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# **DISPUTE RESOLUTION IN REAL ESTATE UNDER RERA: A CRITICAL ANALYSIS OF ARBITRATION AND CONCILIATION WITH FOCUS ON CHALLENGES AND REFORMS**

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## **ABSTRACT**

The Indian real estate sector, a significant economic driver, faces prevalent disputes due to issues like project delays and power imbalances favoring developers. The Real Estate (Regulation and Development) Act, 2016 (RERA) was enacted to address this by enhancing transparency and establishing dispute resolution mechanisms, including arbitration and conciliation. However, challenges in the implementation of these alternative dispute resolution (ADR) processes under RERA persist. This study critically analyzed the efficacy of arbitration and conciliation within the RERA framework from the homebuyer's perspective.

This research employed a qualitative analysis based on a review of statutory provisions of RERA and the Arbitration and Conciliation Act, 1996, relevant judicial precedents from Supreme Court and High Court cases, and existing reports and comparative insights into dispute resolution practices. The analysis focused on the systemic and procedural aspects of arbitration and conciliation under RERA as applied to real estate disputes between homebuyers and developers across various Indian states.

The analysis revealed significant challenges, including jurisdictional conflicts between RERA and other laws like the Arbitration and Conciliation Act, creating confusion regarding the appropriate forum. Arbitration processes often presented inequities, disadvantages for homebuyers due to costs, and power imbalances. Conciliation mechanisms were found to lack standardization across states, diminishing predictability. Structural inefficiencies, resource shortages, delays, and limited awareness among homebuyers also hampered effective dispute resolution under RERA.

These findings indicate that, despite RERA's aims, the current implementation of arbitration and conciliation often falls short of providing accessible, efficient, and fair outcomes for homebuyers. Comprehensive reforms are essential, including harmonizing laws, standardizing procedures,

enhancing institutional capacity, increasing homebuyer awareness, and ensuring robust enforcement of ADR outcomes. Strengthening these mechanisms is crucial for RERA to effectively fulfill its consumer protection mandate in the real estate sector.

## **Introduction**

### ***The Indian Real Estate Sector and Prevalence of Disputes***

The Indian real estate sector drives much of the country's economic growth; giving rise to urban development along with employment opportunities. As of the year 2023, the sector is predicted to reach a market of USD 1 trillion by 2030, contributing to almost 13% of India's GDP. It consists of residential, commercial, retail, and hospitality segments- with residential real estate being in a position to take the highest share as hot and premium housing demand rises. Urbanization, increasing disposable income, and initiation taken by the government are certainly contributing to the sector's growth.<sup>1</sup>

Over the years of growth, the rapidity of these developments has given rise to various other issues as well. The laissez-faire approach in the Indian real estate sector has promoted a number of corrupt practices over the decades, including project delays, fund diversions, and weakness in both rescinding contracts and introducing safeguards. These very people who have been victimized by this malady are usually the home buyers. They often have no alternative but to wait for years in the hands of the builders for possession of their properties or enjoyment promised amenities. Pressures from the massive imbalance in bargaining powers between builders on the one hand and buyers on the other magnify such disputes. The top reasons for disputes in the real estate market remain to be delays, vague land titles, inconsistent approvals, and arbitrary contractual conditions.

### ***Introduction to the Real Estate (Regulation and Development) Act, 2016 (RERA)***

In response to an urgent need for regulation and systemic inefficiencies, the Real Estate (Regulation and Development) Act, 2016 (RERA) was opened up by the Indian parliament and

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<sup>1</sup> [www.ETGovernment.com](https://www.ETGovernment.com), *India's Real Estate Renaissance: Why the Next Decade Belongs to Sustainable, Tech-Driven Housing - ET Government*, ETGOVERNMENT.COM, <https://government.economictimes.indiatimes.com/blog/unlocking-indias-real-estate-future-sustainable-and-tech-driven-habitats/121530785> (last visited Jun. 2, 2025)

came into effect from May 1st, 2017.<sup>2</sup> The act aims to provide much-needed accountability, transparency, and efficiency within real estate transactions. It makes registration of real estate projects and agents a requirement, such that any project exceeding 500 square meters or more than eight apartments needs to be registered<sup>3</sup>. State-level RERA has to maintain a centralized repository for project data to provide information for homebuyers and catch hold of developers for delay.

Also, it has brought in stringent penalties against non-compliance with the clauses in which developers would deploy 70% of their project funds into the project-specific escrow accounts<sup>4</sup>. One should also note that prior to the necessary approvals, developers would refrain from selling such projects to investors. Under this law considered a pro-consumer reform, the aim is to fill the void of trust between buyers and developers and incentivize timely completion of the projects.

### ***Dispute Resolution Mechanisms Under RERA***

Central to the RERA framework is the grievance redressal mechanism for expeditious grievance resolution. It empowers regulatory authorities to handle complaints and supports alternative dispute resolution (ADR) such as arbitration and conciliation. These mechanisms are designed to ease the burden on the courts and promote, instead, an amicable resolution of disputes within people. However, despite the spirit of RERA, the implementation indeed has been uneven.

Specific factors hinder the efficiency of alternative dispute resolution under RERA. The jurisdictional overlap with other laws--like the Arbitration and Conciliation Act of 1996 often leaves a confusion among homebuyers regarding the proper forum for grievance redress. Thus, the variance in the availability and the quality of arbitration and conciliation services State-wise in conjunction with system inefficiencies has limited the efficacy of these forums in consistently delivering fair results.

### **Purpose of the Research Paper**

This research paper seeks to thoroughly analyze the efficacy of arbitration and conciliation

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<sup>2</sup> The Real Estate (Regulation and Development) Act, No. 16 of 2016, Gazette of India, May 1, 2017.

<sup>3</sup> Id. § 3.

<sup>4</sup> Id. § 4(2)(1)(D).

under RERA towards the resolution of real estate disputes, particularly from the viewpoint of homebuyers. RERA was envisaged as a unique statute aimed at protecting consumers and regulating the real estate sector. However, the practical side opened up several challenges and ambiguities.

### **1. Jurisdictional Conflicts and Challenges Posed by Arbitration:**

**While Section 79 of RERA<sup>5</sup> bars civil courts from taking cognizance of the dispute falling under RERA, Section 8(1) of the Arbitration and Conciliation Act<sup>6</sup>** requires the appointment of arbitration in all cases where an arbitration agreement exists. This contradiction results in an ambiguity about which laws will have jurisdiction over the arbitration of real estate cases or whether that power of arbitration has been given to real estate cases by the RERA. It is a long list of issues concerning the creators using arbitration clauses in contracts to evade the real estate regulatory scrutiny, compelling homebuyers to participate in expensive and developer-friendly arbitration proceedings.

### **2. Homebuyers are Discriminated Against in Arbitration:**

While meant to be an efficient substitute for litigation, there have been many complaints that arbitration often works in favor of developers at the expense of consumers. Arbitration clauses in contracts may contain provisions that deny homebuyers the ability to engage in collective action or would impose prohibitively expensive and inaccessible arbitration venues. Many homebuyers also do not have enough money or proper knowledge of the law to navigate arbitration, leading to an endemic imbalance of power.

### **3. Arbitrability of RERA Disputes:**

The Supreme Court decisions in **Booz Allen & Hamilton v. SBI Home Finance Ltd<sup>7</sup>** have sorted out the distinction between rights in rem (concerning the public at large) and rights in personam (which cover private disputes). Some of the claims in RERA like the compensation for project delays may fall within the ambit of arbitrability, while broader disputes involving

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<sup>5</sup> The Real Estate (Regulation and Development) Act, No. 16 of 2016, § 79.

<sup>6</sup> The Arbitration and Conciliation Act, No. 26 of 1996, § 8(1).

<sup>7</sup> Booz Allen & Hamilton Inc. v. SBI Home Fin. Ltd., (2011) 5 SCC 532.

statutory violations fall beyond this ambit. These distinctions remain under-addressed in the RERA framework.

#### **4. Structural and Procedural Inefficiencies:**

A shortage of resources, including insufficient adjudicating officers and insufficient awareness campaigns for homebuyers, only contributes to the ineffectiveness of resolving disputes under RERA. The absence of any clear guidelines concerning arbitration and conciliation has also rendered many disputed unresolved and has delayed others by a considerable amount of time.

### **Establishment and Structure of Dispute Resolution Bodies**

#### **1. Real Estate Regulatory Authority (RERA)**

**Establishment of RERAs under RERA: The Real Estate (Regulation and Development) Act, 2016** is passed for the establishment of the Real Estate Regulatory Authorities in every state and union territory to regulate and resolve disputes concerning real estate.<sup>8</sup> Each state must establish a Real Estate Regulatory Authority to oversee real estate projects and to make sure implementation of RERA's provisions. The authority has a chairperson and at least two members. The chairperson and members are appointed by the state government from amongst persons having expertise in real estate or law or finance.<sup>9</sup>

The functions of RERA include registration of all real estate projects and agents, expediting a homebuyer in their complaints, and bringing transparency. It conducts investigations and inspections to ensure the provisions of RERA have been followed and has given powers to impose fines or provide necessary orders to enforce compliance.<sup>10</sup>

#### **2. RERA Appellate Tribunal**

The RERA Appellate Tribunal functions as the appellate body to hear appeals against orders passed by RERAs and adjudicating officers<sup>11</sup>. The tribunal includes a Judicial Member (with legal expertise) and a Technical/Administrative Member (with real estate expertise) either in

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<sup>8</sup> The Real Estate (Regulation and Development) Act, No. 16 of 2016, § 20, Gazette of India.

<sup>9</sup> Id. § 21

<sup>10</sup> Id. §§ 4, 31, 35.

<sup>11</sup> Id. § 43.

real estate or in law.<sup>12</sup> The tribunal is established at the state level to ensure affordable access to justice.

This tribunal has jurisdiction to hear appeals against decisions, directions, or orders made by RERAs. It can uphold, modify, or overturn the RERA decisions depending on the merit of the case. All of its decisions are binding on-the ground and limited to challenge by way of further appeals before the High Court<sup>13</sup>.

## **Complaint Filing and Investigation Process**

### **1. Procedure to lodge complaints**

Any affected homebuyers, promoters, or agents may lodge complaints alleging violations of provisions of RERA with state parties<sup>14</sup>. Accordingly, these complaints may be filed entirely online or entirely offline, depending on state legislation including key details in their complaints: the parties' names (complainants and defendants), project details, registration number, and the grievance statement. Such complaints have to be accompanied by requisite fees and supporting documents.

### **2. Mechanisms for Investigation**

RERA will conduct preliminary investigations to see the validity and the jurisdiction of complaints received. RERA may summon the parties and the documents as it thinks fit. The hearing process is governed by natural justice principles, in that both parties shall have an opportunity to present their arguments.<sup>15</sup> Based on its judgment, RERA may impose fines, command refunds with interest, or initiate corrective measures.<sup>16</sup>

## **Landmark RERA Tribunal Case Studies and Judgments**

### **1. Pioneer Urban Land and Infrastructure Limited vs. Govindan Raghavan<sup>17</sup>**

In this case, the honorific clause in question, provided in the builder-buyer agreement itself,

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<sup>12</sup> Id. § 46.

<sup>13</sup> Id. § 58

<sup>14</sup> Id. § 31.

<sup>15</sup> The Real Estate (Regulation and Development) Act, No. 16 of 2016, § 35.

<sup>16</sup> Id. §§ 38, 39.

<sup>17</sup> Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan, (2019) 5 SCC 725.

was one-sided and unfair to the consumer intending to buy and left him bereft of adequate recourse. While upholding the progressive and pro-consumer intent of RERA, the court directed the developer to refund the buyer his money along with interest. This underscored the need for equity and fair dealings in contractual obligations encompassed by the ambit of RERA.

## **2. Bikram Chatterji vs. Union of India<sup>18</sup> (Amarapali Case)**

In this landmark case, thousands of home buyers suffered grave defaults by the Amrapali Group in completing their projects. The Supreme Court canceled the registration of the developer under RERA and directed state agencies to finish the projects. It highlighted the powers of RERA and judicial authorities to preserve consumers' interests and secure project completion.

### **Enforcement Mechanisms**

#### **1. Powers of RERA Authority**

RERA authorities have a combination of powers to impose fines for failure to comply, suspending or cancelling project registrations after listening to objections from parties, and appointing third parties to finish incomplete projects. The authorities are also empowered to order refunds with interest to buyers aggrieved by the nonconformity of the developers<sup>19</sup>.

#### **2. Implementation Challenges<sup>20</sup>**

Challenges in effective enforcement are posed by the state-level diversity in implementation of RERA, low awareness of consumers about its provisions, and lack of adequate staffing and infrastructure in RERA offices.

### **Future Outlook and Recommendations**

#### **1. Consolidation of the Framework**

Uniform application of RERA across the states will determine success<sup>21</sup>. Capacity building

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<sup>18</sup> Bikram Chatterji v. Union of India, (2019) 19 SCC 161.

<sup>19</sup> The Real Estate (Regulation and Development) Act, No. 16 of 2016, §§ 7, 38(1), 39.

<sup>20</sup> Ministry of Housing and Urban Affairs, Model Guidelines for State RERAs, <https://mohua.gov.in/pdf/rera-guidelines.pdf> (last visited May 31, 2025).

<sup>21</sup> Ministry of Housing and Urban Affairs, *Model Guidelines for State RERAs*, <https://mohua.gov.in/pdf/rera-guidelines.pdf> (last visited May 31, 2025).

through adequate resource allocation for hiring, training, and provision of appropriate infrastructure is the key. Public awareness campaigns should be made for educating all stakeholders about their rights and obligations under RERA<sup>22</sup>.

## **2. Best Practices**

States should adopt model rules for RERA and promote the best practices as elaborated upon in these frameworks. Improvements in the online system of filing and tracking complaints are seen as a way to reduce congestion in the courts. Periodical reviews of RERA and updates of its provisions will help it to maintain its relevance and efficacy in the years to come<sup>23</sup>.

## **III. Arbitration under RERA: A Comparative Analysis**

### ***A. Arbitration under RERA***

The Real Estate Regulation and Development Act of 2016 was put in place to shelter home buyers. It promotes transparency and functioning in real estate<sup>24</sup>. Real Estate Regulatory Authorities were established in all states under RERA to oversee real estate transactions and resolve disputes. Most agreements between developers and buyers have arbitration clauses despite the establishment of a formal mechanism for dispute resolution under RERA<sup>25</sup>.

### **Jurisdictional Dilemma: RERA vs. Arbitration**

A problem with each of the agreements is that it often has an arbitration clause based on when the matter has been governed by special laws such as RERA, making the jurisdictional issue perplexing<sup>26</sup>. When an arbitral forum and RERA both claim jurisdiction, determining which should take precedence is confusing when one forum's existence excludes another. This results in competition between the two authorities for jurisdiction and introduces further layers of complexity into the entire process of dispute resolution<sup>27</sup>. Resolving the conundrum requires a clear understanding of the applicable statute and related judicial precedents to determine which

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<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> The Real Estate (Regulation and Development) Act, No. 16 of 2016, Preamble.

<sup>25</sup> Id. § 13.

<sup>26</sup> The Arbitration and Conciliation Act, No. 26 of 1996, § 8.

<sup>27</sup> *Booz Allen & Hamilton Inc. v. SBI Home Fin. Ltd.*, (2011) 5 SCC 532.



is the right forum for such disputes. The forum of first resort may play a decisive role both in terms of the outcome of the dispute and the overall efficiency of the dispute-resolution process.

### **Relevant Provisions of RERA**

The jurisdictional provisions pertaining to RERA include, but are not limited to, the powers and limitations of the RERA authorities and their interplay with other legal frameworks:

**Section 79: This provision clearly impedes civil courts from taking any suits or proceedings on matters within the perview of the Authority, adjudicating officer, or Appellate Tribunal as outlined under the Act<sup>28</sup>.** Courts are also barred from issuing any injunctions on actions under the Act. This embodies RERA's aim at providing a specialized and exclusive forum for the resolution of real estate disputes so as not to impair the jurisdictions of civil courts in such disputes. The concept of exclusivity aims to hasten dispute resolution by ensuring its determination by subject-matter experts.

**Section 88: This section regards that the provisions of RERA are supposed to be supplementary and not to contradict or overwrite any existing law in operation<sup>29</sup>.** This provision ensures the concurrent operation of RERA and the existing laws, without compromising any authority of existing laws. It denotes the legislative intention to supplement the existing legal remedies for the homebuyers and not supplant them. However, there has been a lot of controversy concerning the interpretation of this section concerning the disputes over arbitration clauses.

**Section 89: This section grants supreme place to the provisions of RERA; in other words, it would prevail any inconsistent statement as found in any other statute<sup>30</sup>.** This enables the legal precedence of RERA over any other law in the case of inconsistency, an assertion of priorities toward RERA's goals and mechanisms. However, this precedence cannot be absolute and must contend with the principles of contractual freedom and the right to arbitration. Courts have frequently been required to determine how far RERA may penetrate existing legislative frameworks.

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<sup>28</sup> The Real Estate (Regulation and Development) Act, No. 16 of 2016, § 79.

<sup>29</sup> Id. § 88.

<sup>30</sup> Id. § 89.

## Arbitrability of Real Estate Disputes

Arbitration serves as a private mechanism to settle disputes; that is, parties agree to present their dispute to an Arbitral Tribunal instead of going through court. The Arbitration and Conciliation Act of 1996 governs both international and domestic commercial arbitration and conciliation by creating a framework for the conduct of arbitration proceedings. **According to Sections 5, 8, and 16 of the 1996 Act, when there is an arbitration clause in an agreement, that party is to be referred to arbitration by the judicial authority so as to promote arbitration as a preferred mode for settlement of disputes<sup>31</sup>. However, this would not be automatic as there exists a possibility of exceptions regarding public policy or the arbitrability of a dispute.**

Certain kinds of cases fall exclusively under the domain of the public authority and are left for courts and tribunals to deal with. Where such cases overlap or cluster, the confusion arises as to whether the resolution rests under arbitration or the prescribed public forum. This is a clear delineation of jurisdiction that needs to be sorted out: not only as to which jurisdictional arena applies, but also between arbitration and statutory authorities such as RERA. The resolution of this conflict frequently turns on the nature of the dispute and the provisions that follow.

The 1996 Act states that some disputes may not be arbitrable. **Sections 34(2)(b)(i) and 48(2) allow a court to set aside an award if it finds that the subject matter of the dispute is non-arbitrable<sup>32</sup>**. The Act, however, does not specify which matters are arbitrable or not, leaving this determination to the discretion of the court. And therein lies the rub: that fact creates not only uncertainty but also demands case-by-case analysis for determination. The courts have developed principles and guidelines to assess non-arbitrability, which take into account public policy considerations and the intent of the statutes<sup>33</sup>.

## Process of Arbitration under RERA

Arbitration under RERA starts after the dispute arises between a homebuyer and a developer<sup>34</sup>. More often than not, such a dispute usually takes place over either the delay in possession or fulfillment of some commitments or various other financial issues or breach of contract. When

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<sup>31</sup> The Arbitration and Conciliation Act, No. 26 of 1996, §§ 5, 8, 16.

<sup>32</sup> Id. §§ 34(2)(b)(i), 48(2).

<sup>33</sup> *Booz Allen & Hamilton Inc. v. SBI Home Fin. Ltd.*, (2011) 5 SCC 532.

<sup>34</sup> The Arbitration and Conciliation Act, No. 26 of 1996, § 21.

the arbitration clause is included in the agreement, then either party can initiate the process by giving a notice of arbitration to the other party, with which it conveys the relevant details concerning the nature of the dispute, the arbitration clause under question, and the relief that has been sought<sup>35</sup>. This stage marks the official beginning of the arbitration process and initiates the procedures laid down in the Arbitration and Conciliation Act<sup>36</sup>.

If the parties cannot reach the arbitrator, they can approach the courts under **Section 11 of the Arbitration and Conciliation Act, 1996, seeking the appointment of one**<sup>37</sup>. This judicial intervention makes sure there is no delay in the arbitration proceedings due to disputes on choosing the arbitrator. The court acts to ensure that the arbitration goes on smoothly by appointing a competent arbitrator who is non-partisan.

### **Appointment of Arbitrator(s)**

The appointment of an arbitrator is a very essential part of arbitration proceedings. As provided in the Arbitration and Conciliation Act, the aggrieved parties can name an arbitrator by mutual consent. If there is no agreement, either the High Court or the Supreme Court would appoint an arbitrator as provided under Section 11<sup>38</sup>. Arbitrators should demonstrate independence, neutrality, and be well-versed in real estate matters. The independence and knowledge of the arbitrator bear great significance in ensuring the parties to the arbitration process receive impartial and just decisions. Normally, courts will consider the qualifications and experience of the proposed arbitrators sitting before a final appointment.

### **Arbitral Proceedings**

After the appointment of the arbitrator, the parties involved are provided an opportunity to express themselves more formally, allowing formal arbitral proceedings to commence according to formal structured and regulated procedure that ensures fairness and transparency in the presentation of the views of both sides at the same time.

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<sup>35</sup> Id.

<sup>36</sup> Id. §§ 5–9.

<sup>37</sup> Id. § 11.

<sup>38</sup> Id.

**1. Statement of Claim and Defense<sup>39</sup>:** The claimant submits a statement to describe the dispute, the claims being made, and the respective supporting documents. It is the role of the respondent to file a defense. This exchange of pleadings, to the arbitrator, defines the issues raised and provides the arbitrator with insight into each party's case. In the statement of claim, the legal grounds upon which the claim is based must be stated clearly, with enough evidence to support it.

**2. Preliminary Hearings<sup>40</sup>:** The arbitrator decides the time frames of procedures, identifies the key issues, and schedules hearings. These preliminary hearings are intended to provide a way to continue the proceedings while still minimizing and expediting the deliberations of arbitration. During these hearings, the arbitrator may also address any procedural matters or disputes that arise.

**3. Presentation of Evidence<sup>41</sup>:** Both parties will present documentary evidence, approving the test of witnesses and experts in order to support their respective claims. This stage is of crucial importance in the arbitration process, allowing each party to develop its case. The arbitrator may refuse to accept or admit evidence if there is doubt concerning that evidence's content and relevancy.

**4. Final Hearings and Arguments<sup>42</sup>:** Upon completion of all submissions, the arbitrator lets final arguments before making an award. Final arguments give each of the parties the last chance to summarize their cases and convince an arbitrator to rule in their favor. The arbitrator shall carefully weigh the merits of the evidence and arguments before issuing the final award.

### **Issuance of Arbitral Award**

The award shall be made after the arbitrator has disposed of the case, and the time limit for this would normally not exceed 12 months, further extendable as provided in Section 29A of the Arbitration and Conciliation Act for another period of 6 months<sup>43</sup>. The award must include the reasons given by the arbitrator, the findings of the arbitrator, the relief granted, monetary compensation, specific performance, cancellation of agreements, etc., and the allocation of

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<sup>39</sup> The Arbitration and Conciliation Act, No. 26 of 1996, § 23.

<sup>40</sup> Id. § 24.

<sup>41</sup> Id.

<sup>42</sup> Id.

<sup>43</sup> Id. § 29A.

costs between the parties. An award is the final decision of the arbitrator and is thus binding on both parties<sup>44</sup>.

### **Enforcement of Arbitral Awards**

An award will be binding and enforceable under **Section 36 of the Arbitration and Conciliation Act**<sup>45</sup>. If a party fails to comply, an award may be executed like a court decree under the Code of Civil Procedure of 1908. It is meaningful to note that the enforceability of the arbitration award positions it not as a formal victory for the winner but as something having real implications. That such a decree could be sought further bolsters the already reasonably high credibility of arbitration as a mode of dispute resolution.

A party aggrieved by the award may seek to have it set aside under Section 34, but only on a few specified bases of fraud, bias, or procedural irregularity<sup>46</sup>. Such a narrow ambit for judicial review is emblematic of the Indian legal system's trend in favor of arbitration. The Courts have, in general, shown a reluctance to interfere into arbitral awards unless there are compelling reasons to warrant such interference.

### **Several judgments by the Supreme Court and High Courts have clarified the role of arbitration in real estate disputes under RERA:**

1. **Imperia Structures Ltd. Vs. Anil Patni & Anr**<sup>47</sup>: The Supreme Court reiterated injunctions available under the Consumer Protection Act, 2019, and RERA work concurrently, and arbitration terms cannot bar homebuyers from approaching RERA. Thus, it established the concurrent jurisdiction of the consumer court and RERA for homebuyers' grievances and held that arbitration clauses do not permit the avoidance of these consumer protection laws.
2. Gauhati High Court in **Priyanka Taksh Sood v. Sunworld Residency Pvt. Ltd.**<sup>48</sup>: The Court reiterated that arbitration could be invoked even when some other remedy existed

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<sup>44</sup> Id. § 31.

<sup>45</sup> Id. § 36.

<sup>46</sup> Id. § 34.

<sup>47</sup> Imperia Structures Ltd. v. Anil Patni, (2020) 10 SCC 783.

<sup>48</sup> Priyanka Taksh Sood v. Sunworld Residency Pvt. Ltd., 2022 SCC OnLine Gau 114.

under the RERA, which is again the assertion of the enforcement of arbitration clauses in builder-buyer agreements. This decision reinforced the enforcibility of arbitration agreements in real estate contracts and allowed homebuyers to initiate arbitration proceedings even where RERA remedies are available.

3. **Bihar Home Developers and Builders vs. Narendra Prasad Gupta**<sup>49</sup>: This court in this case confirmed that once the parties have chosen to arbitrate, they must proceed with arbitration and must not approach RERA. Hence, the principle of party autonomy was driven home again and fits in to underline that the courts are, in general, obliged to enforce agreements to arbitrate unless strong and forceful reasons to the contrary exist.

### 1. Advantages of Arbitration under RERA

One of the landmark changes in dispute resolution in India is the incorporation of arbitration within the regulatory mechanism established under the Real Estate Regulation and Development Act (RERA) of 2016. Arbitration has been found to be specially beneficial in settling disputes that entail technical complexities, procedural convolutions, and many stakeholders.

- Highlighting the major advantages are the fast resolution of disputes. Advocates believe, when juxtaposed with the timelines for traditional lawsuits, the RERA-proposed timelines may not actually encourage fast resolution of disputes; as RERA provides this facility now. Section 29-A of the Arbitration and Conciliation Act of 1996 aims to complete a good extent of procedure-bound decisions in very quick succession, thereby giving a terrible resolution of disputes<sup>50</sup>.
- Another important facet, which is rarely entertained, is the multi-faceted qualifications a judge needs to possess-a profession in matters concerning real estate dispute resolution. Arbitrators are, therefore, often chosen based on their technical, financial, or legal expertise in real estate<sup>51</sup>.
- While the cost also varies based on institution arbitration, arbitration, in general, is a cheaper solution compared to long litigation. Further, one could be assured that the

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<sup>49</sup> Bihar Home Developers & Builders v. Narendra Prasad Gupta, W.P. (C) No. 367/2019, Gauhati HC (2019).

<sup>50</sup> The Arbitration and Conciliation Act, No. 26 of 1996, § 29A.

<sup>51</sup> Id. Sched. V.

information subscriber could keep all the information confidential, which is necessary for protecting their commercial image and reputation, very important concerning high-end real estate transactions<sup>52</sup>.

- Arbitration permits sufficient flexibility in terms of the processes for the parties themselves to shape the proceedings to fulfill their particular needs. The parties are able to decide on the venue, language, and even choice of law to be applied throughout the proceeding<sup>53</sup>.

## 2. Challenges to Arbitration under RERA

Despite its overt advantages, arbitration under RERA poses significant challenges.

- Arbitration involves the appointment of arbitrators, which is often not without controversy. The Supreme Court in **Perkins Eastman Architects DPC v. HSCC (India) Ltd.**<sup>54</sup> ruled that if one party appointed arbitrators unilaterally, it would compromise their neutrality and independence, which was considered the cornerstone of any fair arbitration proceedings. This issue has a bigger salient quality to it in real estate disputes, where power play between the developer and the consumer is quite common.
- Further, enforcement of arbitral awards, although simplified by Section 36 of the Act, poses a practical hurdle. Undoing delays in their enforcement arising from appeals by parties under Section 34 has always been a sinking problem. **The landmark case of Fuerst Day Lawson Limited v. Jindal Exports Limited brought up the need for speedy enforcement if arbitration is to be effective.**<sup>55</sup>
- But these, procedural delays and extra costs are other disincentives going against arbitration. Arbitration was designed to be a speedy would-be mechanism of dispute resolution, but procedural inefficiencies, coupled with judicial intervention, always reduce its effectiveness. This issue was further aggravated when superior courts came

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<sup>52</sup> Id. § 42A.

<sup>53</sup> Id. § 20.

<sup>54</sup> Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760.

<sup>55</sup> *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*, (2001) 6 SCC 356.

to the conclusion in **K.K. Modi v. K.N. Modi** that arbitration powers were being misused for delaying the resolution of disputes.<sup>56</sup>

- Added to the above, non-standardization of arbitration procedures under RERA is another challenge taking up the complexity therein. While RERA extols the virtues of a dispute resolution triggered and brought into being by conciliation and adjudication, the absence of uniform arbitration guidelines makes different results possible. These issues become further complicated by the state-peculiar manner of implementation of RERA, where agencies like MahaRERA are known to adopt different procedural rules<sup>57</sup>.

### 3. Judicial Precedents and their Implications

Indian courts have played a crucial role in defining the contours of arbitration under RERA, while maintaining a fine balance between party autonomy and statutory mandates.

The Gauhati High Court rendered its verdict in **Priyanka Taksh Sood v. Sunworld Residency Pvt. Ltd.**, in which valid arbitration clauses were upheld despite other available remedies under RERA. Similarly, in the matter of **Bihar Home Developers & Builders v. Narendra Prasad Gupta**, the court reiterated the enforceability of arbitration agreements, confirming the principle of party autonomy set out under **Section 7 of the Arbitration and Conciliation Act**.

**Imperia Structures Ltd. v. Anil Patni & Anr**<sup>58</sup>. Principle that RERA, 2019 Consumer Protection Act operate as concurrent remedies. There is great practical impact regarding forum selection as it leads homebuyers to arbitration without abandoning their statutory rights under RERA.

#### ***B. Relevant Provisions of the Arbitration and Conciliation Act, 1996***

##### **1. Appointment of Arbitrators**

The appointment of an Arbitrator under Section 11 stresses upon neutrality and expertise. The appointment is often another course single-handedly subjected to constant judicial forecast and predictions regarding appointment problems which would in turn delay the resolution of

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<sup>56</sup> K.K. Modi v. K.N. Modi, (1998) 3 SCC 573.

<sup>57</sup> MahaRERA Conciliation Panel, <https://maharera.mahaonline.gov.in> (last visited May 31, 2025).

<sup>58</sup> Imperia Structures Ltd. v. Anil Patni, (2020) 10 SCC 783.



disputes. The Perkins Eastman judgment deals with impartial appointments, which is again very useful in the consumer-oriented sectors like real estate<sup>59</sup>.

## 2. Conduct of Arbitration Proceedings

**Sections 18-27 touch on arbitral process, chiefly applying the principles of fairness and equality.** These statutory-based proceedings are in general accordance with the principles of RERA promulgated for transparency and accountability. Otherwise, due to a jurisdictional squabble between the arbitral and judicial authorities, delays set in.

- **Equal Treatment of Parties (Section 18):** This provision requires that all parties to arbitration are treated equally and are provided with a fair chance to put forward their case. This is an important principle in RERA, providing fairness in real estate transactions where there could be power disparities between developers and homebuyers.
- **Decision on Rules of Procedure (Section 19):** Arbitration permits parties to decide rules of procedure, providing flexibility and expediency. Where parties fail to agree, the tribunal proceeds as it thinks fit, in contrast to strict court procedure.
- **Place and Language of Arbitration (Sections 20-22):** Parties may agree upon the place and language of arbitration. In disputes over real property, arbitration typically takes place at a place convenient to both parties, with easy access and affordability.
- **Statements of Claim and Defense (Section 23):** This section states how the parties are required to file their claims and defenses within a given timeframe, so as not to cause unnecessary delays. This ensures that the arbitration process continues smoothly, without either of the parties hampering the proceedings.
- **Oral Hearings and Written Proceedings (Section 24):** Arbitration under RERA can take advantage of either oral hearings or written proceedings, making it quicker than the protracted court procedures. The flexibility provided allows the processes to be catered according to the demands of the dispute at hand.

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<sup>59</sup> *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, (2020) 20 SCC 760.

- **Expert appointment (Section 26):** An expert can also be appointed by the arbitrators for the technical real estate substances so as to ensure that the award for all the parties will be informed. This is especially relevant in RERA disputes which often include vexing topics regarding construction or valuation.
- **Default in Appearance (Section 25):** The tribunal can exercise its ex parte jurisdiction in case one of the parties does not appear in accordance with the notice served if that is the case. This provision makes it impossible for one party to obstruct the arbitration process through sinuous acts of nonfeasance, impeding the conduct of proceedings.

### 3. Enforceability of Arbitral Awards

Section 36: The award has the added advantage of being enforceable as a decree of a court. Minimal judicial interference, as noted by the Supreme Court in *Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd.*<sup>60</sup>, confirms the notion of finality as far as the arbitral award is concerned.

### 4. Setting Aside of Arbitral Awards

According to Section 34 of the Act, an award could be annulled on specific grounds, thereby allowing the arbiter independence and bestowing limited judicial supervision over the arbitration process, thus expunging all forms of injustice from proceedings or award. The basis of its application is a check on the arbitral process, to see that the awards comply with the notions of equity, fairness, and justice. They highlight a few grounds down through the ages:

- **Incapacity of a Party:** Limping being legally gone, inaptly so declared on the one hand, could be the excuse for annulling the award.
- **Lack of Proper Notice:** An award, in case a party has not been duly served of the appointment of the arbitrator or given notice of the proceedings, could be challenged to that extent.

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<sup>60</sup> *Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd.*, (2018) 15 SCC 331.

- **Exceeding the Terms of the Arbitration Agreement:** The award can be set aside in cases of the workings of a decision that are beyond the powers conferred on the arbitrators-assets. This ground is placed mainly to protect the arbitrator from being alleged to have acted beyond their assigned functions by the parties.
- **Infringement of Public Policy:** This will enter the domain of contradiction nowadays where the court can intervene if any awards contravene the fundamental policies of the law of India. This ground has been a subject of ongoing discussion, to a wider interpretation, ever since it has been passed on to the courts.

In **ONGC Ltd. v. Saw Pipes Ltd. (2003)**<sup>61</sup>, the hon'ble Court gave natural expansion to the "public policy" exception, ruling thus allowing the courts to interfere with arbitral awards if it would be contrary to natural justice. This very ruling had a great impact by introducing judiciary intervention quite often in arbitration, notwithstanding independence.

However, the scope for judicial interference has been greatly reduced in **Ssangyong Engineering & Construction Co. Ltd. v. NHAI (2019)**<sup>62</sup> by the Supreme Court itself, making it clear that only those really grounded in public policy will deserve the calling for annulment. It is clear that this will help in restoring the independence of arbitration while providing a veneer of judicial protection.

However, the broad interpretation of public policy entails an excessive judicial intervention, often leading to much delay in finalizing the arbitration award in real estate disputes. The fine balance between judicial supervision and arbitral independence remains a burning question in the context of RERA.

## 5. Appeal Provisions

**Section 37 of the Arbitration and Conciliation Act** makes provision for appeals against arbitration orders. The following orders are appealable:

- **Orders Granting or Refusing to Set Aside an Award:** If a party is dissatisfied with the order of the tribunal, they are entitled to approach a higher judiciary.

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<sup>61</sup> *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705

<sup>62</sup> *Ssangyong Engineering v. NHAI*, (2019) 15 SCC 131

- Orders Refusing or Granting Interim Reliefs: Where the arbitrator refuses or grants an interim relief (like an injunction), the aggrieved party can appeal.
- Orders Rejecting or Accepting an Arbitral Challenge: If there is a challenge to the appointment of an arbitrator under Section 12 and the same is rejected, it can be appealed.

In **Kandla Export Corporation v. OCI Corporation (2018)**<sup>63</sup>, the Supreme Court cautioned against excessive indulgence of appeal remedies while highlighting the fact that arbitration is for expeditious settlement of disputes. Once more, in real estate disputes under RERA, appeals are generally filed by parties, causing time delays and undermining the speed benefit of arbitration.

There has to be a balance between judicial control and arbitral autonomy so that arbitration does not become an additional layer of litigation rather than being a real alternative to courts. The risk of appeals can have the effect of undermining the finality of arbitration and prolonging the time and cost of dispute resolution.

### ***C. Comparison with UNCITRAL Model Law***

#### **1. Alignment with UNCITRAL Model Law**

The Indian Arbitration and Conciliation Act, 1996 incorporates several principles from UNCITRAL Model law: party autonomy, minimal court intervention, and enforceability of awards<sup>64</sup>. These characteristics add compatibility to international arbitration standards and are good for resolving real estate disputes.

#### **2. Deviations and Their Implications**

The wide interpretation of "public policy" in India is another disagreement with Model Law and a pointer to a stricter interpretation. Similarly, judicial intervention is supposed to ensure

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<sup>63</sup> *Kandla Export Corp. v. OCI Corp.*, (2018) 14 SCC 715.

<sup>64</sup> UNCITRAL Model Law on International Commercial Arbitration, U.N. Doc. A/40/17 (1985), with amendments (2006).

fairness but has often turned out to be the reason for delays when looked from a cost-efficiency point of view, affecting arbitration proceedings under RERA<sup>65</sup>.

### 3. Scope for Improvement

An alignment with the UNCITRAL Model Law provides immense scope for rectification of procedural inefficiencies; for instance, stricter guidelines for judicial intervention and boosting the very prospect of institutional arbitration would enhance the arbitration practice in RERA rather a lot<sup>66</sup>.

## IV. Conciliation under RERA: A Comparative Analysis

### A. Conciliation under RERA

Conciliation, as an alternative dispute resolution (ADR) mechanism, is emerging as a popular choice under the Real Estate (Regulation and Development) Act, 2016 (RERA), as it is a contested process within an adversarial context, conciliation promotes agreement rather than hostility, which further fits with the complementary objectives of RERA, which are transparency, trust, and accountability, between developers and home-buyers<sup>67</sup>.

#### 1. Benefits

- One of the main benefits of conciliation as one of the methods of ADR under RERA is that it does not destroy relationships. While the adversarial nature of litigation usually exacerbates the conflict involving homebuyers and developers, conciliation allows for a means of resolution in a friendly manner<sup>68</sup>. This is particularly true about real estate cases where consumers and developers usually have a pre-existing relationship for decades of ownership.
- Conciliation is fundamentally simple and inexpensive, and therefore, for homebuyers, it is an appealing option if they do not have further financial resources for litigation for

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<sup>65</sup> *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705.

<sup>66</sup> *Ssangyong Eng'g & Constr. Co. Ltd. v. Nat'l Highways Auth. of India*, (2019) 15 SCC 131.

<sup>67</sup> The Real Estate (Regulation and Development) Act, No. 16 of 2016, Preamble.

<sup>68</sup> *Id.*

several years. Technically and financially, conciliation has a wide-open door to justice for conflict resolution.

- Conciliation is also quick as RERA's conciliation proceedings are created to obtain a resolution expeditiously, compared to the perpetual delays often found in adversarial litigation. Conciliation, therefore, follows RERA's priority for immediate availability to resolve conflict in the interest of consumer protection.

## 2. Challenges to Conciliation under RERA

Despite its advantages, conciliation under RERA has an impact on several real-world issues:

- **Lack of Enforceability of Conciliation Agreements:** Section 73 of the Arbitration and Conciliation Act 1996 allows for the enforcement of settlement agreements, but its use under RERA varies. Unlike arbitral awards, which courts treat as decrees, settlement agreements from conciliation often need more court involvement to enforce which involves conversion on behalf of the court.<sup>69</sup>
- **Imbalance of Power:** Real estate disputes involve a big power difference between developers and homebuyers. This gap can hurt the fairness of conciliation, as developers might have too much sway during talks.
- **Limited Awareness and Utilization:** Many people don't know about the conciliation options available under RERA. Also cultural and system-wide preferences for going to court over ADR make it hard for conciliation to catch on<sup>70</sup>.

### *B. Relevant Provisions of the Arbitration and Conciliation Act, 1996*

The Arbitration and Conciliation Act, 1996, includes comprehensive provisions for conciliation, many of which are relevant to real estate disputes governed by RERA.

#### 1. Role and Appointment of Conciliators

Sections 62–68 detail how to initiate conciliation and outline the role of conciliators. A

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<sup>69</sup> The Arbitration and Conciliation Act, No. 26 of 1996, §§ 73–74.

<sup>70</sup> Ministry of Housing and Urban Affairs, *Model Guidelines for State RERAs*, <https://mohua.gov.in/pdf/rera-guidelines.pdf> (last visited May 31, 2025).

conciliator's main job is to facilitate communication, pinpoint common interests, and suggest solutions that both parties can agree on. Unlike arbitrators, conciliators do not make binding decisions, highlighting their function as facilitators rather than judges. The appointment process in Section 64 allows the parties to agree on a conciliator, ensuring that the chosen individual is neutral and knowledgeable. If the parties cannot reach an agreement, institutional mechanisms provided by RERA authorities can be essential in ensuring fair appointments.

## **Process of Conciliation<sup>71</sup>**

### **Commencement of Conciliation/Referring the dispute to conciliation (Section 62)**

The commencement of conciliation occurs when one party serves a written invitation on the other party which invites the other party to conciliate the subject matter in dispute. The conciliation process commences when the party invited accepts the invitation in writing. Where a party does not respond to the invitation within 30 days, it is considered that the invitation was not accepted.

### **Appointment of Conciliators (Section 64)**

The parties may agree together on the number of conciliators—one or more. Each party may appoint a conciliator, and where three are appointed, they may appoint a ‘presiding conciliator’ from among the parties. This will ensure that the parties are satisfied that the conciliators have the expertise and neutrality to facilitate negotiations.

## **Section 65: Statements**

### **65(1): Statements Following Appointment**

Once appointed, the conciliator will ask each party for a written brief statement outlining the issues in dispute. This first statement is important for the conciliator to understand the nature of the conflict, and each party must share their statement with the other party, as the process begins from the point of view of transparency.

### **65(2): Statement or Evidence**

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<sup>71</sup> The Arbitration and Conciliation Act, No. 26 of 1996, §§ 62–68.

The conciliator may also request subsequent statements or evidence to assist in narrowing the dispute from record events or material which may not have been submitted. After all, the parties must share the new statements with the other party in order to maintain dialogue, witness and trust in the process.

### **Section 66: Conciliation Proceedings**

The above sections do not account for Section 66, but it should be noted that this section allows the conciliator to proceed, however the conciliator determines to proceed, including, by meeting, discussion, or consultation with the parties separately and collaboratively.

### **Section 67: Duties of the Conciliator**

#### **67(1): Assistance and Neutrality**

Generally, the conciliator is to assist the parties in reaching a mutually acceptable resolution. The conciliator must remain independent and impartial, and both parties must feel there is equality in terms of assistance during the proceedings.

#### **67(2): Base Principles of Objectivity**

In accordance with wider professional practice, conciliators are required to be impartial and objective. They should take into account not just the facts and the law but the whole deal including prior conduct and business practices between the parties. This is often where the real issues lay, as some grievances could either be beyond the legal process or could fall squarely under questionable business conduct.

#### **67(3): Flexibility**

Unspecified in the Regulations is how the proceedings are to be managed by the conciliator. The Conciliator is to manage the proceedings, meaning that the formal process can be changed to suit the situation (including oral statements if necessary) and whether the parties see fit, it will be effective essentially in isolating issues.



## 67(4): Proposing Solutions

One of the powers significant to this provision will be the authority given to conciliators to make proposals at any time during the proceedings. Any proposals made during the proceedings can be verbal or written and do not need to provide any detail or justification for the proposal. This provision empowers conciliators to practically facilitate negotiations and engage negotiations to find potential solutions.

## 2. Confidentiality

**Section 75 of the Act mandates confidentiality throughout the conciliation process<sup>72</sup>.** This means that the parties can communicate and negotiate freely without concern about the information getting out. Confidentiality is especially important in relation to real estate disputes, where the commercial sensitivities and reputational issues are paramount.

## 3. Enforceability of Settlement Agreements

**Section 73 states that settlement agreements achieved during the process of conciliation are treated like arbitral awards.** However, with no automatic enforceability, this can lead to reliance upon the judiciary that removes the efficiency of conciliation. It would assist greatly to strengthen the enforcement mechanisms contained in RERA, so that a conciliation agreement can be enforced without delay.<sup>73</sup>

## C. Contrast with UNCITRAL Model Law

### 1. Consistency with UNCITRAL Model Law

The Arbitration and Conciliation Act, 1996, is consistent with the UNCITRAL Model Law on International Commercial Arbitration and Conciliation in many ways, notably: the function of the conciliators; the legal status of confidentiality; and the enforceability of settlement agreements<sup>74</sup> are consistent with the Model Law, which exhibits India's commitment to its international obligations for alternative dispute resolution (ADR) across national boundaries.

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<sup>72</sup> Id. § 75.

<sup>73</sup> The Arbitration and Conciliation Act, No. 26 of 1996, §§ 73–74.

<sup>74</sup> UNCITRAL Model Law on International Commercial Arbitration, arts. 6, 9, 30.

For example, the Act, like the Model Law, emphasizes party autonomy, neutrality and voluntary settlement to reach a consensus as part of a fair process in the spirit of conciliation.

## 2. Diverging from UNCITRAL Model Law

However, the Indian Act, diverges from the Model Law in these respects:

**Settlement Agreements enforceability:** The Model Law identifies settlement agreements as obligations to be enforced, however the Indian Act includes additional provisions to enforce these obligations that have procedural components that may weaken the dispute resolution prospect for the parties. If procedural enforcement is removed, conciliation regimes under RERA will have improved efficacy.

### Judicial intervention:

The Indian legal framework offers a higher level of judicial supervision to advance fairness in dispute resolution; however, if fairness extends the dispute resolution process, it has an adverse consequence on time spent for the parties to arrive to a settlement<sup>75</sup>. More closely aligning itself with the Model Law's goal of appearing to provide less intervention will permit conciliation outcomes under RERA to reduce the burden on parties entering the RERA conciliation process.

## 3. Implications for RERA

The points of similarities and differences have implications for conciliation under RERA. While the Indian framework has solid procedural safeguards embedded in it, there is also a divergence from the provisions in the Model Law, which could slow down the process and cause inconsistencies. Adopting international best practice in relation to enforceability and a reduction of judicial intervention could enhance the speed and reliability of the RERA conciliation procedures.

## V. Loopholes and Challenges in RERA's Dispute Resolution Framework

The Real Estate (Regulation and Development) Act, 2016 (RERA) was instituted to increase transparency, accountability and efficiency in the real estate sector. A primary component of

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<sup>75</sup> *Ssangyong Eng'g & Constr. Co. Ltd. v. Nat'l Highways Auth. of India*, (2019) 15 SCC 131.

RERA is its dispute resolution framework which utilizes mechanisms such as, adjudication, arbitration and conciliation. These mechanisms are meant to provide an expeditious, consumer friendly dispute resolution process, but as evidenced by their use there is a significant number of gaps and issues.

### **A. Lack of Arbitration and Conciliation Infrastructure at the State Level**

A principal issue with RERA's dispute resolution framework is a shortage of adequate infrastructure to support arbitration and conciliation at the state level. The act mandates state Real Estate Regulators Authorities (RERAs) for dispute resolution but many of the states have issues in execution and logistics surrounding the creation of these RERAs in their respective states.

Many RERAs do not have the infrastructure in place to carry out arbitration and conciliation. The minimal resourcing is evidenced in the state RERA's operating in Uttar Pradesh and Bihar, in either case with limited personnel and infrastructure to support consumers in resolving their many grievances.<sup>76</sup> The current ad hoc practice in dispute resolution without any institutional arbitration framework under RERA has created a significant reliance and increases the reliance on a haphazard mechanism that is not standardized or effective.

### **B. Non-Uniformity of Procedures Across States**

A critical component of justice is consistency; however, the decentralized nature of RERA has resulted in differing rules and guidelines for procedural rules and guidelines across states. RERA requires a state-level approach, and each state may create its own RERA and Appellate Tribunal resulting in procedural inconsistencies leading to stakeholder confusion<sup>77</sup>. For example, MahaRERA has taken a more proactive and well-organized approach, including an online complaint filing system, while in other areas the states barely meet the baseline of the statute. The inconsistencies dilute homebuyers trust in RERA as a unified and consistent legal framework. The Act's aim, to provide timely resolution of grievances with try to demise timelines and procedural rules, is undermined by common procedural issues such as timelines for resolution, interpretation of statutory provisions, and procedural ambiguities.

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<sup>76</sup> Ministry of Housing and Urban Affairs, *Model Guidelines for State RERAs*, <https://mohua.gov.in/pdf/rera-guidelines.pdf> (last visited May 31, 2025).

<sup>77</sup> *Id.*

### ***C. Potential for Bias and Lack of Impartiality Among Arbitrators and Conciliators***

The neutrality of arbitrators and conciliators is a vital component of any successful dispute resolution process; nonetheless, the issue of bias (actual or perceived) is of serious concern in relation to arbitration and conciliation processes under RERA. Developers are economically more capable in a typical real estate dispute with far greater financial resources and they may be able to utilize these resources to engineer the selection and behavior of arbitrators and conciliators. **The Perkins Eastman Architects DPC & Ors. v. HSCC (India) Ltd<sup>78</sup>**. case seen in the Supreme Court concerning unilateral appointments of arbitrators highlighted the issue of impartiality and neutrality, as dictated under the arbitration laws of the country.

This judgment is a very useful precedent but its pragmatic application under RERA is still limited. Furthermore, state level RERA authorities dealing with conciliators may exhibit unintentional bias as they are closely tied to local stakeholders. Addressing these values requires stricter adherence to those appointment guidelines and promoting the principles of institutional arbitration.

### ***D. Delays in Dispute Resolution Processes***

RERA was established to bring disputes to a resolution as soon as possible, though we still find ourselves grappling with delays that severely inhibit the purpose of the Act. **Section 29 provides that complaints should be "inquired into" within 60 days<sup>79</sup>**. Unfortunately, this time frame is frequently ignored due to incompetence and inefficiencies, a shortage of the requisite adjudicating officers, and a volume of complaints that overloads the available officers.

Delays notably increase at the appellate level, as we can observe with **Dhires Pandey v. Real Estate Appellate Tribunal U P Lucknow And Others**, where the petitioner faced obstacles related to the timely filing and time limits imposed by the appellate tribunal<sup>80</sup>. Firm timelines promote procedural order, but unreasonable adherence to procedural timelines, which ignores real-world obstacles to compliance and imposes significant unfairness, is likewise problematic.

Procedural delays imposed by jurisdictional questions, such as whether RERA is required to adjudicate cases which are also subjects of consumer complaints, are bound to complicate

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<sup>78</sup> *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, (2020) 20 SCC 760.

<sup>79</sup> The Real Estate (Regulation and Development) Act, No. 16 of 2016, § 29.

<sup>80</sup> *Dhires Pandey v. Real Estate Appellate Tribunal UP*, 2022 SCC OnLine All 2471.

resolution. The delays imposed by RERA create the opposite effect which is prompt adjudication designed to instil confidence in homebuyers<sup>81</sup>.

### ***E. Limited Awareness Among Homebuyers***

*RERA was established to protect homebuyers' interests but many homebuyers still are not aware of their rights or dispute resolution mechanisms in the Act and this lack of awareness is most notable in towns and rural areas even where homebuyers do not have access to legal remedies and so rely on informal or local mechanisms for resolving disputes. In our view, even in urban centres many buyers do not know about the conciliation forums created by RERA, the affordable and amicable options that are available to them for complaints. There has been limited and inadequate information provided to the public by state governments and RERA authorities through public campaigns, public workshops or online campaigns. It is our contention that RERA's dispute resolution framework has largely gone unchecked because of a lack of awareness amongst affected groups.*

## **VI. Recommendations for Improvement with reference to the (MoHUA)**

The Ministry of Housing and Urban Affairs (MoHUA) has taken the initiative to develop guidance that will help facilitate and ultimately allow RERA to be successfully implemented where it describes the measures to resolve disputes and promote transparency in the real estate. The MoHUA guidance has helped, but there is still room for improvement particularly in relation to dispute resolution mechanisms, such as arbitration, conciliation and enforcement.

### **1. Operationalising RERA**

MoHUA has provided guidance in the development, operation and individual states regarding the Real Estate Regulatory Authorities (RERAs). The guidance is principally used to:

**Standardise Processes:** The MoHUA guidance is able to provide many standardised processes for the registration of developers, real estate agents and projects, in effect providing certainty across the country. In particular, the MoHUA guidance describes easy to understand online

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<sup>81</sup> Ministry of Housing and Urban Affairs, *Model Guidelines for State RERAs*, <https://mohua.gov.in/pdf/rera-guidelines.pdf> (last visited May 31, 2025).

connectivity for filing and tracking complaints that is in addition to other processes that may lead to faster dispute resolution<sup>82</sup>.

**Registration by Developers:** In addition, developers are required to register their ongoing project with RERA department before advertising and or starting their project. This requirement has a number of advantages, it provides transparency when purchasing property in a new project and it also serves as a record from a regulatory body, thus allowing consumers to reach out to RERA if there are issues relating to the project<sup>83</sup>.

**Timely Disposal of Complaints:** The rules deliver targets for complaint disposal, requiring RERA authorities to consider complaints within a certain time frame. These time frames generally tend to be around 60 days, but inability to meet or comply with the RERA rules typically due to poor infrastructure and staffing deliberately illustrates the opportunity for improvement to where RERA authorities are based and what they have to work with<sup>84</sup>.

## 2. Arbitration and Conciliation Mechanisms:

MoHUA's guidelines on dispute resolution encourage parties to employ ADR processes such as arbitration and conciliation to ensure that disputes can be resolved quicker than traditional litigation. However, the guidelines do not give directions on how to institutionalize these processes, which has resulted in a largely ad-hoc. If there is an ad-hoc nature as to how cases are dealt with depending on the resources available through RERA, this is problematic in itself.

**Encouraging Institutional Arbitration:** MoHUA should prioritize the promotion of institutional arbitration to solve the issues related to ad-hoc arbitrator appointments and to promote neutrality. This would involve working with national arbitration organizations like the Indian Council of Arbitration (ICA) to establish real estate arbitration panels<sup>85</sup>.

**Conciliation as a Bridge:** MoHUA's guidelines recognize conciliation and encourage parties to consider conciliation before arbitrating or litigation. However, the guidelines should include further procedural rules that properly allow for the facilitation of conciliation by ADR

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<sup>82</sup> Ministry of Housing and Urban Affairs, *Model Guidelines for State RERAs*, <https://mohua.gov.in/pdf/rera-guidelines.pdf> (last visited May 31, 2025).

<sup>83</sup> Id.

<sup>84</sup> The Real Estate (Regulation and Development) Act, No. 16 of 2016, § 29.

<sup>85</sup> Indian Council of Arbitration (ICA), <https://www.icaindia.co.in> (last visited May 31, 2025).

practitioners. Additionally, MoHUA could explore the possibility of establishing a National Real Estate Conciliation Centre which would be able to offer no-cost or low-cost conciliation.

### **3. Awareness and Capacity Building:**

*Ministry of Housing and Urban Affairs (MoHUA) has initiated a number of ways to increase awareness about RERA provisions such as Real Estate Appellate Tribunals (REAT) and alternative dispute settlement mechanisms with other partners such as the National Real Estate Development Council (NAREDCO) and in general<sup>86</sup>. Notwithstanding the interactions it is essential to scale them up further especially in rural areas and for the low-income buyers.*

### **H. Suggested Amendments to RERA and the Arbitration and Conciliation Act**

Despite being a comprehensive framework, the Real Estate (Regulation and Development) Act, 2016, has limited fault lines in dispute resolution approaches. What is discussed below looks at marking amendments to RERA and the Arbitration and Conciliation Act, in this regard.

#### **1. Amendments to RERA**

Direct Enforceability of Arbitration Awards and Conciliation Settlements: I could improve the RERA Act if it was amended to make awards from arbitration and settlements from conciliation enforceable as decrees of the civil court automatically. This would reduce reliance on courts for enforceability, which would allow buyers and developers to implement their resolution quickly, which could have been achieved through an alternative dispute resolution (ADR) process. **Section 71 of the RERA Act could be amended to say: "An arbitral award or a conciliation settlement under the provisions of this Act shall be considered a decree of civil court and shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908".**

- **Enhancing the Powers of Real Estate Appellate Tribunals (REAT):** Currently, the operationalisation of the Real Estate Appellate Tribunals (REAT) in several states suffers from backlogs and inadequate staffing. Any amendment to RERA could create a fast-track option for all disputes relating to real estate, especially involving

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<sup>86</sup> National Real Estate Development Council (NAREDCO), <https://naredco.in> (last visited May 31, 2025).

consumers.

- **Introducing Specific Provisions for Developer Default:** While RERA has general guidelines for resolving disputes, it is essential to implement specific provisions that address developer defaults. This includes issues like delays in possession, failure to comply with agreements, and misrepresentation, ensuring that appropriate penalties and compensations are clearly defined.
- A provision could be introduced under Section 12 of RERA stating that "**In the event of a delay or failure in the delivery of possession, the developer shall be liable to compensate** the homebuyer at a prescribed rate of interest or penalty, in addition to providing for a **forensic audit** of the project to ascertain the causes of the delay."

## 2. Amendments to the Arbitration and Conciliation Act, 1996:

- **Reduced Timelines for Real Estate Disputes:** The timelines of the Arbitration and Conciliation Act are too lengthy, at times, for real estate disputes that need to be resolved urgently due to the large financial implications involved.

A change to Section 29A of the Arbitration and Conciliation Act can limit the timelines for real estate disputes (for example, 6 months for arbitration awards) to enable quicker resolution.

- **Institutional arbitration clauses:** The other major gap in the Arbitration and Conciliation Act is the lack of established institutional arbitration clauses for real estate or sector that requires institutional arbitration. The Act should be changed to establish institutional arbitration for real estate disputes.

The Act can be amended to create panels for Special Real Estate Arbitration. Those parties can select qualified gentlemen as arbitrators with a background in real estate law, contracts and urban planning.

- **Ensuring Enforcement of Conciliation Agreements:** Currently, conciliation agreements are not always easily enforceable without judicial involvement, undermining the purpose of using alternative dispute resolution (ADR) mechanisms as quicker substitutes for litigation.



The Act should incorporate provisions for the automatic enforcement of conciliation agreements, akin to those in countries like Singapore and the UK, where such agreements become enforceable as court orders once both parties consent.

### ***1. Leveraging Technology to Streamline Dispute Resolution***

The integration of technology in the dispute resolution system as prescribed in RERA will radically enhance the accessibility, efficiency and transparency of the entire system. These are the steps that should be taken:

**1. Online Dispute Resolution (ODR) Platforms:** ODR has been successfully used across the globe for a multitude of purposes, including use in consumer disputes. An online platform for dispute resolution under RERA would allow developers and homebuyers to submit claims online, track their case status and participate in the hearing without having to leave their home or office. MoHUA would need to partner with state RERA authorities to develop a comprehensive digital platform for all the activities involved in resolving, and being engaged in, a dispute (submitting complaints, scheduling hearings, payment).

**2. Virtual Hearings and Mediation:** Virtual hearings have become common during the pandemic and have illustrated the ability, ease, and relative efficiency of conduct complaints virtually, and the opportunity to resolve disputes. RERA should formally allow for virtual hearings to include arbitration and mediation proceedings. Virtual hearings would need to have a standard procedure established. Video conferencing with secured platforms should be used as an option for the dispute resolution system, allowing homebuyers and developers from any part of the country to access the dispute resolution mechanism.

## **VII. Conclusion**

The research provides a comprehensive analysis of the dispute resolution mechanisms created by the Real Estate (Regulation and Development) Act, 2016 (RERA), with a distinctive emphasis on arbitration and conciliation. This section presents an in-depth summary of the research results, acknowledges the significance of having a fit-for-purpose dispute resolution framework, types a pathway to reform based on a nuanced, data-driven approach.

## A. Research Findings

The research indicates that there are two narratives: the positives that arbitration and conciliation through RERA can lessen litigation burdens, there can be timely dispute resolution, and the parties "who are the experts in their industry", are the ones making the decisions; but, there are many practical issues with the operation of these processes.

Key problems include inconsistencies in procedures between states, a poor level of awareness from stakeholders, and even the physical resources were poor. Moreover, the level of enforcement of awards and agreements has been inconsistent, which is directly undermining the credibility of the ADR process. These findings highlight that the case for reform is tangible, and yet are salient to showing RERA's dispute resolution framework does not operate as it is intended to.

## B. Institutional Strengthening for Arbitration and Conciliation under RERA

**Capacity Building:** There must be structured capacity building and training for arbiters and conciliators which aim to address legal and regulatory questions raised by a wide range of sectors. Researching international models, like ICSID, would inform these training programs<sup>87</sup>.

Example: ICSID provides training programs for its arbiters that clarify the relationship between public international law and a dispute arising from a particular industry, thus creating benchmarks for different sectors.

**Institutionalisation:** Developing state and national RERA Arbitration and Conciliation Centres provides a uniform, accessible, and methodical avenue for dispute resolution. These institutions could provide their model by borrowing good practices of the likes of Singapore International Arbitration Centre (SIAC) which had fixed procedural timelines and standardisation of rules in various industries in addition to contract law<sup>88</sup>.

**Performance Monitoring:** Creating annual audits and performance reviews of the ADR institutions under RERA would ensure transparency and accountability. The CAG or other

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<sup>87</sup> International Centre for Settlement of Investment Disputes (ICSID), *ICSID Training Programs*, <https://icsid.worldbank.org/services/training> (last visited May 31, 2025).

<sup>88</sup> Singapore International Arbitration Centre (SIAC), *SIAC Arbitration Rules*, <https://www.siac.org.sg> (last visited May 31, 2025)

independent oversight organisations can readily provide templates for such assessments in evaluating the competency of these institutions.

### ***C. Standardizing Procedures and Rules for Real Estate Disputes***

- The central government under the auspices of MOHUA should create mandatory procedural stipulations. These procedural stipulations should have a clear time indication from the initial filing to the final award being issued aimed at providing clarity to the uncertainties inherent in ADR mechanisms at the state level.
- A Uniform Code of Practice should be devised to specify the individual constituents of the arbitration and conciliation process. For example, the Construction Industry Arbitration Rules in the UK specify standards for documentation, timelines and splitting costs to ensure consistency in processes<sup>89</sup>.
- The use of organized public consultations, workshops, and effective technology outreach efforts are all ways to raise awareness similar to the mode of the legal awareness raising programs in Canada<sup>90</sup>.

### ***D. Enhancing Selection and Impartiality of Arbitrators and Conciliators***

- A centralized selection, modeled on the **Arbitration Council of India (ACI), will demonstrate to stakeholders that only competent professionals with qualifications in arbitration and property law will be included**<sup>91</sup>. The roster may be administered by a committee comprised of retired judges, legal academics, and the distinguished property professionals.
- To counteract potential conflicts of interest, the articulation of robust disclosure obligations may attenuate the likelihood of bias, and be consistent in practice. An arbitrator or conciliator would have to disclose any dealings, or past or current

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<sup>89</sup> UK Adjudication Society, *Construction Industry Arbitration Rules* (2021).

<sup>90</sup> Department of Justice, Canada, *Public Legal Education and Information (PLEI)*, <https://justice.gc.ca/eng/fund-fina/guides/plei.html> (last visited May 31, 2025).

<sup>91</sup> Arbitration Council of India, *About ACI*, <https://lawmin.gov.in/arbitration-council-india> (last visited May 31, 2025).

relationship with the parties in dispute. This modeling provides a basis for a reasonable adjudicator to rule fairly.

- Periodic training will be required for arbitrators to be in tune with legal and regulatory developments. For example, training modalities could be designed or delivered around RERA's provisions; ethics training in dispute resolution; an awareness of phenomena in real estate development which could form part of a certification process developed and administered by organizations such as the National Law Universities (NLUs)<sup>92</sup>.

### ***E. Strengthening Enforcement Mechanisms for ADR Outcomes***

**Legislative Clarity:** RERA should be amended to clarify that results from ADR will be enforceable. The outcomes of ADR must be enforced in the same manner as awards provided under section 36 of the Arbitration and Conciliation Act, 1996, where the ADR results will need to be accepted as decrees of civil courts as outlined in section 36 of the Arbitration and Conciliation Act, 1996.

Case Study: The important case *Mahanagar Telephone Nigam Ltd v. Canara Bank* (2020)<sup>93</sup> illustrated enforcement of arbitral awards under the Arbitration Act, and can serve as best practises for demonstrating ways to revise RERA specifically.

**Judicial Oversight:** RERA Appellate Tribunals should be endowed with the power to implement the ADR award on a timeline, and required to dismiss frivolous objections to avoid delays.

Example: Administrative reforms in Germany stipulates that the tribunal must take ADR awards into consideration in their judgments, and explicitly states that while a prefectly to fundamental errors is understandable, only a small number of legal grounds could be deem valid for appellate review<sup>94</sup>.

**Penalties for Non-Compliance:** developers who non comply with awards without reasonable justification, will be subject to a significant penalty such as fines, suspension of the license or

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<sup>92</sup> National Law University Delhi, *Centre for ADR Training Modules*, <https://nludelhi.ac.in> (last visited May 31, 2025).

<sup>93</sup> *Mahanagar Telephone Nigam Ltd. v. Canara Bank*, (2020) 12 SCC 767.

<sup>94</sup> German Administrative Procedure Act, *Verwaltungsverfahrensgesetz (VwVfG)*, art. 68–73.

blacklisting on the particular project. Merit based financial penalties, and reputational penalties have provided by example from other countries to deter non compliance.

**Support Systems for Execution:** RERA authorities may legislate enforcement units dedicated to ensuring compliance, while also provided administrative assistance to execute the award in a reasonable timeframe.