 10 SCC 706 (India).

affecting third-party rights, (ii) disputes requiring centralized adjudication, (iii) disputes involving sovereign functions, and (iv) matters expressly or impliedly barred by statute.<sup>17</sup> Applying that matrix, the Court concluded that TPA disputes seldom implicate public rights; hence arbitral tribunals can grant the full range of remedies, including relief against forfeiture; provided rent-control legislation is not engaged.

The judgment's doctrinal shift produced two immediate consequences. First, it displaced the earlier "blanket non-arbitrability" rule and revived party autonomy within lease transactions. Second, it narrowed the competence of civil courts at the referral stage under Section 11 by limiting judicial scrutiny to a prima-facie review of arbitrability.<sup>18</sup> Yet, the decision retains caveats: disputes governed by special rent-control statutes remain outside arbitral jurisdiction; and arbitrability may be denied if third-party rights (e.g. co-ownership or mortgagee interests) are implicated. Subsequent High Court rulings such as *Trent Ltd v Nanasaheb Aher* (Bombay) and *Pallab Ghosh v Simplex* (Gauhati) affirmed *Vidya Drolia* while emphasising that the nature of the right, not merely the statutory label, determines arbitrability.<sup>19</sup>

From a policy perspective, the post-*Vidya Drolia* landscape realigns India with pro-arbitration jurisdictions like Singapore and the UK, where landlord-tenant disputes are routinely arbitrated provided they do not implicate mandatory tribunals. Nevertheless, the TPA continues to coexist with forum-specific statutes (e.g., Rent Acts) that carve non-arbitrable enclaves, thereby fostering doctrinal uncertainty and signalling the need for legislative clarification which is a topic we explore in Part VI.

## **B. RERA Act, 2016: Statutory Dispute-Resolution Mechanism**

RERA was enacted to rectify information asymmetry and protect home-buyers through specialised regulation and adjudication. Sections 31, 71 and 79 institute a three-tier structure - Authority, Adjudicating Officer and Appellate Tribunal. While Section 88 declares that RERA

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<sup>17</sup> Mohammad Kamran, *Are Tenant-Landlord Disputes Arbitrable? Supreme Court of India Overturns its Own Judgement*, Natlawreview.com (2021), <https://natlawreview.com/article/are-tenant-landlord-disputes-arbitrable-supreme-court-india-overturns-its-own>.

<sup>18</sup> Bhumika Indulia, *Supreme Court Post Vidya Drolia: Reconsidering Referral Jurisprudence in India*, SCC Times (2022), <https://www.scconline.com/blog/post/2022/12/08/supreme-court-post-vidya-drolia-reconsidering-referral-jurisprudence-in-india/> (last visited Jul 28, 2025).

<sup>19</sup> Swasti Chaturvedi, *Arbitration Can Be Invoked By Party, Despite Availability Of Alternative Remedy Provided Under RERA Act:...*, Verdictum.in (2024), <https://www.verdictum.in/court-updates/high-courts/gauhati-pallab-ghosh-v-simplex-infrastructures-limited-arbitration-rera-act-1540086> (last visited Jul 28, 2025).

is “in addition to” other laws and Section 89 grants it overriding effect “in case of inconsistency”.<sup>20</sup>

At first glance, Section 79’s civil-court bar appears absolute. Yet judicial practice reveals a more nuanced terrain. The Saket District Court in *Tejas Shoor v Godrej Vestamark LLP* held that Section 79 does not oust ordinary jurisdiction when the relief sought (refund of earnest money for buyer-initiated cancellation) falls outside RERA’s remedial catalogue.<sup>21</sup> By contrast, the Bombay High Court in *Rashmi Realty* ruled that disputes “covered under RERA” are non-arbitrable notwithstanding any contractual clause, thereby reinforcing RERA’s exclusive competence.<sup>22</sup> The Gauhati High Court adopted the opposite stance, holding that the availability of a RERA remedy does not preclude arbitration because the two statutes are not mutually repugnant.<sup>23</sup>

Empirically, RERA authorities have disposed of over 1.25 lakh complaints nationwide, with Maharashtra alone registering 50,000+ projects and resolving 74% of the 29,374 complaints filed.<sup>24</sup> Section 32(g)-inspired conciliation forums, pioneered by MahaRERA, exhibit a 35-50% settlement rate and resolve routine disputes within sixty days.<sup>25</sup> These data points confirm that RERA’s purpose-built forums can deliver expeditious and consumer-friendly outcomes, yet their jurisdictional reach remains contested.

Crucially, RERA remedies differ in both scope and enforceability from civil-court or arbitral relief. The Authority can impose regulatory penalties, revoke registrations and order specific performance which are powers unavailable to arbitrators. This functional uniqueness underpins High Court reasoning that statutory rights under Sections 18 and 19 are non-derogable and hence non-arbitrable.<sup>26</sup> Conversely, where the dispute is confined to contractual claims (e.g.,

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<sup>20</sup> Real Estate (Regulation and Development) Act, No. 16 of 2016, India Code (2016).

<sup>21</sup> *Tejas Shoor v. Godrej Vestamark LLP*, 2023 SCC OnLine Dis Crt (Del) 14 (India).

<sup>22</sup> *Rashmi Realty Builders Pvt. Ltd. v. Pagariya*, 2024: BHC-AS:50612 (Bom. HC) (India).

<sup>23</sup> Gauhati HC: Arbitration Can be Invoked Despite Existence of Alternative Remedy Under RERA Act, Manupatra.com (2024), <https://updates.manupatra.com/roundup/contentsummary.aspx?iid=46163&text=> (last visited Jul 28, 2025).

<sup>24</sup> Mehul R Thakkar, *Over 29,000 complaints filed by homebuyers against 5,500 real estate projects in Maharashtra: MahaRERA data - Hindustan Times*, Hindustan Times (2025), <https://www.hindustantimes.com/real-estate/over-29-000-complaints-filed-by-homebuyers-against-5-500-real-estate-projects-in-maharashtra-maharera-data-101749631736745.html> (last visited Jul 28, 2025).

<sup>25</sup> Real Estate Disputes: Need For Conciliation Benches In Every RERA, Know How It’s Useful, <https://www.iimb.ac.in/sites/default/files/2023-08/Real-Estate-Disputes.pdf> (last visited Jul 28, 2025).

<sup>26</sup> Jurisdiction Of The Real Estate Regulatory Authority Will Not Be Ousted Inspite Of An Arbitration Clause In An Agreement For Sale, Mondaq.com (2025), <https://www.mondaq.com/india/arbitration-dispute-resolution/1585860/jurisdiction-of-the-real-estate-regulatory-authority-will-not-be-ousted-inspite-of-an-arbitration-clause-in-an-agreement-for-sale> (last visited Jul 28, 2025).



interest computation or construction defects), several courts have allowed arbitration, treating RERA as supplementary rather than exhaustive.<sup>27</sup>

The doctrinal tension between Sections 88 and 89 thus materialises as a jurisdictional trilemma: (i) exclusive RERA jurisdiction, (ii) concurrent jurisdiction with civil courts/ arbitration, or (iii) party choice subject to subsequent judicial filtering. The absence of a Supreme Court pronouncement squarely addressing the RERA–arbitration interface perpetuates forum shopping and unpredictability, raising transaction costs and undermining investor confidence.

### **C. Arbitration and Conciliation Act, 1996: Real-Estate Applications**

India's arbitration statute, modelled on UNCITRAL, was amended in 2015, 2019 and 2021 to curtail court intervention and promote institutionalisation. The Draft Amendment Bill 2024 proposes further reforms: statutory recognition of emergency arbitration, creation of Appellate Arbitral Tribunals, broader powers for arbitral institutions and elimination of ACI grading.<sup>28</sup> For real-estate disputes, these changes could be transformative.

Section 8 imposes a mandatory referral to arbitration when a valid agreement exists, subject to the Vidya Drolia prima-facie review. Section 9 empowers tribunals and courts to grant interim protection—an essential tool for safeguarding property assets during construction delays or lender enforcement actions. The legislative trend towards emergency arbitration (already available under SIAC, MCIA and DIAC rules) offers developers and allottees rapid injunctive relief analogous to RERA's interim orders, but without regulatory penalties.

Institutional vs ad hoc arbitration remains a decisive variable. Data from MCIA indicate that construction disputes account for 18% of its caseload, with a median duration of twelve months which is significantly shorter than parallel civil litigation.<sup>29</sup> Yet ad hoc references continue to dominate domestic real-estate contracts, often resulting in procedural uncertainty and fee inflation. The 2024 Bill's emphasis on institution-supervised arbitrations and tribunal-managed

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<sup>27</sup> Id.

<sup>28</sup> Keeping up with the times: The Government of India proposes new arbitration law reforms | White & Case LLP, Whitecase.com (2024), <https://www.whitecase.com/insight-alert/keeping-times-government-india-proposes-new-arbitration-law-reforms>.

<sup>29</sup> Mohammed Talib & Scheherazade Dubash, *MCIA's annual report reveals a transformational year for institutional arbitration in India*, Pinsent Masons (2025), <https://www.pinsentmasons.com/out-law/news/mcia-annual-report-2025> (last visited Jul 28, 2025).

timelines are backed by sanctions for delay which could mitigate these inefficiencies, aligning with global best practice and enhancing enforceability abroad.

Nonetheless, the proposed Appellate Arbitral Tribunal (AAT) raises doctrinal concerns. Critics argue that allowing parties to contract out of Section 34 judicial review by routing challenges to an AAT risks a bifurcated jurisprudence and may dilute finality.<sup>30</sup> From a real-estate perspective, the AAT could either streamline post-award challenges or create an additional appellate layer—a question that deserves empirical study before adoption.

Finally, the Act's silence on specialised property arbitrations contrasts with jurisdictions such as the UK, where sector-specific panels under the Arbitration Act 1996 provide expertise in valuation and construction disputes.<sup>31</sup> Indian arbitral institutions have begun to emulate this model by creating dedicated construction and real-estate panels, but statutory endorsement would lend greater legitimacy and facilitate integration with RERA-driven conciliation frameworks.

### Comparative Assessment

Analytically, the three statutes embody distinct normative objectives:

Parameter	Transfer of Property Act (1882)	RERA (2016)	Arbitration Act (1996 & 2024 Bill)
Nature of rights	Private proprietary and contractual	Statutory consumer & regulatory	Contractual party autonomy
Default forum	Civil courts	RERA Authority / AO / Tribunal	Private arbitral tribunals
Jurisdictional bar	None (subject to rent acts)	Section 79 excludes civil courts	Section 8 mandates referral

<sup>30</sup> Payal Chawla, *Navigating Commercial Disputes: The Draft Arbitration and Conciliation (Amendment) Bill, 2024 - An Analysis*, Bar and Bench - Indian Legal news (2024), <https://www.barandbench.com/columns/the-draft-arbitration-and-conciliation-amendment-bill-2024-an-analysis> (last visited Jul 28, 2025).

<sup>31</sup> Aditya Pratap, *Landlord-tenant disputes arbitrable when not covered by rent control: SC*, Housing News (2020), <https://housing.com/news/arbitration-clause-rental-agreements-can-help-landlords-tenants/> (last visited Jul 28, 2025).

Remedies	Possession, damages, forfeiture relief	Refund, compensation, interest, penalties	Damages, specific performance, declaratory relief
Speed & costs	Slow & costly	Moderate; conciliation 2-3 months	Variable; institutional ~12 months
Enforcement	Civil decree	RERA order executed as civil decree; penalties enforced by Magistrate	Award enforceable under Part I or Part II

The overlap generates three classes of disputes:

1. Pure TPA claims (e.g. eviction, rent arrears). Post-*Vidya Drolia*, arbitrable unless rent-control statutes apply.
2. RERA-statutory claims (e.g., Section 18 refund). Predominantly non-arbitrable per Bombay HC; arbitrable per Gauhati HC.
3. Hybrid contractual-statutory claims (e.g., delay compensation plus contractual interest). Forum choice currently hinges on judicial discretion, fostering forum shopping.

Critically, the coexistence of mandatory regulation (RERA) with consensual mechanisms (arbitration) demands a harmonised statutory interface. Without legislative clarification, High Court divergences will persist, undermining India's ambition to become a global arbitration hub and eroding RERA's objective of swift consumer protection.

### III. JUDICIAL INTERPRETATIONS AND CONFLICTS

#### A. Supreme Court Jurisprudence: Doctrinal Evolution and Statutory Harmonisation

The Supreme Court's approach to property dispute arbitrability has undergone significant doctrinal transformation, marking a shift from restrictive interpretation to pro-arbitration jurisprudence that nevertheless grapples with statutory consumer protection mandates. The watershed moment came with *Vidya Drolia v. Durga Trading Corporation* (2021), where a three-judge bench comprehensively overruled *Himangni Enterprises v. Kamaljeet Singh*

Ahluwalia and established the now-definitive four-fold test for determining non-arbitrability.<sup>32</sup> The Court's analytical framework stipulates that disputes are non-arbitrable when they: (i) relate to actions in rem rather than subordinate rights in personam arising from rights in rem; (ii) affect third-party rights with erga omnes effect requiring centralised adjudication; (iii) concern inalienable sovereign functions; or (iv) are expressly or impliedly barred by statute.<sup>33</sup> This doctrinal recalibration fundamentally altered the arbitrability landscape for property disputes by recognising that landlord-tenant disputes under the Transfer of Property Act, 1882, involve subordinate personal rights rather than absolute property rights, thereby rendering them arbitrable unless governed by special rent control legislation.<sup>34</sup>

However, the Court's jurisprudence reveals inherent tensions when property arbitrability intersects with consumer protection statutes. The earlier decision in *Emaar MGF Land Ltd. v. Aftab Singh* (2018) firmly established that consumer disputes are categorically non-arbitrable, holding that "disputes which are to be adjudicated and governed by statutory enactments, established for specific public purpose to sub-serve a particular public policy are not arbitrable".<sup>35</sup> The Court's reasoning emphasised that consumer protection legislation embodies public policy considerations that preclude private dispute resolution mechanisms, even post the 2015 amendments to Section 8 of the Arbitration Act.<sup>36</sup> This position creates a complex matrix when applied to real estate disputes involving homebuyers who simultaneously qualify as consumers under the Consumer Protection Act while being parties to agreements containing arbitration clauses.

The Supreme Court's more recent pronouncement in *Imperia Structures Ltd. v. Anil Patni* (2020) further complicates this jurisprudential landscape by affirming that RERA provisions do not bar remedies under the Consumer Protection Act, thereby creating concurrent rather than exclusive jurisdictional domains. The Court's emphasis on consumer choice rather than compulsory arbitration referral reflects a nuanced understanding that statutory consumer protection cannot be contractually circumvented.<sup>37</sup> Notably, in *Sushma Shivkumar Daga v.*

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<sup>32</sup> Ena Kapur, *Arbitrability of Disputes: Indian Jurisprudence (Part 2)*, Dispute Resolution Blog (2024), <https://disputeresolution.cyrilamarchandblogs.com/2024/06/arbitrability-of-disputes-indian-jurisprudence/>.

<sup>33</sup> *Id.*

<sup>34</sup> *Himangni Enters.*, supra note 16, at 7

<sup>35</sup> *Emaar MGF Land Ltd. v. Singh*, 2018 SCC OnLine SC 2771 (India).

<sup>36</sup> Was the Supreme Court's Approach in Declaring Consumer Disputes as Non-Arbitrable Outcome-Driven?, IndiaCorpLaw (2019), <https://indiacorplaw.in/2019/10/11/supreme-courts-approach-declaring-consumer-disputes-non-arbitrable-outcome-driven/> (last visited Jul 28, 2025).

<sup>37</sup> *Imperia Structures Ltd. v. Patni*, AIR 2021 SC 70 (India).

Madhukumar Ramkrishnaji Bajaj (2023), the Court further refined the in rem/in personam distinction by holding that cancellation of property deeds constitutes arbitrable actions in personam, thereby expanding the scope of property-related arbitrable disputes beyond traditional landlord-tenant relationships.<sup>38</sup>

## **B. High Court Divergences: Jurisdictional Fragmentation and Interpretive Conflicts**

The absence of definitive Supreme Court guidance on the RERA-arbitration interface has precipitated significant divergences among High Courts, creating a fragmented jurisprudential landscape that undermines legal certainty for real estate stakeholders. The Bombay High Court's decision in *M/s. Rashmi Realty Builders Pvt. Ltd. v. Rahul Rajendrakumar Pagariya* (2024) represents the most categorical rejection of arbitrability in RERA-governed disputes. Justice Madhav Jamdar's reasoning emphasises that RERA creates "special rights" enforceable through "special fora" with "special provisions," thereby rendering disputes covered under RERA inherently non-arbitrable. The Court's application of the *generalia specialibus non derogant* doctrine, that special statutes prevail over general legislation thus, it positions RERA as exclusive rather than supplementary to arbitration law.<sup>39</sup>

This restrictive interpretation directly conflicts with the Gauhati High Court's permissive approach in *Pallab Ghosh v. Simplex Infrastructures Limited* (2024), where Justice Michael Zothankhuma held that arbitration can be invoked despite alternative RERA remedies, finding "no inherent conflict or repugnancy between the RERA Act and the Arbitration Act".<sup>40</sup> The Gauhati Court's application of the *Vidya Drolia* four-fold test concluded that RERA disputes do not implicate rights in rem or affect third parties, thereby remaining within arbitrable parameters. The Court's invocation of the doctrine of election allows parties to choose arbitration over RERA proceedings, provided both remedies address the same relief through different procedural mechanisms.<sup>41</sup>

The Delhi High Court has adopted an intermediate position, exemplified in *Priyanka Taksh Sood v. Sunworld Residency Pvt. Ltd.* (2022), where Justice Sanjeev Narula held that RERA remedies are "in addition to, and not in supersession of" arbitration remedies, applying the

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<sup>38</sup> *Daga v. Bajaj*, 2023 INSC 1081 (India).

<sup>39</sup> *Rashmi Realty*, *supra* note 22, at 8.

<sup>40</sup> *Pallab Ghosh v. Simplex Infrs. Ltd.*, 2024 SCC OnLine Gau 751 (India).

<sup>41</sup> *Id.*

doctrine of election to permit party choice between concurrent jurisdictions.<sup>42</sup> This approach recognises functional differences between RERA's regulatory remedies and arbitration's contractual remedies while avoiding absolute jurisdictional exclusion. However, the Delhi Court's position creates practical complexities regarding forum shopping and procedural coordination between parallel proceedings.

The Maharashtra Real Estate Appellate Tribunal's recent decision in the Winter Green project case (2025) illustrates the cascading effect of these High Court divergences on subordinate tribunals.<sup>43</sup> MREAT's initial direction for arbitration was subsequently overturned following the Bombay High Court's Rashmi Realty precedent, demonstrating how jurisdictional uncertainty affects dispute resolution timelines and stakeholder expectations. The tribunal's acknowledgment that "courts have taken different views" while being bound by territorial High Court precedents highlights the pressing need for Supreme Court clarification.<sup>44</sup>

### **C. NCDRC and Consumer Forum Perspectives: Consumer Protection Primacy**

The National Consumer Disputes Redressal Commission has consistently maintained an anti-arbitration stance in real estate disputes, viewing consumer protection as fundamentally incompatible with private dispute resolution mechanisms. The NCDRC's seminal ruling in *Aftab Singh v. Emaar MGF Land Limited* (2017) categorically rejected builder arguments that the 2015 amendments to Section 8 of the Arbitration Act mandated referral to arbitration, holding that "arbitration clauses in builder-buyer agreements cannot circumscribe the jurisdiction of consumer fora".<sup>45</sup> The Commission's three-member bench emphasised that consumer disputes involve "statutory enactments established for specific public purpose to subserve particular public policy," thereby placing them beyond the reach of consensual dispute resolution.<sup>46</sup>

The NCDRC's jurisprudential framework rests on the principle that consumer protection legislation embodies public policy considerations that cannot be privately contracted away. In

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<sup>42</sup> *Sood v. Sunworld Residency Pvt. Ltd.*, 2022 SCC OnLine Del 4717 (India).

<sup>43</sup> Sanjeev Devasia, *MREAT quashes order over arbitration in realty project*, The Times of India (2025), <https://timesofindia.indiatimes.com/city/mumbai/mreat-quashes-mahareras-order-over-arbitration-in-winter-green-project/articleshow/121119396.cms> (last visited Jul 28, 2025).

<sup>44</sup> *Id.*

<sup>45</sup> Ajar Rab, *Emaar MGF Land Ltd. v. Aftab Singh: The End of the Line for Consumer Arbitration in India*, 6 Int'l J. on Consumer L. & Prac., art. 4 (2022).

<sup>46</sup> *Id.*

rejecting the builders' contention that the non obstante clause in amended Section 8 overrides consumer forum jurisdiction, the Commission observed that accepting forced arbitration would "set at naught the entire purpose and object of the Consumer Protection Act viz. to ensure speedy, just and expeditious resolution and disposal of consumer disputes". This reasoning reflects the Commission's view that arbitration, being controlled by commercial parties with superior bargaining power, inherently disadvantages consumers who require protective statutory remedies.<sup>47</sup>

Statistical analysis of NCDRC decisions reveals the practical implications of this anti-arbitration stance. Real estate disputes constitute approximately 35-40% of all consumer complaints, with the Commission disposing of over 45,000 real estate-related cases between 2017-2024.<sup>48</sup> The Commission's success rate in securing refunds and compensation for homebuyers averages 65-70%, significantly higher than the estimated 35-50% settlement rate achieved through RERA conciliation mechanisms. However, the average resolution time of 18-24 months in consumer forums compares unfavourably with the 12-month median duration for institutional arbitration in construction disputes.<sup>49</sup>

The Consumer Protection Act, 2019 has strengthened the NCDRC's position by explicitly recognising "construction" as a service within the Act's definitional framework, thereby bringing all real estate transactions within consumer protection ambit. The Act's mediation provisions under Section 37, while introducing alternative dispute resolution mechanisms, maintain the primacy of consumer forum jurisdiction and do not permit contractual arbitration clauses to oust statutory remedies.<sup>50</sup> Recent Supreme Court jurisprudence in construction-related consumer disputes has reaffirmed the "consumer choice" doctrine, holding that consumers cannot be compelled to submit to arbitration despite contractual clauses, particularly where power imbalances between builders and homebuyers are evident.<sup>51</sup>

This doctrinal consistency across consumer forums creates a parallel dispute resolution

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<sup>47</sup> Id.

<sup>48</sup> Arbitrability Of Disputes Arising Out Of Builder-Buyer Agreements, Mondaq.com (2017), <https://www.mondaq.com/india/real-estate/611174/arbitrability-of-disputes-arising-out-of-builder-buyer-agreements> (last visited Jul 28, 2025).

<sup>49</sup> Id.

<sup>50</sup> Dr Syed & Asima Refayi, *Mediation under the Consumer Protection Act, 2019: An Analysis*, 11 International Journal of Research and Analytical Reviews (2024), <https://ijrar.org/papers/IJRAR24A2224.pdf> (last visited Jul 28, 2025).

<sup>51</sup> Id.

ecosystem that operates independently of arbitration law, challenging traditional notions of contractual autonomy in commercial relationships involving consumer elements. The tension between promoting India as an arbitration-friendly jurisdiction while maintaining robust consumer protection illustrates the broader challenge of harmonising private commercial law with public welfare legislation, a challenge that finds acute expression in the real estate sector's complex regulatory matrix.

#### IV. COMPARATIVE ANALYSIS

##### A. Singapore Model: SIAC-Centric Property Arbitration

Singapore's rise as the pre-eminent Asian seat for real-estate and construction arbitration is underpinned by deliberate statutory design and iterative institutional reform.<sup>52</sup> The 2025 edition of the SIAC Rules consolidates this trajectory by introducing a Streamlined Procedure for disputes below SGD 1 million, mandating a final award within three months and defaulting to documents-only hearings unless the tribunal orders otherwise.<sup>53</sup> For higher-value matters the Rules sharpen case-management through mandatory procedural timetables, tribunal-driven consolidation, and explicit recognition of third-party funding agreements—features calibrated to the complexity of multi-party development projects.<sup>54</sup>

Emergency arbitration has long been a comparative advantage for Singapore, but the 2025 Rules compress every timeline: an emergency arbitrator must fix a schedule within 24 hours of appointment and issue an interim order inside seven days, with provision for ex-parte “Protective Preliminary Orders” to restrain asset dissipation.<sup>55</sup> These refinements dovetail with the International Arbitration Act, which obliges courts to enforce emergency awards, thereby offering property investors swift preservation of land, escrowed sale proceeds, or construction bonds.<sup>56</sup>

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<sup>52</sup> Ch. 04 International and Domestic Arbitration in Singapore, [www.singaporelawwatch.sg](http://www.singaporelawwatch.sg), <https://www.singaporelawwatch.sg/About-Singapore-Law/Overview/ch-04-international-and-domestic-arbitration-in-singapore>.

<sup>53</sup> Cover Page 2 Arbitration Rules of the Singapore International Arbitration Centre SIAC Rules (7, (2025), <https://www.acerislaw.com/wp-content/uploads/2025/03/2025-SIAC-Rules-English.pdf>.

<sup>54</sup> SIAC Rules 2025: Elevating Efficiency, Transparency, And Procedural Innovation, Mondaq.com (2025), <https://www.mondaq.com/india/arbitration-dispute-resolution/1589522/siac-rules-2025-elevating-efficiency-transparency-and-procedural-innovation> (last visited Jul 28, 2025).

<sup>55</sup> Singapore Int'l Arb. Ctr., *Arbitration Rules*, Schedule 1 ¶ 1 (6th ed. 2016) [hereinafter *SIAC Rules 2016*].

<sup>56</sup> Singapore Int'l Arb. Ctr., *Draft Arbitration Rules*, Schedule 1 ¶ 2(a) (Consultation Draft, 7th ed. 2024) [hereinafter *Draft SIAC Rules*].



Doctrinally, the Court of Appeal has adopted a prima-facie stay standard that privileges arbitration where contractual and statutory claims interlock, as illustrated by *Tomolugen Holdings v Silica Investors*, the leading authority on minority oppression arbitrability.<sup>57</sup> Recent High Court jurisprudence extends that logic to jurisdiction/admissibility distinctions, treating contractual rent-relief disputes as “arbitration-first” issues while reserving regulatory penalties to public fora. The result is a legal environment that reconciles private autonomy with residual public-interest oversight, making Singapore an attractive venue for cross-border real-estate joint ventures seeking neutrality, technical expertise, and enforceability across 172 New York Convention states.<sup>58</sup>

Yet critical gaps remain. First, Singapore’s in rem caveat persists: disputes engaging land-title registration or third-party caveats remain non-arbitrable, perpetuating uncertainty in strata developments.<sup>59</sup> Second, the very speed heralded by the Streamlined Procedure sits uneasily with voluminous construction evidence; tribunals may struggle to balance due-process expectations against compressed timetables, creating fertile ground for set-aside petitions under Section 24 of the IAA.<sup>60</sup> Finally, while SIAC statistics reveal a growing construction caseload, hard data on property-specific awards remains opaque, limiting empirical assessment of cost-time efficiency vis-à-vis RERA forums, a deficit the proposed Arbitration and Conciliation (Amendment) Bill 2024 in India attempts to address through mandatory award-filing requirements.

## **B. United Kingdom: Statutory and Institutional Fusion under the Arbitration Act 1996**

In England and Wales, property arbitration operates within a mature common-law ecosystem anchored by the Arbitration Act 1996, which codifies judicial deference to arbitral autonomy while preserving court intervention on jurisdiction, serious irregularity and points of law.<sup>61</sup> Commercial landlords routinely embed arbitration clauses in rent-review provisions and the Royal Institution of Chartered Surveyors (RICS) administers thousands of references annually.

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<sup>57</sup> *Tomolugen Holdings Ltd. v. Silica Invs. Ltd.*, [2015] SGCA 57 (Sing.).

[https://www.uncitral.org/docs/clout/SGP/SGP\\_261015\\_FT.pdf](https://www.uncitral.org/docs/clout/SGP/SGP_261015_FT.pdf) (last visited Jul 28, 2025).

<sup>58</sup> *Id.*

<sup>59</sup> :: eLitigation, Elitigation.sg (2025), [https://www.elitigation.sg/gd/s/2010\\_SGHC\\_95](https://www.elitigation.sg/gd/s/2010_SGHC_95) (last visited Jul 28, 2025).

<sup>60</sup> Singapore High Court Sets Aside Arbitration Award: Lessons on What Is and Is Not Procedurally Acceptable, Morganlewis.com (2021), <https://www.morganlewis.com/pubs/2021/04/singapore-high-court-sets-aside-arbitration-award-lessons-on-what-is-and-is-not-procedurally-acceptable> (last visited Jul 28, 2025).

<sup>61</sup> Legislation.gov.uk, *Arbitration Act 1996*, Legislation.gov.uk (2019), <https://www.legislation.gov.uk/ukpga/1996/23/contents>.

8,535 in 2008 dropping to 2,921 in 2012 yet still dwarfing construction and commercial caseloads.<sup>62</sup> The Professional Arbitration on Court Terms (PACT) scheme further exemplifies statutory-institutional fusion by allowing parties to opt for an arbitrator or expert to determine lease-renewal terms under the Landlord and Tenant Act 1954, thereby bypassing clogged county-court lists.<sup>63</sup>

Judicial doctrine has evolved from scepticism to robust endorsement of arbitrability for statutory corporate and property claims. The Court of Appeal in *Fulham Football Club v Richards* upheld a mandatory stay of an unfair-prejudice petition under Section 994 Companies Act, reasoning that statutory rights are arbitrable unless the remedy sought is inherently public, such as winding-up or registration rectification.<sup>64</sup> This reasoning has since been applied to service-charge disputes, ground-rent apportionment, and dilapidations, signalling a judicial willingness to respect party choice absent wider public-law implications.<sup>65</sup>

Nonetheless, critics argue that UK property arbitration suffers from under-utilisation outside rent reviews, driven by perceptions of cost parity with litigation, limited tribunal powers to bind non-signatory mortgagees, and the absence of sector-specific default rules comparable to SIAC's or RERA's.<sup>66</sup> The government's 2022 Commercial Rent (Coronavirus) Act, which delegated pandemic-era rent arrears to compulsory arbitration, illustrates both potential and pitfalls: while arbitrators resolved viability disputes rapidly, anecdotal feedback cites inconsistent approaches to disclosure and valuation methodology, underscoring the need for calibrating arbitral procedure to real-estate context.<sup>67</sup>

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<sup>62</sup> CENTRE FOR SOCIO-LEGAL STUDIES AN OVERVIEW OF THE USE OF ARBITRATION IN ENGLAND, (2014), [https://www.law.ox.ac.uk/sites/default/files/migrated/a\\_report\\_by\\_dr\\_michael\\_reynolds\\_of\\_december\\_2014.pdf](https://www.law.ox.ac.uk/sites/default/files/migrated/a_report_by_dr_michael_reynolds_of_december_2014.pdf) (last visited Mar 8, 2025).

<sup>63</sup> LexisNexis Property Disputes expert, *PACT—Professional Arbitration on Court Terms*, @lexisnexis (2019), <https://www.lexisnexis.co.uk/legal/guidance/pact-professional-arbitration-on-court-terms> (last visited Jul 28, 2025).

<sup>64</sup> Robert Merkin, *Lloyd's Law Reporter*, I-law.com (2025), <https://www.i-law.com/ilaw/doc/view.htm?id=271004> (last visited Jul 28, 2025).

<sup>65</sup> Boris Kasolowsky & Roopa Mathews, *The Arbitrability of Corporate Disputes After Fulham Football Club V. Richards: A Decade On*, 39 *Journal of International Arbitration* (2022), <https://kluwerlawonline.com/journalarticle/Journal+of+International+Arbitration/39.2/JOIA2022011> (last visited Jul 28, 2025).

<sup>66</sup> nick wood, *Arbitration in land and property disputes – a missed opportunity?*, Cms.law (2024), <https://cms.law/en/gbr/publication/cms-international-disputes-digest-2024-winter-edition/arbitration-in-land-and-property-disputes-a-missed-opportunity> (last visited Jul 28, 2025).

<sup>67</sup> LEVELLING UP, HOUSING AND COMMUNITIES COMMITTEE - PRIVATE RENTED SECTOR DISPUTES, UK Parliament (2023), <https://committees.parliament.uk/publications/33861/documents/185287/default/>.

The proposed Law Commission amendments to the 1996 Act by introducing tribunal power to summarily dismiss manifestly unmeritorious claims and to make orders against non-parties which could narrow those gaps, especially for multi-tenanted developments where third-party guarantors or superior landlords are indispensable.<sup>68</sup> Until enacted, however, institutional innovation remains the primary driver: RICS now offers an India-specific arbitration panel and digital appointment system, indicating a trend toward specialised rosters and hybrid ADR packages that mirror Singaporean efficiency within the UK framework.<sup>69</sup>

### **C. International Construction Arbitration: ICC and FIDIC as Global Benchmarks**

Beyond Singapore and the UK, international construction arbitration is dominated by the ICC, whose 2024 statistics register 841 new cases with an aggregate dispute value of USD 102 billion.<sup>70</sup> Construction and engineering disputes account for 23.2 percent of filings, with FIDIC-based contracts featuring in nearly a quarter of the caseload, a testament to the ICC's perceived neutrality and technical capability.<sup>71</sup> The Court's award-scrutiny process, unique among leading institutions, returned 71 draft awards for revision in 2024, reinforcing enforceability standards critical for multi-jurisdictional real-estate megaprojects<sup>72</sup>

Procedurally, the ICC Expedited Rules (automatic for claims under USD 3 million) align with SIAC's Streamlined Procedure but provide a six-month award deadline, reflecting a more cautious balance between speed and procedural robustness.<sup>73</sup> Emergency arbitration, though less prolific than at SIAC, remains a vital safeguard: 17 applications in 2024 produced enforceable interim relief across 46 parties spanning all continents, illustrating the ICC's capacity to protect construction site assets and performance bonds before full tribunal constitution.<sup>74</sup>

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<sup>68</sup> Arbitration Act 1996, <https://www.legislation.gov.uk/ukpga/1996/23/contents> accessed 3 August 2025.

<sup>69</sup> DISPUTE RESOLUTION SERVICE, (2023), <https://www.rics.org/content/dam/ricsglobal/documents/dispute-resolution-service/rics-india-arbitration-brochure-dec-2023.pdf> (last visited Jul 28, 2025).

<sup>70</sup> ICC 2024 Dispute Resolution Report: Caseloads, Complexity, and Global Reach | Herbert Smith Freehills Kramer | Global law firm, Herbert Smith Freehills Kramer | Global law firm (2025), <https://www.hsfkramer.com/notes/arbitration/2025-06/icc-2024-case-report-caseloads> (last visited Jul 28, 2025).

<sup>71</sup> ICC reaches arbitration milestone with case 28,000 - ICC - International Chamber of Commerce, ICC - International Chamber of Commerce (2023), <https://iccwbo.org/news-publications/news/icc-reaches-arbitration-milestone-with-case-28000/> (last visited Jul 28, 2025).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 19

Comparatively, the ICC offers broader multi-party joinder and consolidation mechanisms than the UK ad hoc model, reducing the risk of inconsistent awards in EPC consortia or complex financing structures.<sup>75</sup> Conversely, the absence of a dedicated property arbitration wing means that pure landlord-tenant disputes seldom appear on the ICC docket, signalling that domestic institutions retain comparative advantage for localised property issues. Moreover, ICC average proceeding durations—26 months for a final award—are longer than SIAC’s 12-month median, revealing a trade-off between global breadth and time-cost efficiency.<sup>76</sup>

From a doctrinal standpoint, ICC tribunals routinely apply *lex constructionis* principles such as concurrent delay apportionment and total-cost claims, fostering transnational harmonisation of construction law. Awards under the 1999 and 2017 FIDIC suites generate persuasive authority subsequently cited in domestic courts and RERA appellate bodies, indirectly influencing Indian jurisprudence on liquidated damages and extension-of-time entitlements.<sup>77</sup> Yet the ICC’s heavy reliance on document-heavy quantum expert evidence drives costs upward, prompting calls for integrated dispute boards and adjudication tiers in mega-projects—a reform direction already adopted in the 2023 FIDIC Green Book and mirrored in SIAC’s “Arb-Med-Arb” protocol.<sup>78</sup>

## Synthesis

The comparative survey reveals a continuum: Singapore exemplifies hyper-efficient, statute-aligned institutional arbitration tailored to property stakeholders; the UK demonstrates mature yet fragmented utilisation, with scope for procedural innovation and legislative fine-tuning; and the ICC anchors cross-border construction disputes, trading expedition for global enforceability and doctrinal harmonisation. For India’s real-estate sector, a harmonised reform blueprint can selectively borrow: SIAC’s emergency and streamlined architecture for speed, RICS/PACT’s sector-specialist panels for domain expertise, and ICC-style consolidation and scrutiny to ensure consistency and award quality. Such calibrated synthesis would satisfy investor demand for predictability while preserving consumer protection imperatives

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<sup>75</sup> ICC reaches arbitration milestone with case 28,000 - ICC - International Chamber of Commerce, ICC - International Chamber of Commerce (2023), <https://iccwbo.org/news-publications/news/icc-reaches-arbitration-milestone-with-case-28000/> (last visited Jul 28, 2025).

<sup>76</sup> *ICC 2024 Dispute Resolution Report* (n 70).

<sup>77</sup> ICC Arbitration Milestone (n 75).

<sup>78</sup> ‘SIAC Rules 2025 (n 54).

embedded in RERA—advancing the overarching goal of a coherent, integrated dispute-resolution ecosystem for the Indian property market.

## V. CURRENT CHALLENGES AND GAPS

The theoretical framework established by RERA, the Transfer of Property Act, and the Arbitration and Conciliation Act, while conceptually sound, faces significant practical challenges that undermine its effectiveness in providing coherent dispute resolution for India's real estate sector. These challenges manifest across three critical dimensions: jurisdictional uncertainty fostering forum shopping, systemic implementation deficiencies, and differential stakeholder impacts that exacerbate existing power imbalances in the sector.

### A. Jurisdictional Conflicts and Forum Shopping

The most pervasive challenge confronting real estate dispute resolution in India is the emergence of systematic forum shopping enabled by conflicting judicial interpretations of overlapping statutory provisions. The absence of definitive Supreme Court guidance on the RERA-arbitration interface has created what Union Housing Minister Hardeep Singh Puri aptly described as a tendency toward "forum shopping" that undermines the specialized adjudicatory framework that Parliament intended to establish.<sup>79</sup> This judicial uncertainty has crystallized into three distinct interpretive camps among High Courts, each advancing fundamentally different conceptualizations of statutory hierarchy and jurisdictional allocation.

The Bombay High Court's categorical position in *M/s. Rashmi Realty Builders Pvt. Ltd. v. Rahul Rajendrakumar Pagariya* (2024) represents the most restrictive approach, holding that "disputes covered under RERA are non-arbitrable" based on the *generalia specialibus non derogant* doctrine.<sup>80</sup> Justice Madhav Jamdar's reasoning that RERA creates "special rights" enforceable through "special fora" with "special provisions" reflects a rigid interpretation that prioritizes statutory consumer protection over contractual autonomy.<sup>81</sup> This approach has been judicially endorsed through subsequent Maharashtra Real Estate Appellate Tribunal decisions,

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<sup>79</sup> Dipak K Dash, *Govt entities should curb consumers tendency for "forum shopping", encourage them to approach RERA: Hardeep Singh Puri*, The Times of India (2023), <https://timesofindia.indiatimes.com/india/govt-entities-should-curb-consumers-tendency-for-forum-shopping-encourage-them-to-approach-rera-hardeep-singh-puri/articleshow/100113190.cms> (last visited Jul 28, 2025).

<sup>80</sup> *M/s. Rashmi* (n 22).

<sup>81</sup> *Id.*

creating regional certainty but national fragmentation.

Conversely, the Gauhati High Court's permissive stance in *Pallab Ghosh v. Simplex Infrastructures Limited* (2024) embodies a liberal interpretation of concurrent jurisdiction, holding that "arbitration can be invoked by a party, in spite of the availability of the alternative remedy provided under the provisions of the RERA Act".<sup>82</sup> Justice Michael Zothankhuma's application of the doctrine of election allows parties to choose arbitration over RERA proceedings, provided both remedies address the same relief through different procedural mechanisms. This interpretation, while respecting party autonomy, potentially undermines RERA's consumer protection objectives by enabling developers to circumvent specialized regulatory oversight through contractual mechanisms.<sup>83</sup>

The Delhi High Court's intermediate position in *Priyanka Taksh Sood v. Sunworld Residency Pvt. Ltd.* (2022) attempts reconciliation by treating RERA remedies as "in addition to, and not in supersession of" arbitration remedies, applying the doctrine of election to permit party choice between concurrent jurisdictions.<sup>84</sup> However, this approach creates practical complexities regarding procedural coordination between parallel proceedings and fails to address the fundamental question of whether consumer protection statutes can be contractually circumvented.

The practical consequences of this jurisdictional fragmentation are empirically demonstrable. Despite Government efforts to direct disputes toward RERA authorities, consumer forums continue to receive approximately 10% of all complaints related to real estate matters, indicating persistent forum shopping. The Supreme Court's affirmation in *Imperia Structures Ltd. v. Anil Patni* (2020) that RERA does not bar Consumer Protection Act remedies has further complicated the dispute resolution landscape by creating a tripartite jurisdictional framework where homebuyers can potentially approach RERA authorities, consumer forums, and arbitral tribunals for overlapping claims.<sup>85</sup>

## **B. Implementation Challenges**

Beyond doctrinal conflicts, the Indian real estate dispute resolution system suffers from

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<sup>82</sup> *Pallab Ghosh* (n 40)

<sup>83</sup> *ibid*

<sup>84</sup> *Priyanka Taksh Sood v. Sunworld Residency Pvt. Ltd.*, 2022 SCC OnLine Del 4717

<sup>85</sup> *M/S Imperia Structures* (n 37)

profound implementation deficiencies that compromise both RERA's regulatory effectiveness and arbitration's procedural efficiency. These challenges manifest most acutely in infrastructure limitations, resource constraints, and procedural inconsistencies that undermine the theoretical benefits of specialized dispute resolution mechanisms.

**RERA Implementation Deficiencies:** Despite eight years since enactment, RERA implementation remains "patchy" across Indian states, with significant variations in institutional capacity and regulatory effectiveness.<sup>86</sup> Only Maharashtra, Madhya Pradesh, and Punjab initially established permanent regulatory authorities, while most states relied on "interim" arrangements that were "strictly supposed to be a stop-gap" but became standard practice.<sup>87</sup> Current data reveals that while 27 states and 8 union territories have notified RERA rules, 11 states, including all northeastern states, West Bengal, and Kerala - lack functional web portals. West Bengal's refusal to implement RERA, preferring its own West Bengal Housing and Industrial Regulation Act (WBHIRA), illustrates the challenges of implementing central legislation in a federal system where real estate regulation involves concurrent jurisdiction

**Arbitration Infrastructure Limitations:** India's arbitration infrastructure suffers from what the High Level Committee to Review Institutionalisation of Arbitration described as "lack of credible arbitral institutions" with "inadequate infrastructure and support".<sup>88</sup> Most arbitral institutions provide only "hearing venues with basic facilities" lacking advanced amenities such as "multi-screen video conferencing, sound-proof caucus rooms, audio/video recording, court recorders".<sup>89</sup> The Committee's assessment reveals that arbitral institutions are "staffed mostly by persons without adequate knowledge and experience of arbitration," resulting in "invariably limited" quality and range of support available to parties and arbitrators.<sup>90</sup>

These infrastructure deficiencies have practical consequences for real estate disputes, which often involve complex technical evidence requiring specialized presentation and evaluation. The construction industry experiences particular challenges, with arbitration duration in

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<sup>86</sup> IANS, *Two years of RERA: Implementation still patchy in many states*, Millenniumpost.in (2019), <https://www.millenniumpost.in/business/two-years-of-rera-implementation-still-patchy-in-many-states-351867> (last visited Jul 28, 2025).

<sup>87</sup> IANS, *The Financial Express*, Financialexpress.com (2018), <https://www.financialexpress.com/business/industry-rera-act-impact-how-implementation-still-patchy-in-most-states-after-one-year-1149904/> (last visited Jul 28, 2025).

<sup>88</sup> Srikrishna, *Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in India*, (2017), <https://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf>.

<sup>89</sup> Id.

<sup>90</sup> Id.

institutional settings averaging 12 months compared to 18-24 months for traditional consumer forum resolution.<sup>91</sup> However, ad hoc arbitration which dominates domestic real estate contracts which frequently results in "procedural uncertainty and fee inflation" that undermines cost and time advantages.<sup>92</sup>

**Procedural Inconsistencies:** The success rates of alternative dispute resolution mechanisms demonstrate significant procedural variations across states. MahaRERA's conciliation forum achieves a 35-50% success rate, resolving disputes within 60 days compared to 8-10 months for formal RERA orders.<sup>93</sup> However, this model has been adopted by only 6 of 28 states, with only Maharashtra and Uttar Pradesh being "particularly proactive in making conciliation as their anchor dispute resolution strategy".<sup>94</sup> Uttar Pradesh RERA conciliation forum claims a 90-95% success rate through CREDAI member cooperation, while Maharashtra's data indicates 75% initial success rates that have stabilized around 35-50%.

These variations reflect fundamental differences in institutional design and stakeholder cooperation. The absence of standardized procedures across states "diminish[es] predictability" and creates "structural inefficiencies, resource shortages, delays, and limited awareness among homebuyers".<sup>95</sup> The lack of uniform arbitrator qualification requirements for real estate disputes further compounds these challenges, with most arbitrators lacking "relevant technical expertise" necessary for complex property and construction disputes

### C. Stakeholder Impact Analysis

The fragmented dispute resolution landscape generates differential impacts across stakeholder categories, exacerbating existing power imbalances in India's real estate sector and undermining the consumer protection objectives that motivated RERA's enactment.

**Developer Challenges:** Real estate developers face what industry analyses characterize as "uncertainty about appropriate dispute resolution forums, leading to defensive litigation

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<sup>91</sup> Vikash Singh, *Arbitration in India: Recent Developments and Key Challenges*, 11 Int'l J. Creative Res. Thoughts (IJCRT), <https://ijcrt.org/papers/IJCRT2307247.pdf> (2023)

<sup>92</sup> *Dispute Resolution in Real Estate under RERA: A Critical Analysis of Arbitration and Conciliation with Focus On*, IJLLR J. (June 12, 2025), <https://www.ijllr.com/post/dispute-resolution-in-real-estate-under-rera-a-critical-analysis-of-arbitration-and-conciliation-wi>.

<sup>93</sup> *MahaRERA Reports That the Success Rate of Agreements Between Developers and Homebuyers Is Approximately 50%*, PropertyWala.com (Mar. 12, 2024), <https://propertywala.com/news/regulatory/maharera-reports-that-the-success-rate-of-agreements-between-developers-and-homebuyers-is-approximately-50>.

<sup>94</sup> 'Real Estate Disputes: Need for Conciliation Benches in Every RERA, (n 25)

<sup>95</sup> IJLLR Journal, 'Dispute Resolution in Real Estate under RERA: (n 92)



strategies and increased transaction costs".<sup>96</sup> The jurisdictional conflicts between RERA authorities, consumer forums, and arbitral tribunals create what developers describe as compliance cost inflation. These costs are particularly burdensome for small builders in tier-2 cities who often lack the resources to comply, leading some to scale back or exit the industry.

The regulatory uncertainty has prompted developers to adopt "defensive litigation strategies" that prioritize legal protection over project delivery efficiency. Builders' challenges to RERA provisions, particularly Section 3's retrospective application to ongoing projects, reflect industry attempts to "stall implementation" through judicial intervention.<sup>97</sup>

**Homebuyer Disadvantages:** Despite RERA's consumer protection objectives, homebuyers continue to face significant disadvantages in dispute resolution processes. The jurisdictional uncertainty means homebuyers "still find themselves navigating multiple forums without clear guidance on the most effective route to resolution".<sup>98</sup> Research indicates that "arbitration processes often present inequities, disadvantages for homebuyers due to costs, and power imbalances" that reproduce the sectoral advantages that RERA was designed to address.<sup>99</sup>

The consumer choice doctrine, while theoretically protective, creates practical complexities for homebuyers who lack legal sophistication to navigate multiple jurisdictional options. The National Consumer Disputes Redressal Commission's consistent position that consumers cannot be compelled to submit to arbitration reflects recognition of these power imbalances, particularly where "power imbalances between builders and homebuyers are evident". However, the fragmented nature of dispute resolution means that homebuyers must invest substantial resources in forum selection and legal representation across multiple potential jurisdictions.

The HKA Crux Insight Report 2023 documents that Indian construction projects routinely experience cost increases of billions and delays amounting to "hundreds of years" due to

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<sup>96</sup> Id.

<sup>97</sup> Moushumi Das Gupta, *RERA deadlock: Homebuyers in limbo as builders move court ahead of deadline for registering projects* | *Latest News India - Hindustan Times*, Hindustan Times (2017), <https://www.hindustantimes.com/india-news/rera-deadlock-homebuyers-in-limbo-as-builders-move-court-ahead-of-deadline-for-registering-projects/story-GCtH7nMb5cbHIMRvcNMyDJ.html> (last visited Jul 28, 2025).

<sup>98</sup> RERA vs. Arbitration: A jurisdictional dilemma, IIPRD Blog - Intellectual Property Discussions (2024), <https://iiprd.wordpress.com/2024/08/07/rera-vs-arbitration-a-jurisdictional-dilemma/> (last visited Jul 28, 2025).

<sup>99</sup> Id.

contractual disputes.<sup>100</sup> The report's analysis of 16 Indian projects, each averaging \$1.8 billion in capital expenditure, confirms that "all projects suffered from additional costs and delays because of disputes between employers, major project partners and across the supply chain".<sup>101</sup> These systemic inefficiencies reflect the broader challenges of implementing coherent dispute resolution mechanisms for complex, multi-party construction arrangements.

The absence of predictable, efficient dispute resolution mechanisms undermines India's ambitions to attract foreign investment in real estate and infrastructure development. International investors, accustomed to coherent arbitration frameworks in jurisdictions like Singapore and the UK, face additional risk premiums when investing in markets characterized by jurisdictional uncertainty and procedural fragmentation. This challenge is particularly acute for cross-border real estate joint ventures and infrastructure projects involving international financing, where dispute resolution predictability is essential for investment decision-making and risk assessment.

## VI. REFORM PROPOSALS

The foregoing analysis reveals that India's real estate dispute resolution framework requires fundamental restructuring to address the jurisdictional fragmentation, implementation deficiencies, and stakeholder disadvantages that currently characterize the sector. Drawing from comparative international best practices and contemporary academic discourse, this section proposes a comprehensive reform agenda organized around three interconnected pillars: harmonized legal framework development, institutional capacity building, and procedural innovation through technology integration.

### A. Harmonized Legal Framework

#### Proposed Real Estate Dispute Resolution Code

The most pressing reform imperative is the enactment of a comprehensive Real Estate Dispute Resolution (Harmonization) Act that reconciles the jurisdictional conflicts between RERA, the Transfer of Property Act, and the Arbitration and Conciliation Act. This proposal builds upon

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<sup>100</sup> Editor, *Arbitration – a viable and cost-effective method for resolving construction disputes*, Construction Times (2024), <https://constructiontimes.co.in/arbitration-a-viable-and-cost-effective-method-for-resolving-construction-disputes> (last visited Jul 28, 2025).

<sup>101</sup> Id.

scholarly recommendations for "harmonized legal frameworks" that integrate multiple dispute resolution mechanisms while preserving their distinctive institutional advantages.<sup>102</sup> The proposed Code should establish clear jurisdictional demarcation principles based on the nature of the dispute rather than the forum chosen by parties, thereby eliminating the forum shopping behavior that currently undermines systemic efficiency.<sup>103</sup>

The Code's structural framework should adopt what comparative scholars term a "tiered arbitrability test" that distinguishes between: (i) pure contractual disputes, which remain fully arbitrable under existing jurisprudence; (ii) mixed contractual-statutory claims, which should be arbitrable subject to RERA authority oversight for regulatory compliance; and (iii) pure regulatory violations, which should remain within exclusive RERA jurisdiction.<sup>104</sup> This approach draws inspiration from Singapore's refined arbitrability framework, which successfully balances private autonomy with public regulatory oversight.<sup>105</sup>

Critically, the harmonized framework must address the definitional ambiguity surrounding "consumer" disputes in real estate transactions. Academic analysis suggests that the current blanket non-arbitrability of consumer disputes creates "disproportionate protection" that may actually disadvantage consumers by forcing them into slower, more expensive forums.<sup>106</sup> The proposed Code should therefore adopt a "consumer choice doctrine" that permits arbitration where consumers affirmatively opt for such mechanisms after receiving mandatory disclosure about alternative remedies, thereby respecting both consumer protection imperatives and contractual autonomy principles.

### Statutory Amendments

The harmonized framework requires targeted amendments to existing statutes to eliminate contradictory provisions that generate jurisdictional uncertainty. Section 79 of RERA requires

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<sup>102</sup> Ajit K. Mishra, *International Commercial Arbitration – Harmonization of Indian Legal Framework with International Practices in Context of International Construction Disputes*, 3 AIADR J. 23 (June 2023), [https://www.academia.edu/102783628/International\\_Commercial\\_Arbitration\\_Harmonization\\_of\\_Indian\\_Legal\\_Framework\\_with\\_International\\_Practices\\_in\\_Context\\_of\\_International\\_Construction\\_Disputes](https://www.academia.edu/102783628/International_Commercial_Arbitration_Harmonization_of_Indian_Legal_Framework_with_International_Practices_in_Context_of_International_Construction_Disputes) (last visited July 28, 2025).

<sup>103</sup> IJLLR Journal, 'Dispute Resolution in Real Estate under RERA (n 92)

<sup>104</sup> Mishra, A. K. (2023) "International Commercial Arbitration (n 102)

<sup>105</sup> 'Multi-Tier Approaches to the Resolution of International Disputes, Cambridge University Press eBooks (2021).

<sup>106</sup> IJLLR Journal, *Resolving Property Disputes In India: Lessons From Global ADR Practices And Pathways For Reform*, IJLLR Journal (2025), <https://www.ijllr.com/post/resolving-property-disputes-in-india-lessons-from-global-adr-practices-and-pathways-for-reform> (last visited Jul 28, 2025).

clarification to explicitly exclude arbitral tribunals from the "other authority" bar while preserving the Authority's regulatory oversight functions.<sup>107</sup> Simultaneously, Section 88's "in addition to" formulation needs legislative refinement to specify that RERA remedies operate concurrently with, rather than in substitution of, contractual arbitration rights where disputes involve both statutory and contractual elements.

The Arbitration and Conciliation Act requires corresponding amendments to recognize the specialized nature of real estate disputes. Drawing from academic proposals for "sector-specific arbitration frameworks," the Act should include a dedicated chapter on real estate arbitration that mandates specialized arbitrator qualifications, expedited procedures for residential disputes below specified thresholds, and integrative mechanisms with RERA conciliation processes.<sup>108</sup> The proposed 2024 amendments' emphasis on institutional arbitration provides an opportune moment to incorporate these sector-specific provisions.

## **B. Institutional Framework Development**

Specialized Real Estate Arbitration Institutions Contemporary scholarship emphasizes that successful arbitration hubs require "purpose-built institutional infrastructure" rather than generic commercial arbitration facilities.<sup>109</sup> India should therefore establish a specialized Real Estate Arbitration Council (REAC) modeled on the Arbitration Council of India but with sector-specific expertise and procedural innovations. REAC's mandate should encompass: (i) maintaining specialized panels of real estate arbitrators with technical qualifications in property law, construction, and valuation; (ii) developing standardized procedural rules for different categories of real estate disputes; and (iii) coordinating with RERA authorities to ensure regulatory compliance in arbitral proceedings.<sup>110</sup>

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<sup>107</sup> Indian Journal of Integrated Research in Law CONUNDRUM OF CONCURRENT REMEDIES FOR HOMEBUYERS UNDER RERA, 2016 AGAINST IBC, CONSUMER PROTECTION ACT AND ARBITRATION ACT Introduction, <https://ijirl.com/wp-content/uploads/2024/04/CONUNDRUM-OF-CONCURRENT-REMEDIES-FOR-HOMEBUYERS-UNDER-RERA-2016-AGAINST-IBC-CONSUMER-PROTECTION-ACT-AND-ARBITRATION-ACT.pdf> (last visited Jul 28, 2025).

<sup>108</sup> Sachin Rastogi & Shahi, *THE CONCEPT OF INSTITUTIONAL ARBITRATION -NEED FOR THE HOUR*, 58 PSYCHOLOGY AND EDUCATION 6601 (2021), <https://pdfs.semanticscholar.org/3a4e/1d4293e9022e009ca63782d6d6d0e8e9cd83.pdf>.

<sup>109</sup> Sh. Pachahara, *Institutional Arbitration: India's Attempt to Transpire as an International Hub of Arbitration in Southeast Asia*, 10 BRICS Law Journal 123 (2023).

<sup>110</sup> ARBITRATION COUNCIL OF INDIA | TaxTMI, TaxTMI (2018), <https://www.taxtmi.com/article/detailed?id=8171> (last visited Jul 28, 2025).

The institutional framework should incorporate what academic analysis terms "hybrid dispute resolution mechanisms" that combine arbitration's finality with RERA's consumer protection features.<sup>111</sup> REAC should therefore establish "Integrated Dispute Resolution Panels" comprising both legal arbitrators and technical experts, enabling tribunals to address complex construction defects, title disputes, and valuation disagreements with appropriate domain expertise. This approach draws from successful international models where specialized arbitration institutions have achieved significant efficiency gains through technical specialization.<sup>112</sup>

State-level implementation requires careful calibration to federal structure considerations. REAC should establish regional centers aligned with RERA authority jurisdictions, ensuring procedural consistency while accommodating state-specific legal variations.<sup>113</sup> The Maharashtra model of institutional arbitration policies mandating arbitration clauses in government contracts provides a template for scaling specialized real estate arbitration across Indian states.<sup>114</sup>

### Enhanced Conciliation Mechanisms

The reform framework must strengthen and standardize RERA's conciliation mechanisms, which have demonstrated significant success but remain limited in scope and geographical coverage. Academic analysis of MahaRERA's conciliation program reveals that success rates of 35-50% compare favorably with international mediation benchmarks, but procedural variations across states undermine scalability.<sup>115</sup> The proposed enhancement should therefore establish uniform conciliation procedures, standardized training protocols for conciliators, and mandatory pre-arbitration conciliation for disputes below specified value thresholds.

The conciliation enhancement should incorporate what ODR scholars term "technology-enabled mediation platforms" that can handle high-volume, low-complexity disputes

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<sup>111</sup> Daksh Gupta, *Mediation as an Effective Mechanism for Resolving Real Estate Disputes in India*, Zenodo (2025), <https://zenodo.org/records/15529378> (last visited Jul 28, 2025).

<sup>112</sup> RICHARD GARNETT, *INTERNATIONAL ARBITRATION LAW: PROGRESS TOWARDS HARMONISATION* International Arbitration Law: Progress Towards Harmonisation RICHARD GARNETT \* CONTENTS, [https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0003/1680258/Garnett.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0003/1680258/Garnett.pdf).

<sup>113</sup> Vanshika Kapoor, *Strengthening The Role Of Institutional Arbitration And Its Enforcement In India This paper seeks to deal with the functioning of the existing institutions for governing arbitration in India*, 9 International Journal of Creative Research Thoughts 2320 (2021), <https://www.ijert.org/papers/IJCRT2103003.pdf> (last visited Jul 28, 2025).

<sup>114</sup> Ian Thomas, *indian arbitration hub progress*, (2024), <https://law.asia/indian-arbitration-hub-progress/>.

<sup>115</sup> IJLLR Journal, 'Dispute Resolution in Real Estate under RERA (n 92)

efficiently.<sup>116</sup> Drawing from NITI Aayog's ODR Policy Plan, the framework should establish digital conciliation platforms that provide automated case categorization, online document filing, and virtual hearing capabilities.<sup>117</sup> This technological integration addresses the resource constraints that currently limit conciliation availability while ensuring broader geographical coverage.

### C. Procedural Innovations

#### Multi-Tier Dispute Resolution System

International academic consensus increasingly supports multi-tier dispute resolution (MDR) frameworks that combine mediation, arbitration, and specialized adjudication in sequential stages.<sup>118</sup> For Indian real estate disputes, the optimal MDR framework should mandate: (i) initial conciliation attempts through RERA mechanisms for statutory claims; (ii) expedited arbitration for contractual disputes below ₹50 lakh; (iii) institutional arbitration for complex multi-party construction disputes; and (iv) specialized appellate arbitration for award challenges involving technical issues.<sup>119</sup>

This tiered approach addresses what scholars identify as the "filtering function" of effective dispute resolution systems, ensuring that only genuinely complex disputes proceed to resource-intensive adjudicative processes.<sup>120</sup> The procedural design should incorporate "enforcement checkpoints" at each tier, preventing parties from circumventing earlier resolution attempts while maintaining access to higher-tier remedies where justified. Academic analysis suggests that properly designed MDR clauses can reduce resolution timelines by 40-60% compared to

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<sup>116</sup> Pasham Abhinay Reddy, "ONLINE DISPUTE RESOLUTION: A NEW ERA FOR INDIA'S JUSTICE SYSTEM? ANALYSING THE GROWTH AND EFFECTIVENESS OF ODR PLATFORMS IN RESOLVING DISPUTES OUTSIDE TRADITIONAL COURTS," SSRN Electronic Journal (2025).

<sup>117</sup> THE ODR POLICY PLAN FOR INDIA DESIGNING THE FUTURE OF DISPUTE RESOLUTION, <https://www.niti.gov.in/sites/default/files/2023-03/Designing-The-Future-of-Dispute-Resolution-The-ODR-Policy-Plan-for-India.pdf>.

<sup>118</sup> 'Multi-Tier Approaches to the Resolution of International Disputes' (n 106.)

<sup>119</sup> Gaurav Rai, Gautam Mohanty & Anushna Das, *Pre-arbitral Steps in a Multi-Tier Dispute Resolution System in India-Analysing the Current Quagmire and the Way Forward*, Ssrn.com (2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4116827](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4116827) (last visited Jul 28, 2025).

<sup>120</sup> Doug Jones, *Dealing with Multi-Tiered Dispute Resolution Process*, 75 Arb. Int'l J. Arb., Mediation & Disp. Mgmt. 188(2009), <https://kluwerlawonline.com/journalarticle/Arbitration:+The+International+Journal+of+Arbitration,+Mediation+and+Dispute+Management/75.13/AMDM2009034> (last visited July 28, 2025).

traditional litigation pathways.<sup>121</sup>

The MDR framework must address enforceability concerns that have limited multi-tier adoption in commercial contexts. Drawing from comparative scholarship on MDR clause interpretation, the Indian framework should establish presumptive mandatory compliance with pre-arbitral steps while permitting waiver through express party agreement or demonstrable futility.<sup>122</sup> This approach balances party autonomy with systemic efficiency objectives while reducing judicial uncertainty about MDR clause enforceability.

### Technology Integration

The reform framework's most transformative element involves comprehensive technology integration that leverages artificial intelligence, blockchain, and online dispute resolution platforms to enhance efficiency and accessibility.<sup>123</sup> The technological integration should encompass three domains: (i) case management and evidence processing through AI-powered document analysis and fact extraction; (ii) virtual hearing infrastructure supporting remote arbitration with specialized real estate expertise; and (iii) blockchain-based award enforcement mechanisms that ensure cross-jurisdictional recognition.

Academic research on "technological competence in arbitration" suggests that successful integration requires deliberate design choices that enhance rather than replace human adjudication.<sup>124</sup> The proposed framework should therefore establish AI-assisted case categorization that routes disputes to appropriate resolution mechanisms, automated deadline management systems that reduce procedural delays, and predictive analytics that inform parties about likely outcomes to encourage settlement.<sup>125</sup>

ODR integration must address the digital divide concerns that could exclude vulnerable

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<sup>121</sup> Gaurav Rai, Gautam Mohanty and Anushna Das, 'Pre-Arbitral Steps in a Multi-Tier Dispute Resolution System in India-Analysing the Current Quagmire and the Way Forward' (Ssrn.com 20 October 2020) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4116827](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4116827)> accessed 28 July 2025.

<sup>122</sup> Jus Mundi, *Multi-Tiered Dispute Resolution Clauses: Towards Harmonisation?*, Daily Jus - Your daily dose of arbitration and legal industry insights (2023), <https://dailyjus.com/world/2023/05/multi-tiered-dispute-resolution-clauses-towards-harmonisation-2> (last visited Jul 28, 2025).

<sup>123</sup> Amy J Schmitz, *Picking the Proper Technological Tool for Problem-Solving in Arbitration*, Social Science Research Network (2023), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4608415](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4608415).

<sup>124</sup> Fach Gómez, Katia, *Technological Competence of Arbitrators: A Comparative and International Legal Study*, Ssrn.com (2024), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4721800](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4721800) (last visited Jul 28, 2025).

<sup>125</sup> Id.

populations from technology-enabled dispute resolution. Following OECD ODR Framework guidelines, the Indian system should provide multi-channel access including mobile platforms, vernacular language support, and offline backup procedures for parties lacking digital access.<sup>126</sup> Recent scholarship emphasizes that effective ODR systems require "inclusive design principles" that ensure no stakeholder category is systematically disadvantaged by technological requirements.

The technological framework should incorporate smart contract applications for routine real estate transactions, enabling automated dispute prevention through predefined performance triggers and penalty mechanisms. This proactive approach aligns with academic recommendations for "dispute avoidance systems" that address conflicts before they escalate to formal adjudication.<sup>127</sup> Blockchain integration can provide immutable transaction records that simplify evidence presentation while ensuring data integrity across multiple dispute resolution forums.

### **Implementation Sequencing and Evaluation Metrics**

The comprehensive reform agenda requires phased implementation with robust monitoring mechanisms to ensure effectiveness and stakeholder acceptance. Phase I should focus on harmonizing statutory provisions and establishing REAC infrastructure in pilot states with existing RERA capacity. Phase II should expand to national coverage while incorporating technology platforms and standardized procedures. Phase III should integrate international arbitration capabilities and cross-border enforcement mechanisms.

Success metrics should encompass quantitative indicators (average resolution time, cost per dispute, stakeholder satisfaction rates) and qualitative assessments (procedural fairness, enforcement effectiveness, systemic coherence). Academic literature suggests that reform sustainability requires continuous stakeholder engagement and adaptive modification based on empirical outcomes.<sup>128</sup> The proposed framework should therefore establish mandatory periodic review mechanisms with academic research components to ensure ongoing effectiveness and

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<sup>126</sup> Michael J. Dennis, *APEC Online Dispute Resolution Framework*, 6 International Journal of Online Dispute Resolution 138 (2019).

<sup>127</sup> Dhatri Singh & Kalpana Devi, *Online Dispute Resolution (Odr): A Paradigm Shift In Access To Justice*, 7 International Journal For Multidisciplinary Research (2025), <https://www.ijfmr.com/papers/2025/2/40938.pdf>.

<sup>128</sup> Ajit K Mishra, 'International Commercial Arbitration (n 102)



relevance to evolving market conditions.

## VII. IMPLEMENTATION ROADMAP

The proposed harmonized framework for real estate dispute resolution requires systematic implementation through coordinated legislative, institutional and monitoring mechanisms that address India's federal structure while ensuring national coherence. Drawing from international experience with legal system reforms, this roadmap establishes a three-phase implementation strategy designed to minimize disruption while maximizing stakeholder adoption and institutional capacity building.

### A. Legislative Measures

The implementation roadmap's foundational phase requires comprehensive legislative action through Parliament's concurrent jurisdiction over arbitration and state cooperation on real estate regulation. The proposed Real Estate Dispute Resolution (Harmonization) Act should be introduced as a Money Bill under Article 110 to expedite passage while incorporating constitutional amendments expert recommendations for concurrent list legislation. Parliamentary committee examination should focus on federal-state coordination mechanisms, ensuring state RERA authorities retain regulatory autonomy while participating in the harmonized dispute resolution framework.

Legislative sequencing must prioritize the amendment of Section 79 RERA to clarify arbitration exceptions, followed by corresponding amendments to Section 8 of the Arbitration and Conciliation Act recognizing real estate disputes' specialized characteristics. Academic analysis of successful legal harmonization initiatives suggests that simultaneous rather than sequential statutory amendments reduce implementation confusion and judicial misinterpretation. The 2024 Draft Arbitration Bill's institutional arbitration emphasis provides legislative momentum that should be leveraged to incorporate sector-specific real estate provisions.

Critical to legislative success is the development of Model Rules that states can adapt to local conditions while maintaining procedural consistency. The Inter-State Council's role in facilitating cooperative federalism becomes essential, particularly given real estate regulation's state subject designation under the Seventh Schedule. The legislative framework must therefore

include sunset clauses for pilot programs and mandatory parliamentary review after three years to ensure adaptive governance based on empirical outcomes.

## **B. Institutional Development Phase**

The institutional development strategy adopts a three-wave approach that builds capacity incrementally while ensuring quality control and stakeholder confidence. Phase I focuses on establishing Real Estate Arbitration Council (REAC) infrastructure in Maharashtra, Delhi, and Karnataka, which are states with existing RERA capacity and institutional arbitration experience. These pilot programs should operate for 18 months, generating empirical data on procedural effectiveness, stakeholder satisfaction, and cost-benefit ratios that inform national expansion.

Phase II expansion to all RERA-compliant states requires standardized training protocols for arbitrators, conciliators, and administrative staff. The training framework should incorporate technical modules on construction defects, property valuation, and consumer protection law, addressing the specialized expertise gaps identified in current arbitration practice. International collaboration with SIAC, RICS, and ICC should provide knowledge transfer and certification pathways that enhance arbitrator quality while building global recognition for Indian real estate arbitration.

Phase III implementation involves establishing India as a regional hub for cross-border real estate arbitration, leveraging the country's growing economic influence and English-language legal tradition. This requires REAC accreditation under international institutional standards and bilateral arbitration promotion agreements with key trading partners. The institutional development must parallel technology infrastructure deployment, ensuring digital case management, virtual hearing capabilities, and blockchain-based enforcement mechanisms support rather than replace human expertise.

## **C. Monitoring and Evaluation Framework**

Implementation success requires robust monitoring mechanisms that track quantitative performance indicators while capturing qualitative stakeholder experiences and systemic coherence. Key performance indicators should include average dispute resolution timelines (target: 6-9 months for standard cases), cost ratios compared to traditional litigation (target: 30-

40% reduction), and stakeholder satisfaction rates across developer, homebuyer, and investor categories (target: 75% satisfaction threshold).

The evaluation framework must incorporate academic research partnerships that provide independent assessment of reform effectiveness. Annual reports should analyze case law developments, identify implementation bottlenecks, and recommend adaptive modifications based on empirical evidence. International benchmarking against Singapore, UK, and other comparative jurisdictions should inform continuous improvement initiatives and best practice adoption.

Critically, the monitoring system must address equity concerns by tracking access to justice indicators across different socio-economic groups, geographical regions, and dispute value categories. The framework should include mandatory feedback mechanisms for all stakeholders and sunset review provisions that permit legislative modifications based on demonstrated implementation challenges. This adaptive governance approach ensures the harmonized framework remains responsive to evolving market conditions and stakeholder needs while maintaining the core objectives of efficiency, accessibility, and enforceability in India's real estate dispute resolution ecosystem.

## **VIII. CONCLUSION**

This research has undertaken a comprehensive analysis of India's fragmented real estate dispute resolution landscape, examining the jurisdictional conflicts between RERA's statutory mechanisms, the Transfer of Property Act's civil court procedures, and arbitration under the Arbitration and Conciliation Act. The central research question revolves around how India can develop a harmonized legal framework that effectively reconciles these jurisdictional conflicts while ensuring efficient, accessible, and enforceable dispute resolution that has been addressed through doctrinal analysis, comparative jurisprudence, and empirical assessment of stakeholder impacts.

### **Summary of Key Findings**

The analysis reveals that India's current legal framework suffers from fundamental structural deficiencies that undermine the effectiveness of dispute resolution for real estate stakeholders. The Supreme Court's transformative jurisprudence in *Vidya Drolia v. Durga Trading*

Corporation, while expanding property dispute arbitrability through the four-fold test, has failed to address the specific interface between RERA's consumer protection mandates and arbitration's contractual autonomy principles. The resulting jurisdictional vacuum has generated divergent High Court interpretations, with the Bombay High Court adopting categorical non-arbitrability for RERA disputes while the Gauhati High Court permits party choice between concurrent jurisdictions.

This doctrinal fragmentation manifests practically through systematic forum shopping that increases transaction costs, extends resolution timelines, and undermines investor confidence. Empirical evidence demonstrates that real estate disputes proceeding through traditional litigation require average resolution times of 7.5 years with costs reaching 31% of claim value, significantly exceeding international benchmarks. Meanwhile, RERA's conciliation mechanisms, despite achieving 35-50% success rates in pilot programs, remain geographically limited and procedurally inconsistent across states.

The comparative analysis reveals that successful jurisdictions like Singapore and the United Kingdom have achieved coherent real estate dispute resolution through deliberate statutory harmonization, specialized institutional infrastructure, and technology-enabled procedural innovations. Singapore's SIAC framework demonstrates that efficient arbitration institutions can resolve construction disputes within 12 months while maintaining regulatory oversight, while the UK's integration of statutory tribunals with private arbitration provides a template for balancing consumer protection with contractual autonomy.

### **Proposed Harmonized Framework**

The research proposes a comprehensive reform agenda organized around three interconnected pillars: harmonized legal framework development, institutional capacity building, and procedural innovation through technology integration. The centerpiece recommendation is the enactment of a Real Estate Dispute Resolution (Harmonization) Act that establishes clear jurisdictional demarcation based on dispute nature rather than forum choice, thereby eliminating the forum shopping behaviour that currently undermines systemic efficiency.

The institutional framework development requires establishing a specialized Real Estate Arbitration Council (REAC) with sector-specific expertise and procedural innovations, complemented by enhanced RERA conciliation mechanisms that leverage technology-enabled

platforms for high-volume dispute resolution. The procedural innovations encompass multi-tier dispute resolution systems that combine mediation, arbitration, and specialized adjudication in sequential stages, supported by artificial intelligence, blockchain, and online dispute resolution platforms.

### **Expected Benefits and Future Implications**

Implementation of the proposed harmonized framework is projected to reduce dispute resolution timelines from the current average of 18 months to 6-9 months while decreasing costs by 30-40% compared to traditional litigation. Enhanced procedural predictability should strengthen investor confidence and support India's ambitions to attract foreign investment in real estate and infrastructure development.

The framework's success depends on coordinated implementation through legislative amendment, institutional capacity building, and stakeholder engagement across India's federal structure. Future research should focus on empirical assessment of implementation effectiveness, cross-border real estate arbitration frameworks, and the impact of technological integration on access to justice across different socio-economic groups.

Ultimately, this research contributes to the broader academic discourse on harmonizing statutory consumer protection with commercial dispute resolution mechanisms, providing a template for similar reforms in other sectors characterized by complex regulatory-contractual interfaces. The proposed framework represents a significant step toward establishing India as a preferred jurisdiction for efficient, accessible and enforceable real estate dispute resolution in the global economy.