

# ILE

## PROPERTY AND LAND LAW REVIEW

VOLUME 3 AND ISSUE 1 OF 2025

INSTITUTE OF LEGAL EDUCATION

**ILE PROPERTY AND LAND LAW REVIEW**

**APIS – 3920 – 0048 | ISSN - 2584-1998**

**(OPEN ACCESS JOURNAL)**

**Journal's Home Page – https://pllr.iledu.in/**

**Journal's Editorial Page - https://pllr.iledu.in/editorial-board/**

**Volume 3 and Issue 1 (Access Full Issue on - https://pllr.iledu.in/category/volume-3-and-issue-1-of-2025/)**

**Publisher**

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 - info@iledu.in / Chairman@iledu.in




© Institute of Legal Education

**Copyright Disclaimer**: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer https://pllr.iledu.in/terms-and-condition/

ILE PROPERTY AND LAND LAW REVIEW

VOLUME 3 AND ISSUE I OF 2025

APIS – 3920 – 0048 | ISSN - 2584-1998

Published by

Institute of Legal Education

https://iledu.in

# STRENGTHENING HOMEBUYER REMEDIES: THE ROLE OF ADR MECHANISMS IN THE RERA FRAMEWORK

**AUTHOR -** ASTHA KOTHARI* & ARRYAN MOHANTY**

* DEPARTMENT OF LAW, CALCUTTA UNIVERSITY, INDIA

** STUDENT OF SYMBIOSIS LAW SCHOOL, NAGPUR

**BEST CITATION -** ASTHA KOTHARI & ARRYAN MOHANTY, STRENGTHENING HOMEBUYER REMEDIES: THE ROLE OF ADR MECHANISMS IN THE RERA FRAMEWORK, *ILE PROPERTY AND LAND LAW REVIEW (ILE PLLR)*, 3 (1) of 2025, Pg. 15-30, APIS – 3920 – 0048 | ISSN - 2584-1998

**Abstract**

The housing sector plays a crucial role in India's GDP and is a significant source of employment. However, despite this importance, it has remained largely unregulated for many years, putting homebuyers at the mercy of developers and promoters. Due to a lack of awareness regarding the sector and the applicable legal frameworks, consumers often fall prey to deceptive practices. Many financial resources in this industry are spent on disputes concerning construction and delivery. The Government implemented the Real Estate (Regulation and Development) Act, 2016 (RERA) to address these challenges and establish regulatory oversight. RERA aims to protect the interests of homebuyers, tenants, and investors from malpractices by developers, including project delays, poor construction quality, and false promises—factors that often result in lengthy legal disputes. Creating the Real Estate Regulatory Authority under RERA establishes a specialised platform for resolving these conflicts. Nevertheless, there have been inquiries about alternative dispute resolution (ADR) options within the RERA framework. This raises the possibility of utilising mechanisms from the Arbitration and Conciliation Act, 1996, which are designed to resolve disputes outside of traditional court systems. Identifying the most effective dispute resolution method in real estate often depends on the contract details and both parties' willingness to opt for arbitration. This paper examines how ADR mechanisms can be incorporated into the RERA structure to improve the efficiency and accessibility of remedies for homebuyers.

## Introduction

The construction and infrastructure industries rank among the fastest-growing sectors worldwide, with substantial financial resources often spent on resolving disputes connected to construction activities. Globalisation and industrial competition in India have led to increased commercial conflicts. However, the evolution of mechanisms to address and settle these disputes has often lagged behind the broader socio-economic advancements, industrial expansion, and modernisation efforts.[23]

Over the past two decades, India's real estate sector has experienced significant growth. As the country establishes itself as one of the fastest-growing economies in the world, it is on a path to becoming the world's third-largest economy. Increased per capita income has improved living standards, granting citizens better access to housing, education, healthcare,

[23] Samruddhi S Divekar, A Review on Dispute Resolution under the Real Estate (Regulation and Development) Act, 2016, Vol 8 Issue 8, IRJET, 2111-2114 (2021) https://mail.irjet.net/archives/V8/i8/IRJET-V8I8320.pdf

ILE PROPERTY AND LAND LAW REVIEW
VOLUME 3 AND ISSUE I OF 2025
APIS – 3920 – 0048 | ISSN - 2584-1998
Published by
Institute of Legal Education
https://iledu.in

and food essentials. This transformation reflects a growing aspiration for an improved lifestyle. The Indian real estate sector is divided into four key sub-sectors: residential, commercial, retail, and hospitality. Among these, the residential sector is the most crucial, demonstrating ever-increasing demand. Furthermore, the real estate industry is a significant source of employment, providing jobs for nearly 40 million people, making it the third-largest contributor after agriculture and manufacturing. Consequently, real estate is a fundamental component of India's construction landscape.

Conflicts between developers and homebuyers have had widespread consequences throughout the sector, often stemming from project delays, non-compliance with approved plans, or alterations in sanctioned layouts. Previously, buyers had to rely heavily on developers' discretion to acquire possession of their homes. However, the rise of legal protections, judicial involvement, and increased public awareness, driven by social media and greater access to digital information, has dramatically transformed the situation in favour of consumer protection. These advancements have empowered homebuyers to assert their rights through consumer redressal forums, particularly in project delays, contract breaches, or project specifications and design changes.

Frustrated homebuyers faced limited options before the introduction of the Real Estate (Regulation and Development) Act in 2016. They often depended on traditional consumer protection mechanisms to obtain redress from non-compliant builders. Following the implementation of RERA, courts have struggled to define the applicability and priority of various legal frameworks in resolving real estate disputes. This complexity arises from the variety of forums now available for grievance resolution. Homebuyers can now turn to multiple legal entities, including the Real Estate Regulatory Authority (RERA), consumer courts, civil courts, the National Company Law Tribunal (NCLT), the Competition Commission of India (CCI), or choose alternative dispute resolution (ADR) methods based on the specifics of the dispute.[24]

The Real Estate (Regulation and Development) Act requires developers to register their projects, disclose essential information to prospective buyers, ensure financial transparency, and strictly adhere to project timelines. With this legislation's introduction, participants in the real estate industry have become more aware of their legal obligations. They are trying to fulfil these regulatory requirements to avoid potential penalties and legal disputes.

To facilitate a more effective grievance resolution process, the Act created the Real Estate Regulatory Authority (RERA) as a dedicated platform for addressing complaints related to project development, property possession, and maintenance issues. This body helps alleviate the workload on conventional civil courts. A significant aspect introduced by RERA is the creation of a specialised Reserve Account designed to enhance financial accountability and transparency in real estate ventures. The Act grants homebuyers increased oversight and confidence by requiring a portion of project funds to be placed into this account and used exclusively for the specified project.

A notable judicial precedent in this regard is Brig. (Retd.) In Kamal Sood v. M/S DLF Universal Ltd., the court examined whether a developer could promise timely apartment delivery and later claim delays due to pending government approvals. The ruling underscored the necessity of builder accountability and affirmed that external permits do not exempt developers from their commitments to buyers.[25] Since RERA's implementation, the industry has experienced significant advancements in operational transparency, punctual project delivery, and builder responsibility. These changes have fostered greater consumer confidence and

[24] Dr. Gurmanpreet Kaur & Dr. Parineeta Goswami, Real Estate Dispute Resolution: A Study of Remedies available under Real Estate Regulation Act & Consumer Protection Act, Vol 4 Issue 2, VULJ, 1-15 (2024) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5085787
[25] First App Nos 557/2003 & 683/2003

encouraged a more professional and ethically managed real estate landscape. However, persistent issues still exist, such as the need for standardised third-party evaluations, clarity in compensation frameworks, and further legal revisions to bolster project completion timelines.

Alternative Dispute Resolution (ADR), especially arbitration, plays an essential role in settling disputes related to RERA. It is an efficient and streamlined means of resolving conflicts between builders and homebuyers, ensuring that contractual obligations are met without resorting to lengthy litigation. In the landmark ruling of Hindustan Petroleum Corporation Ltd. v. Pink City Midway Petroleum, the Supreme Court highlighted the enforceability of arbitration agreements under the Arbitration and Conciliation Act,[26] stating that when such an agreement is present, courts must direct the dispute to arbitration without assessing the merits.[27] This case emphasised that civil courts should restrict their involvement to verifying the existence of a valid arbitration clause. Consequently, arbitration has become crucial for enabling specialised and expedited adjudication within the RERA framework, safeguarding all parties' interests.[28]

Alternative Dispute Resolution (ADR) techniques like arbitration, mediation, and conciliation provide a quicker and more budget-friendly method for resolving disputes than conventional litigation. Given their advantages in efficiency, it is prudent to incorporate these approaches into various legal fields. One specific area that could benefit is real estate, which deals with a substantial backlog of unresolved issues. Therefore, investigating the potential of ADR for resolving property conflicts is crucial. Following the enactment of the Real Estate (Regulation and Development) Act (RERA), a notable number of complaints have arisen regarding the behaviour of real estate developers and associated service providers. Problems such as extended project delays, unexpected cost hikes during construction, unbalanced builder-buyer agreements, and inadequate enforcement mechanisms have led to growing dissatisfaction among consumers. This has resulted in a notable increase in complaints submitted to RERA.

This rise in complaints has significantly burdened RERA, civil courts, and consumer redressal forums, which are already struggling with significant case backlogs. Thus, integrating ADR methods in the real estate sector is essential. RERA has established provisions for conciliation forums, enabling parties in dispute to resolve issues amicably without resorting to traditional court proceedings. Those involved in property development, management, sales, and purchases typically understand the high monetary and time-related expenses of protracted disputes. ADR presents a viable solution for prompt conflict resolution, benefiting developers and buyers alike. While it is acknowledged that not all disagreements are suitable for ADR, there is an increasing inclination to support and enforce arbitration clauses, which act as an efficient alternative to litigation.

The success of ADR is closely linked to the quality of contract drafting and enforcement. Disputes frequently arise from existing contractual obligations, and ADR is commonly incorporated into these contracts as a predetermined method for resolving future issues. This proactive strategy assists parties in steering clear of lengthy and costly litigation. Nonetheless, it is vital to acknowledge that numerous disputes within real estate are specialised and demand expert insight. Professionals providing ADR services in this field must comprehensively understand the sector's legal, commercial, and technical dimensions. Considering real estate's complexities and evolving nature, ADR practitioners must comprehend market trends and financial aspects and know land laws and lease agreements. This level of expertise enables

[26] The Arbitration and Conciliation Act, 1996, § 8
[27] (2003) 6 SCC 503
[28] Stuti Kuzur and Shruti Roy, Regulatory Dynamics in Real Estate: Exploring the Intersection of RERA and the Arbitration Act, Vol 4 Issue 4, JCLJ, 242-252 (2024) https://www.juscorpus.com/wp-content/uploads/2024/08/71.-Stuti-Kuzur-Shruti-Roy.pdf

them to offer practical and tailored solutions specifically designed to address individual disputes.[29]

Understanding the RERA Act 2016

The real estate industry in India had historically functioned without a solid legal framework, creating opportunities for unregulated activities and inefficiencies. Acknowledging the pressing need for a regulatory system, talks commenced during the 2000 conference of National Housing Development and Municipal Administration Ministers. The discussions aimed to realise affordable housing for everyone, revisit land-use policies, financially empower local governmental bodies, and envision urban centres free of slums. These talks also addressed concerns related to land valuation and the regulation of urban development. In line with this effort, the Ministry of Housing and Urban Poverty Alleviation began drafting a Real Estate bill. In July 2011, the Ministry of Law and Justice categorised the bill under the concurrent list of the Indian Constitution, allowing both the Central and State governments to legislate on it.

On 14 August 2013, the Real Estate (Regulation and Development) Bill was presented in the Rajya Sabha. After thorough examination and suggestions from the Rajya Sabha Committee, the Union Cabinet approved twenty significant amendments in December 2015. The bill was approved by the Rajya Sabha on 10 March 2016, and by the Lok Sabha on 15 March 2016. The legislation, called the Real Estate (Regulation and Development) Act, 2016, or RERA, was enacted primarily to safeguard consumer rights, reduce fraudulent activities by developers, and promote consistency and transparency in the real estate sector. The Act officially took effect on 1 May 2016, although only 69 of the 90 sections were initially notified. The remaining provisions came into force on 1 May 2017. On 31 October 2016, the Ministry of Housing and Urban Poverty Alleviation published the general rules concerning the implementation of the Act. This legislation was enacted under Entry 6 and Entry 7 of the Concurrent List of the Indian Constitution.

The RERA Act applies throughout India, except for Jammu and Kashmir, at its establishment. It covers various kinds of real estate, including residential apartments, commercial structures, and plots for residential or commercial purposes. The Act defines a "Real Estate Project" as the development of buildings that include apartments, the conversion of existing buildings into apartments, or the development of land into plots for sale, either in total or in part. Projects exceeding an area of five hundred square meters must register under the Act. It also sets forth essential obligations, such as the disclosure of project details, the execution of standardized contracts, the specification of carpet area, a limit on advance payments to ten percent of the property's total cost, and the obligatory deposit of seventy percent of buyer funds into an escrow account to ensure they are used solely for their intended project. Additionally, the Act mandates timely project completion and includes penalties for non-compliance, establishing a comprehensive framework for managing commercial and residential real estate.[30]

Several fundamental objectives propelled the legislative framework. One of the primary aims was to regulate and mitigate malpractice within the real estate industry. It sought to protect consumers from prevalent issues such as delays in project completion, improper conveyance of property titles, and substandard amenities. RERA formed regulatory authorities and appellate tribunals in various states to actualise this vision, enabling consumers to voice grievances against non-compliant developers. The Act also aspired to enhance India's Gross Domestic Product by establishing

[29] Astha Dhawan, How can ADR be beneficial for the Real Estate Sector? VIA Mediation & Arbitration Centre (12 July 2025, 04:26 PM) https://viamediationcentre.org/readnews/MzIx/How-can-ADR-be-beneficial-for-the-Real-Estate-Sector

[30] Akshaya V, Real Estate (Regulation and Development) Act, 2016, iPleaders (12 July 2025, 06:23 P.M.) https://blog.ipleaders.in/real-estate-regulation-and-development-act-2016-2/#Scope_and_applicability_of_the_Real_Estate_Regulation_and_Development_Act_2016

a more organised and dependable real estate market. In pursuing this goal, it intends to impose greater accountability on developers and regulatory entities, ensuring that investments made by homebuyers are safeguarded and effectively managed. Moreover, the Act centralised oversight concerning project registration and underscored the significance of upholding construction quality. In instances of structural defects or other grievances, it afforded buyers the mechanisms to pursue justice.

Before RERA was enacted, the real estate sector functioned with limited oversight, resulting in uncertainty and risk for homebuyers and investors alike. The Act has revolutionised this landscape by promoting transparency, establishing legal clarity in the relationships between developers and buyers, and instituting mechanisms for dispute resolution and project oversight. Through the establishment of state-level authorities and tribunals, RERA has institutionalised accountability. For Indian homebuyers, this legislation has emerged as a foundational pillar of trust, ensuring their investments are secure and that properties are delivered within the stipulated timelines. In summary, RERA has not only brought stability to the real estate market but has also reinstated consumer confidence by laying a robust legal groundwork for equitable and ethical business practices.

The Real Estate (Regulation and Development) Act, 2016, was established primarily to regulate and foster the real estate sector, creating a dedicated authority known as the Real Estate Regulatory Authority. This authority enhances transparency, accountability, and efficiency in selling and promoting plots, buildings, and apartments throughout India. Its goal is to ensure that all real estate transactions are carried out fairly and transparently, thereby building public trust in the sector. A key objective of the Act is to protect consumer interests and prevent exploitative behaviour by developers and promoters. To accomplish this, the Act provides for the rapid resolution of disputes through designated mechanisms, including the creation of Appellate Tribunals. These tribunals can hear appeals against decisions or orders made by the Regulatory Authority, ensuring timely justice for those affected.

The law requires the establishment of state-specific regulatory bodies, known as RERA, which oversee the implementation of the Act within their regions. Promoters must register all residential real estate initiatives with the relevant authority before engaging in any advertisement, promotion, or sale. Selling or marketing real estate projects without this registration is strictly prohibited. Promoters must also comply with certain obligations under the Act, such as publishing project-related information on the official RERA website, including layout plans and site maps. Furthermore, suppose a promoter plans to transfer or assign a significant portion of rights and responsibilities in a real estate project to another party. In that case, they must obtain written consent from the Regulatory Authority and two-thirds of the allottees associated with the project.

In cases where either the promoter or the buyer fails to meet their contractual commitments, the Act mandates that both parties share equal liability by compensating each other accordingly. Additionally, suppose a promoter incurs financial loss for a buyer due to a flawed title or any third-party claim on the property. In that case, the promoter must compensate for the damage or inconvenience caused. The Act specifies that funds from allottees must be placed into a designated bank account to encourage responsible financial practices. These funds should exclusively be used to develop the project for which they were collected. The required percentage of funds to be deposited and maintained in this separate account may vary based on state regulations. The Act also grants clients the right to legal representation by professionals such as Chartered Accountants (CAs), Company Secretaries (CSs), Cost and Management

Accountants (CMAs), or legal practitioners, depending on the nature of the dispute. The legislation establishes severe penalties for promoters and real estate agents who breach its provisions to enforce compliance. In severe cases, the Act even prescribes imprisonment, highlighting the importance of adhering to its rules.

The Real Estate (Regulation and Development) Act of 2016 established a regulatory framework at the state level to manage the operations of the real estate industry. Under Section 20 of the Act, each state has the authority to create its own Real Estate Regulatory Authority (RERA).[31] These authorities are entrusted with several essential duties, such as registering and maintaining a public database of real estate projects, ensuring transparency by providing accessible online information, protecting the interests of promoters, agents, and homebuyers, and encouraging sustainable and affordable housing. Moreover, RERA is also expected to guide state governments and oversee adherence to the Act's provisions.

When stakeholders wish to contest decisions made by RERA, Section 43 of the Act allows for the formation of Real Estate Appellate Tribunals in each state.[32] These tribunals act as the appellate authorities, with specific regulations on their composition, requirements for their chairperson and members, powers of procedure, authority over dispute resolution, and rules concerning vacancies. They are essential in maintaining checks and balances within the real estate regulatory framework.

A fundamental aspect of the Act is the compulsory registration of real estate projects. According to Section 3, any project that involves a plot size of 500 square meters or more, or includes eight or more apartments, must be registered with the relevant regulatory authority before any advertisements, sales, or bookings.[33]

The Act also places a strong emphasis on financial accountability. Promoters must deposit 70% of the funds received from buyers into a designated escrow account. These funds must be utilised solely for the construction and land expenses of the specific project from which they were gathered, thereby preventing the misallocation of funds and ensuring timely project completion. In cases of default by either the promoter or the buyer, Section 61 requires both parties to pay interest at the same rate.[34] This provision guarantees fairness and equality in financial responsibilities, deterring unnecessary delays or breaches of contract.

Section 13 of the Act prohibits promoters from receiving more than 10% of the property's cost as an advance or application fee unless a formal sale agreement has been signed first.[35] This rule safeguards buyers from being misled or financially taken advantage of during the initial phases of the transaction.

Additionally, the Act enforces strict penalties for failing to comply with the directives issued by the Appellate Tribunal or the Regulatory Authority. According to Section 66, developers who breach such orders may face imprisonment for three years. Real estate agents and buyers could also face up to one year in prison, or financial penalties that may accrue daily, potentially reaching up to ten per cent of the estimated cost of the property involved.[36] These provisions ensure that all parties engaged in real estate transactions are held responsible for their conduct.

Important Definitions

Appropriate Government

The phrase "appropriate government" pertains to various authorities based on the jurisdiction. For Union Territories without a legislature, it refers to the Central Government. In the Union Territory of Puducherry, the relevant governing body is the administration of that territory. In the context of Delhi, the authority is the Central

[31] The Real Estate (Regulation and Development) Act, § 20
[32] The Real Estate (Regulation and Development) Act, § 43
[33] The Real Estate (Regulation and Development) Act, § 3
[34] The Real Estate (Regulation and Development) Act, § 61
[35] The Real Estate (Regulation and Development) Act, § 13
[36] The Real Estate (Regulation and Development) Act, § 66

ILE PROPERTY AND LAND LAW REVIEW
VOLUME 3 AND ISSUE I OF 2025
APIS – 3920 – 0048 | ISSN - 2584-1998
Published by
Institute of Legal Education
https://iledu.in

Ministry of Urban Development. For states, the term indicates the respective State Government.[37]

Appellate Tribunal

An "Appellate Tribunal" refers to the Real Estate Appellate Tribunal established under Section 43 of the Act. This tribunal reviews appeals against the Real Estate Regulatory Authority's decisions, directives, or orders.[38]

Person

The term "person" includes a broad spectrum of legal entities. It covers individuals, Hindu Undivided Families (HUFs), companies, and firms registered under the Indian Partnership Act of 1932 or the Limited Liability Partnership Act of 2008. It also comprises competent authorities, associations of persons or groups of individuals, whether they are incorporated—co-operative societies registered under applicable laws, and any other entity that the appropriate government may declare through official notification.[39]

Planning Area

"Planning area" refers to any region designated for urban or regional development by the appropriate government or competent authority. This includes development areas, local or regional planning zones, and other selected regions for future planned development following current town and country planning regulations. These definitions may undergo updates occasionally to address changing administrative or planning requirements.[40]

Promoter

A "promoter" is a person or entity constructing or converting buildings into apartments to sell them fully or partially. This includes individuals or organisations that develop land into a real estate project, regardless of whether they also construct buildings on the designated land. Furthermore, public bodies and development authorities that build apartments or allocate plots using government-owned land are also included in this definition. Apex-level and primary co-operative housing societies and individuals acting on behalf of landowners via power of attorney are also considered. Moreover, the term covers anyone functioning as a builder, coloniser, contractor, estate developer, or under any similar title for the intent of selling apartments, buildings, or plots to the public.[41]

Real Estate Agent

A "real estate agent" is any individual who aids in transactions between purchasers and sellers in real estate projects. This includes those who represent one party in transferring a plot, apartment, or building through sale and who receive a fee, commission, or any other form of compensation for their services. The definition encompasses individuals or entities utilising any platform or medium to connect potential buyers and sellers. Standard designations for such individuals include brokers, intermediaries, or property dealers, independent of the title by which they are recognised.[42]

Analysis

Advantages of RERA for Homebuyers

The Real Estate (Regulation and Development) Act (RERA) was established mainly to safeguard the interests of homebuyers, who have historically faced issues related to delays and inconsistencies in real estate projects. A key benefit for buyers under RERA is the reduction of project delays. Builders, previously known for extending project timelines indefinitely, must complete construction within the agreed-upon timeframe. In case of a delay, the Act mandates the payment of financial penalties by developers. Another significant advantage is the prevention of overcharging. RERA explicitly defines terms such as carpet area, built-up area, and super built-up area. Builders can no

[37] The Real Estate (Regulation and Development) Act, § 2(g)
[38] The Real Estate (Regulation and Development) Act, § 2(f)
[39] The Real Estate (Regulation and Development) Act, § 2(zg)
[40] The Real Estate (Regulation and Development) Act, § 2(zh)
[41] The Real Estate (Regulation and Development) Act, § 2(zk)
[42] The Real Estate (Regulation and Development) Act, § 2(zm)

longer impose charges based on super built-up areas and can only bill buyers for the carpet area as outlined in the Act. This standardisation provides greater clarity and fairness in pricing. Transparency is another vital aspect of the Act. Developers must register their projects and reveal essential details on the official RERA website. This enables buyers to access important information about the project and make informed choices. Regarding accountability, RERA holds builders liable for construction quality. If a buyer discovers structural flaws or quality concerns, the builder must correct them within 30 days of notification. To further safeguard consumer interests, the Act ensures prompt grievance redressal by establishing regulatory bodies and appellate tribunals in every state. If a buyer is unhappy with the resolution offered, they can appeal further, although certain financial conditions must be satisfied before the appeal is considered. This includes depositing either 30% of the penalty amount, a higher percentage determined by the tribunal, or the total due amount, along with any applicable interest and compensation.

Advantages of RERA for Builders

Although RERA is primarily viewed as a consumer-focused reform, it also provides several benefits to developers. One of the most prominent advantages is the enhancement of the financial landscape. Launching new projects, which used to be a significant hurdle, has become easier due to increased investor confidence stemming from regulatory transparency. Developments such as the introduction of GST, liberalised foreign direct investment (FDI) policies, and RERA have made the real estate landscape more favourable. This has resulted in a more structured inflow of capital, facilitating smoother project execution and attracting both domestic and international investors. RERA also promotes healthy competition among developers. By encouraging fair practices and assuring buyers of their rights, the Act motivates more individuals to invest in real estate. Consequently, this compels builders to uphold high standards and ensure timely delivery, revitalising the real estate market. Moreover, the Act has helped streamline the sector's operations. Historically, the industry suffered from a lack of regulation and unresolved issues. RERA has introduced consistency and predictability, aiding developers in operating more effectively. RERA penalises buyers who fail to make timely payments to maintain fairness. This provision creates an equitable framework, shielding builders from financial difficulties caused by delayed payments. The transparency enforced by RERA benefits consumers and developers by building trust. When both parties function within a distinctly defined legal framework, it strengthens their relationship and leads to fewer conflicts.

Drawbacks of RERA

Notwithstanding its numerous advantages, RERA has concurrently presented various challenges, particularly for developers within the real estate sector. A primary apprehension is that the Act does not encompass projects initiated before its enforcement, leaving many purchasers without adequate protection. The obligatory registration of forthcoming projects can also serve as an impediment. The bureaucratic process for governmental approvals frequently requires substantial time, resulting in delays in project execution. Furthermore, complications such as internal corruption and political meddling can engender additional hurdles. There have been reported cases in which regulatory authorities have solicited bribes or supplementary fees for approval, thereby exerting financial pressure on developers. Projects under 5,000 square meters are exempt from the stipulations of RERA, which engenders a significant loophole. This exemption permits smaller developers to circumvent regulatory constraints and potentially exploit consumers through excessive charges or inferior practices. Another issue pertains to the protraction of project completion due to the imposition of stringent regulations. Builders are prohibited from

marketing or selling incomplete properties, thereby complicating the initiation of new projects without the prior completion of existing ones. Acquiring necessary clearances can extend to two years, hindering the sector's growth. RERA also fails to incorporate provisions that pertain to rental housing, thereby revealing a regulatory void in a critical segment of the real estate market. Moreover, the stipulation requiring the deposit of 70% of project funds into an escrow account, although intended to avert the diversion of funds, may precipitate liquidity challenges for developers. The rigorous penalties delineated within the Act, amounting to as much as five per cent of the project cost for infractions, further exacerbate the financial burden on builders.

Impact

The introduction of RERA has resulted in considerable disruption within the industry. The real estate sector has been a major contributor to the national economy, but this legislation has adversely affected the industry, leaving builders in financial distress. The sector is facing monetary challenges and is hindered by numerous hurdles. The rollout of RERA has significantly impacted the corporate landscape. The implementation of demonetisation was already challenging, and the concurrent introduction of RERA led to widespread frustration. Due to the existing regulations, many states' property sectors are becoming more transparent and credible. Over time, benefits are expected to flow to all potential buyers. The Act's scope and intent can be enhanced by technology-driven platforms that process larger data sets, which remain underutilised in many nations. The anticipated benefits of the Act are likely to increase as focus on its enforcement intensifies.

Recently, the Union Government introduced three key policies in India: demonetisation, Goods and Services Tax, and the Real Estate (Regulation and Development) Act, which significantly impacted the economy. RERA was enacted six months after demonetisation, negatively influencing the real estate market and stifling its growth. RERA particularly affected small developers and contractors, especially in urban areas, as numerous planned real estate projects were either deferred or abandoned until they were compliant with the RERA Act, leading to a scarcity of job opportunities for workers. Additionally, modifications in liability and increased responsibilities for builders regarding property delivery were instituted. This situation also resulted in sellers being unable to sell properties at lower prices due to limited incentives. At the same time, buyers were reluctant to make purchases because their earnings had been affected by demonetisation and the weakened liquidity of the property market. Consequently, the real estate market became sluggish, triggering economic repercussions and imbalances.

Types of Disputes in the Real Estate Sector

Title Disputes

Having a legally clear title for a property is vital in the real estate industry. Unfortunately, many regions' poorly maintained and non-digitised land records have led to frequent fraudulent claims and ownership disputes, particularly when buying independent properties. To mitigate such risks, conducting a comprehensive examination of all relevant documents is imperative before finalising the transaction. Consulting with a legal expert can also help ensure the documents' legitimacy. Additionally, purchasing Title Insurance can provide financial coverage in instances of property title fraud.

Conflicts Between Developers and Homebuyers

Disputes often occur between property developers and buyers, predominantly arising from breach of contract on the builder's part. To reduce these issues, it is advisable to choose well-established developers. If the builder's reliability is questioned, prospective buyers should check with the Real Estate Regulatory Authority (RERA), which was established under the Real Estate (Regulation and Development)

Act, 2016. RERA-approved projects offer greater security, as the authority protects buyer interests and promotes transparency and accountability within the real estate sector.

Disputes Over Inherited or Willed Property

Conflicts related to inheritance frequently arise when property ownership is transferred through a will, and other potential heirs challenge its legitimacy. Difficulties may also occur when an individual passes away without a will, known as intestate. Such issues can often be averted by preparing a valid will beforehand. In cases of intestate death, succession laws provide the legal framework for property distribution. Verifying that the seller possesses a clear legal title is essential when purchasing property, especially one obtained through inheritance.

Occupancy Certificate Issues

In numerous instances, even after the completion of residential projects, property owners cannot occupy their units due to the lack of an occupancy certificate (OC). The local authority grants this certificate and verifies that the building adheres to necessary regulations. Builders may sometimes fail to meet the established standards, leading to delays in issuing the OC. To avoid such obstacles, buyers should keep track of the project's advancement and ensure adherence to all regulatory requirements.

Improper Use of Leased or Rented Property

Disputes can also arise when tenants misuse rented or leased properties in ways not agreed upon by the owner. To avoid these issues, it is vital to have a comprehensive and mutually accepted rental agreement that clearly outlines the rights and responsibilities of both parties from the beginning.[43]

Reasons Behind Conflicts in the Real Estate Industry

Insufficient Disclosure

A major contributor to conflicts in real estate transactions is the negligence of sellers or property owners to provide complete and precise information. Frequently, buyers discover essential details such as unpaid taxes or outstanding utility bills only after completing the purchase, which leads to disputes and legal complications.

Land Acquisition Disputes

Disagreements regarding land acquisition have become more prevalent, especially in urban growth areas like Greater Noida. Farmers often demand higher compensation for their properties in these regions, causing delays in the transfer process. As legal battles continue, buyers are left uncertain, adversely impacting the entire sector.

Possession Delays

Delays in possession are common and often stem from pending approvals like building permits, environmental clearances, or non-agricultural land use permits. Even significant projects may be delayed due to financial issues in certain situations. Buyers, particularly those residing in rented accommodations, shouldering the dual burden of paying rent and home loan EMIs. At times, construction might not commence for a considerable period.

Changes in Project Plans

Modifications to project layouts or building designs can lead to dissatisfaction among buyers. Previously, substantial changes required approval from at least two-thirds of property owners, but with evolving regulations, alterations are sometimes executed without proper consultation, inciting disagreements.

Lack of Openness

A deficiency in transparency during real estate transactions fosters distrust among buyers. Unlike other sectors where information is more readily available, property buyers often struggle to obtain vital details such as legal documentation, approvals, and project specifications. This lack of information

[43] Unnati Khajanchi, How are disputes in Real Estate Industry resolved? iPleaders (13 July 2025, 06:19 AM) https://blog.ipleaders.in/how-disputes-real-estate-industry-resolved/#Kinds_of_dispute_in_the_real_estate_sector

contributes to widespread confusion and disputes.

Environmental Compliance Challenges

Rapid urban development has led to breaches of environmental regulations. For instance, projects near protected zones like national parks have faced legal obstacles. Poor waste management, excessive noise, and untreated sewage have also sparked tensions between developers and residents, particularly those who have invested in impacted projects.

Fraudulent Activities

Weak regulatory oversight has rendered the real estate market susceptible to dishonest practices. Sure, developers have been known to engage in fraud, including selling the exact property to multiple purchasers. To avoid falling prey to such scams, buyers should conduct thorough research on builders, examine their previous work, and evaluate their market reputation. Promised offers, discounts, and incentives should also be scrutinised.

Brokerage Conflicts

Conflicts related to brokers often arise when commission rates are not discussed and agreed upon beforehand. In some instances, disagreements occur over unpaid brokerage fees, leading to tension between agents and clients.

Disputes Over Maintenance Fees

Disagreements regarding maintenance charges are another frequent issue. Buyers may be unhappy with the quality of maintenance provided, yet are still obligated to pay the housing society regularly, monthly, quarterly, or annually. Even if the services do not meet expectations, the Residents' Welfare Association (RWA) collects and manages these fees.

Lengthy Legal Disputes

Prolonged court cases are a significant problem within the Indian legal system. Real estate disputes can sometimes take years to resolve, causing substantial financial and emotional hardship for those involved. Given the high costs associated with legal proceedings, many individuals find it challenging to pursue extended litigation.

Arbitrability of disputes related to the real estate sector

A significant limitation of the Arbitration and Conciliation Act is its lack of a clear definition or specification regarding the types of disputes amenable to resolution through arbitration. Sections 34(2)(b)[44] and 48(2)[45] The Act sets forth the grounds on which an arbitral award may be contested, one of which is the unsuitability of the subject matter for arbitration. These provisions establish the legal foundation for determining a dispute's arbitrability.[46] Generally, the arbitrability of a dispute hinges on the presence of a valid arbitration agreement that does not exclude the jurisdiction of the arbitral tribunal. As a rule of thumb, disputes of a civil or commercial nature, whether contractual or otherwise, are regarded as arbitrable.

The Supreme Court of India articulated essential criteria for evaluating disputes' arbitrability in the Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd case.[47] The Court specified the following factors:

- Whether the dispute is appropriate for resolution through arbitration, whether it is the type of dispute that parties can agree to settle in a private forum, or if it is strictly within the purview of public judicial authorities.
- Whether the subject matter falls within the boundaries of the arbitration agreement: whether it is explicitly included or implicitly stated as being

[44] The Real Estate (Regulation and Development) Act, § 34(2)(b)
[45] The Real Estate (Regulation and Development) Act, § 48(2)
[46] Ajar Rab, Redressal Mechanism under the Real Estate (Regulation and Development) Act, 2016: Ouster of the Arbitration Tribunal, Vol 10 Issue 1, NUJSLR, 1-18 (2017) https://nujslawreview.org/wp-content/uploads/2017/03/2017-10-1-Ajar-Rab-Redressal-Mechanism-Under-The-Real-Estate-Regulation-and-Development-Act-2016.pdf
[47] (2011) 5 SCC 532

subject to arbitration, or expressly excluded as an "excepted matter."

- Whether the parties have indeed presented the dispute for arbitration, indicating that the issue is encompassed within the arguments before the arbitral tribunal (as detailed in the statements of claim and counterclaim).

Nevertheless, the Supreme Court has consistently held in prior rulings that such disputes are not subject to arbitration when legislation designates exclusive jurisdiction to a particular court or tribunal, especially in cases affecting public interest or policy. A similar perspective has been adopted concerning matters under the Consumer Protection Act, where the presence of public rights and remedies warrants exclusion from the realm of private adjudication.[48]

RERA and Arbitration

The Real Estate (Regulation and Development) Act, 2016 (RERA) was established to introduce structure and accountability to India's previously chaotic and largely unregulated real estate sector. Its main goal is to safeguard the interests of homebuyers by establishing mandatory frameworks that ensure transparency, accountability, and effective dispute resolution. The Act mandates that each state create a Real Estate Regulatory Authority and an Appellate Tribunal, where dissatisfied buyers can lodge complaints against developers or builders for violations or misconduct. According to Section 84 of the Act, state governments must formulate and announce rules for executing their provisions within six months of the Act's initiation.[49] This ensures uniformity and prompt realisation of the law's objectives in various states. Before the introduction of RERA, homebuyers had limited legal options and mainly depended on general laws such as the Consumer Protection Act, 1986 and the Indian Contract Act, 1872. Although these statutes were beneficial, they lacked the specificity necessary to tackle real estate transactions' intricate and technical aspects. RERA addressed this gap by providing a more customised regulatory framework. Moreover, RERA aims to standardise the rights and duties of essential participants in the real estate industry, replacing a previously fragmented system governed by state-specific municipal regulations. A notable provision in this context is Section 88, which clarifies that RERA is meant to be an addition to, and not a substitute for, other existing laws. This indicates that RERA can function alongside other legislation while affirming its unique position in real estate regulation. Nevertheless, interpreting RERA's connection with arbitration law presents certain complexities.[50] Section 89 of the Act states that RERA will take precedence in any contradictions with existing legislation. The provision "*the provisions of this Act shall have effect, notwithstanding anything inconsistent contained in any other law for the time being in force*" reflects a clear legislative intent for RERA to hold overriding authority.[51] Sections 88 and 89 imply that arbitration might be viewed solely as an alternative remedy rather than the primary option when remedies specific to RERA are available.

Judicial precedents support this interpretation. In rulings such as those involving Nataraj Studios, the Supreme Court has determined that when a special law is applicable, it takes precedence over general laws like the Arbitration and Conciliation Act. The National Consumer Disputes Redressal Commission (NCDRC) has also pointed out that, as a matter of public policy, the jurisdiction granted under specialised laws like RERA cannot be overridden by arbitration clauses. However, this legal framework is not without its uncertainties. The overlap between RERA and arbitration law, especially Section 8(1) of the Arbitration and Conciliation Act, 1996, stipulates that disputes

[48] Som Dutt Vyas, Dispute Resolution and Spirit of RERA vis-à-vis Real Estate Industry, Vol 2 Issue 2, IJLSI, 522-534 (2020) https://www.ijlsi.com/wp-content/uploads/Dispute-Resolution-and-Spirit-of-RERA-vis-a-vis-Real-Estate-Industry.pdf
[49] The Real Estate (Regulation and Development) Act, § 84
[50] The Real Estate (Regulation and Development) Act, § 88
[51] The Real Estate (Regulation and Development) Act, § 89

with an arbitration clause must be directed to arbitration, creating a direct conflict.[52] While RERA seems to assert dominance in real estate disputes, arbitration law supports the enforcement of arbitration agreements even in areas governed by special laws. This contradiction leads to confusion and inconsistent application, posing challenges for stakeholders seeking a straightforward path to dispute resolution in the real estate sector. While RERA offers a specialised and effective mechanism for addressing real estate disputes, its intersection with arbitration law reveals legislative and interpretive disparities. More legal clarity is essential to reconcile the application of both statutes, ensuring consistency, minimising jurisdictional conflicts, and boosting investor and consumer confidence in the sector.[53]

India's legal framework for upholding decisions reached through Alternative Dispute Resolution (ADR) in real estate disputes primarily relies on several key laws. The Arbitration and Conciliation Act of 1996, amended in 2015, 2019, and 2021, is the foundational legislation for arbitration processes. It includes Section 34,[54] which permits challenges to arbitration awards on specific grounds; Section 35,[55] which affirms the awards as final and binding; and Section 36,[56] which equates arbitral awards with civil court decrees for enforcement purposes. Importantly, the 2015 amendment clarified the interpretation of "public policy" regarding the annulment or refusal to enforce an award, thereby improving predictability in enforcement. The Real Estate (Regulation and Development) Act of 2016 (RERA) established a specific framework for addressing real estate disputes. Section 40 empowers the Real Estate Regulatory Authority to issue binding orders,[57] and Section 40(1) stipulates that these orders can be enforced similarly to a civil court decree.[58] Moreover, Sections 57 to 59 impose penalties for failing to comply with the Act's provisions, strengthening its regulatory authority.[59] The Code of Civil Procedure of 1908 provides the procedural rules essential for enforcing ADR results through the judiciary, while the Specific Relief Act of 1963 oversees the execution of obligations relating to immovable property, including specific performance orders. In addition to these legislative measures, enforcement is bolstered by regulatory instruments such as state-specific RERA regulations, guidelines from the Bar Council of India for mediation conducted by legal practitioners, and procedural norms set by arbitration and mediation organisations operating nationwide.[60]

Mediation within RERA

The Real Estate (Regulation and Development) Act, 2016 (RERA), was introduced to tackle the persistent inefficiencies and lack of transparency in India's real estate sector. Among its various regulatory advancements, one of the most notable is its institutional promotion of Alternative Dispute Resolution (ADR) methods, particularly mediation, to address the increasing number of conflicts between consumers and developers. Mediation, characterised as a voluntary, informal, and collaborative resolution method, has become a feasible alternative to litigation and arbitration in disputes related to real estate.

RERA acknowledges the importance of a non-adversarial approach to dispute resolution and includes explicitly conciliation methods under Section 32(g), which requires authorities to "encourage amicable settlement of disputes" between developers and buyers.[61] Additionally, Section 31 permits filing complaints with the

[52] The Arbitration and Conciliation Act, 1996, § 8(1)
[53] Raveena R Savadia & Annesha Gora, A Comparative Analysis of Arbitration Efficiency in Real Estate Transactions: A Cross-Border Perspective, Vol 4 Issue 4, JCLJ, 882-898 (2024) https://www.juscorpus.com/wp-content/uploads/2024/09/96.-Raveena-R-Savadi.pdf
[54] The Arbitration and Conciliation Act, 1996, § 34
[55] The Arbitration and Conciliation Act, 1996, § 35
[56] The Arbitration and Conciliation Act, 1996, § 36
[57] The Real Estate (Regulation and Development) Act, § 40
[58] The Real Estate (Regulation and Development) Act, § 40(1)
[59] The Real Estate (Regulation and Development) Act, § 57, 58 & 59
[60] Chaitanya Chander Bali & Meghna Biswas, Enforceability of ADR Decisions in Real Estate Disputes, Vol 8 Issue 2, IJLMH, 5804 – 5811 (2025) https://ijlmh.com/wp-content/uploads/Enforceability-of-ADR-Decisions-in-Real-Estate-Disputes.pdf
[61] The Real Estate (Regulation and Development) Act, § 32(g)

Authority, and in several instances, these complaints are redirected to conciliation forums before considering adversarial resolution.[62] The regulatory setting, as examined in existing literature, also supports mediation through associated laws such as Section 89 of the Code of Civil Procedure, 1908, which authorises courts to refer issues for mediation,[63] and Part III of the Arbitration and Conciliation Act, 1996, which renders settlement agreements enforceable as arbitral awards. This legal enforceability is vital in real estate, where time-sensitive obligations and significant financial interests are at stake.[64]

Several state RERA authorities, particularly MahaRERA and UP RERA, have established conciliation forums to promote mediation between homeowners and builders. Recent statistics indicate that MahaRERA's Conciliation Forum successfully resolved over 500 disputes in 2023, frequently within a timeframe of 60 to 90 days, significantly quicker than the multi-year timelines associated with litigation. Likewise, UP RERA has settled over 300 disputes since 2019 through mediation, highlighting the scalability and efficacy of this method. These conciliation forums address the varied and complex nature of real estate disputes, including issues like delayed possession, refund requests, and concerns about construction quality and maintenance duties. Mediation meetings are voluntary and confidential, allowing for adaptable, interest-driven outcomes, which is especially advantageous for maintaining long-term relationships among stakeholders.

The mediation process under the RERA framework generally starts with the mutual agreement of both parties. A neutral mediator, typically a legal or industry professional, directs the parties through organised discussions. As the literature outlines, this procedure consists of joint sessions, defining issues, private talks, and drafting final agreements. For instance, when developers refer to delays caused by regulatory obstacles, and buyers express concerns about financial impacts, the mediator helps find a compromise, such as adjusting timelines or offering partial refunds that courts or tribunals might not typically consider. Mediators working under RERA forums or High Court Mediation Centres (established under the MCPC initiative) are trained to manage industry-specific disputes. This guarantees the necessary expertise to comprehend real estate contracts, title concerns, and construction standards. The presented research consistently underscores a multitude of benefits associated with mediation within the Real Estate (Regulation and Development) Act (RERA):

- Speed and Efficiency: Mediation in real estate disputes resolves conflicts in a significantly shorter timeframe than traditional litigation. Regulatory bodies such as MahaRERA indicate that average settlement durations typically do not exceed 90 days.
- Cost-Effectiveness: Participants can significantly reduce legal and procedural expenditures, making mediation appealing to individual homebuyers and smaller developers.
- Confidentiality: Mediation protects sensitive commercial information, including project finances and buyer records, preventing public disclosure.
- Relationship Preservation: Disputes are settled to foster amicable relations, thereby maintaining the essential trust required for ongoing projects and prospective transactions.
- Flexibility in Solutions: While courts may enforce binary resolutions, mediation facilitates the development of innovative, tailored solutions, such as

[62] The Real Estate (Regulation and Development) Act, § 31
[63] The Code of Civil Procedure, 1908, § 89
[64] Daksh Gupta, Mediation as an Effective Mechanism for Resolving Real Estate Disputes in India, Vol 3 Issue 3, IJLRR, 20-32 (2025) https://www.ijlrr.com/_files/ugd/b45e4e_5efde296a815445cb40722bc50599a8f.pdf

phased compensation, waivers of penalties, or extensions of warranties.[65]

Notwithstanding its potential, mediation under the RERA framework encounters several impediments. A principal challenge is the limited awareness among stakeholders, particularly in Tier-2 and Tier-3 urban centres. Additionally, the scarcity of qualified mediators, inconsistent application across various states, and the non-binding nature of the mediation process, where parties retain the option to withdraw at any time, further inhibit its broader adoption. Moreover, legal inconsistencies between RERA's obligatory adjudication provisions and Section 8(1) of the Arbitration Act, which advocates for arbitration in a valid clause, engender interpretative challenges and procedural ambiguities.

Mediation within the RERA framework transcends mere statutory compliance, representing a transformative approach that addresses the sector's imperative for rapid, equitable, and confidential dispute resolution. It empowers stakeholders to devise contextually relevant remedies while alleviating the burden on an overloaded court system. However, to fully harness its potential, mediation necessitates increased institutional investment through comprehensive training, awareness initiatives, and the establishment of standardised processes. With enhanced design and consistent implementation, mediation could be the preferred recourse for many real estate disputes, fortifying homebuyer protections within the RERA framework.[66]

Conclusion

The Real Estate (Regulation and Development) Act of 2016 (RERA) represented a pivotal shift for India's real estate industry by implementing a regulatory framework that improves transparency, accountability, and consumer protection. The Act tackles enduring issues such as project delays, deceitful practices, and the absence of legal recourse for homebuyers. By requiring project registration, standardising contracts, introducing financial safeguards like escrow accounts, and establishing regulatory authorities at the state level, RERA has notably transformed the operational landscape of the sector. Nevertheless, despite RERA's positive impact, the rising number of disputes and the pressure on resolution bodies underscore the necessity for more effective and accessible methods of conflict resolution. In this regard, Alternative Dispute Resolution (ADR)—particularly mediation, conciliation, and arbitration—becomes an essential complement to RERA's adjudicative framework. ADR offers many benefits, such as speed, cost savings, confidentiality, flexibility, and the preservation of relationships. These are significant in real estate disputes where both time and financial resources are considerable.

This paper concludes that while arbitration faces limitations due to statutory conflicts and jurisdictional overlaps with RERA, mediation and conciliation initiatives under RERA have demonstrated positive outcomes. Success stories from state authorities, including MahaRERA and UP RERA, indicate that ADR can resolve intricate real estate disputes in a fraction of the time that courts typically require, ultimately benefiting homebuyers and developers alike. Furthermore, judicial precedents reinforce the binding nature of ADR agreements, even within the context of specialised legislation. However, there are still practical and legal challenges to address. The relationship between the Arbitration and Conciliation Act and RERA is marked by uncertainty, particularly concerning overriding jurisdiction. Variations across states, a lack of trained mediators, inadequate awareness among stakeholders, and the non-binding nature of mediation impede the complete integration of ADR within the RERA framework. Enhancing ADR mechanisms within the RERA framework is not just a legal adjustment but an essential requirement. Through careful policy

[65] Rudi Kurniawan & Sabela Gayo, The Use of Mediation as an Alternative Property Dispute Resolution, Vol 10 Issue 2, IJRR, 330-338 (2023) https://www.ijrrjournal.com/IJRR_Vol.10_Issue.2_Feb2023/IJRR42.pdf

[66] Saanvi R Udupa, Arbitration and Mediation in Real Estate Disputes, Vol 5 Issue 1, JCLJ, 146-162 (2024) https://www.juscorpus.com/wp-content/uploads/2024/09/10.-Saanvi-R-Udupa.pdf

integration, investments in capacity building, and legislative backing, ADR can significantly improve the efficacy of real estate regulation in India, restore confidence in the housing market, and offer timely, meaningful solutions to homebuyers.