

Interplay between RERA and Arbitration

RERA aims to protect homebuyers' interests by enforcing project registration, demanding disclosure of significant details, maintaining financial discipline through escrow accounts, and providing a statutory dispute resolution system through its authorities and adjudicating officials. Section 89 of RERA overrides any inconsistencies in other laws.

In contrast, arbitration emphasizes party autonomy and flexibility, allowing disputes to be resolved privately through a neutral arbitrator. Section 8 of the Arbitration Act directs courts to refer parties to arbitration when a valid agreement exists. The key legal question arises when both mechanisms apply; whether RERA, as a special statute, overrides arbitration clauses or whether arbitration can operate alongside RERA. Judicial pronouncements have played a pivotal role in clarifying this relationship.

Case Law Analysis

1. Ganesh Lonkar v. D.S. Kulkarni Developers Ltd. (2017) MANU/HC/34/2017

Facts: The complainant booked a flat in Pune; possession was delayed beyond June 30, 2017, and the developer also failed to pay pre-EMIs.

Issue: Whether the arbitration clause in the agreement ousted MahaRERA's jurisdiction.

Held: MahaRERA held that Section 89 of RERA overrides Section 8 of the Arbitration Act. The existence of an arbitration clause does not bar RERA's jurisdiction. The developer was ordered to hand over possession and pay interest at 10.05% on the amount due.

2. Vidya Drolia & Ors. v. Durga Trading Corporation, 2020 SCC On Line SC 1018

Facts: The Supreme Court examined when disputes are non-arbitrable and who decides non-arbitrability; whether it is the court at the reference stage or the arbitral tribunal.

Issue: Defining the scope of non-arbitrable disputes and the court's role under Sections 8 and 11 of the Arbitration Act.

Held: The Court laid down a four-fold **test** to determine non-arbitrability: (i) actions in rem, (ii) third-party rights, (iii) sovereign functions, and (iv) express statutory bar. These test guides, when disputes fall exclusively under a statutory forum like RERA.

3. Pallab Ghosh v. Simplex Infrastructures Ltd., Arb.P./21/2023

Facts: The petitioner sought interest for delayed possession and invoked arbitration despite the availability of RERA remedies.

Issue: Whether arbitration could be invoked when a statutory remedy under RERA exists.

Held: Court held there was no conflict between RERA and arbitration. Applying *Vidya Drolia Case*, it upheld the arbitration clause and appointed a sole arbitrator, reinforcing party autonomy.

4. Priyanka Taksh Sood & Ors. v. Sunworld Residency Pvt. Ltd., 2022 SCC On Line Del 4717

Facts: The petitioner sought interest under RERA for delayed possession; the respondent argued RERA powers are broader.

Issue: Whether arbitration is barred when RERA provides statutory remedies.

Held: Court held that arbitration and RERA can co-exist. The existence of RERA provisions does not exclude arbitration where parties consent to it.

Conclusion / Key Takeaways

The judicial approach shows a positive blend of RERA and arbitration. RERA takes precedence in matters involving statutory consumer protection and regulatory control. Arbitration, on the other hand, is still applicable to contractual issues such as delayed possession, financial claims, and performance obligations. Courts now use the *Vidya Drolia four-fold test* to establish arbitrability in the real estate industry.

This dual approach protects statutory rights under RERA, while also protecting party autonomy under the Arbitration Act. It enables faster, more predictable dispute resolution, increases buyer confidence, and improves efficiency in the real estate industry. In essence, RERA and arbitration are complementing, not competing systems.

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