



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Arbitration and Mediation in Real Estate Disputes

Saanvi R Udupa^a

^aSymbiosis Law School, Hyderabad, India

Received 08 August 2024; Accepted 10 September 2024; Published 13 September 2024

In most cases, real estate deals are plagued with those aspects of contract violation, property defects, boundary conflicts, and lease termination. Usually, litigation processes are perceived by society as time-consuming and costly, which necessitates the parties to search for alternative dispute resolution mechanisms. Arbitration and mediation have already been shown to be reliable forms of alternative dispute resolution in real estate, which give the parties opportunities to decide meaningful details of the case and solve issues efficiently and without publicising the solution. The paper discusses the effectiveness and efficiency of alternative dispute resolution methods in resolving disputes in the real estate sector, focusing primarily on arbitration and mediation methods. The paper examines the role of Arbitration in resolving real estate disputes by discussing the advantages this method has over traditional litigation and giving an outline of the arbitration process. The paper also examines the role of mediation in real estate disputes by listing various techniques used to resolve real estate conflicts. Further, the paper provides a comparative analysis between arbitration and traditional litigation in terms of cost, procedure, privacy, and enforcement of decisions. It states the pros and cons of each form of resolution and provides case laws to support the analysis that real estate disputes are efficiently and effectively resolved through ADR mechanisms. Finally, the paper analyses the final results and provides responses to the utilisation of arbitration and mediation in real property synchronies in terms of efficient and timely conclusions.

Keywords: *real estate, alternative dispute resolution, arbitration, mediation.*

INTRODUCTION

The real estate sector can be defined as the ownership of property, which includes land, buildings, and any other permanent natural objects such as water, minerals, forests, etc. The sector deals with the rights and ownership of land above as well as underneath the surface. This means that the real estate sector transcends to residential, commercial, industrial, and vacant land areas. Residential real estate includes properties used for residential purposes, such as family homes, townhouses, cooperatives, etc. Commercial real estate is mainly for business purposes, which include shopping centres, hotels, and offices. The main operation of these properties is to produce income for the business. Industrial properties are large areas of land used for manufacturing, production, distribution, storage, and research development. Vacant land refers to agricultural lands such as farms, ranches, timberland, and orchards. Laws and legislations have been created to govern these sectors, such as the Transfer of Property Act 1882¹, the Indian Easement Act, and the Real Estate (Regulation and Development Act) of 2016,² which established the Real Estate Regulatory Body (RERA) with the objective of bringing transparency and promote efficient and lawful transactions in the real estate sector.

Disputes in this sector arise due to the breach in the contractual relationship between the developer and buyer. It involves failure to perform the terms of the agreement, non-disclosure of facts related to any defects in the property to the buyer, or disagreements regarding the constituencies. There is a requirement for a thorough examination of the terms of the contract to resolve these disputes. Landowner-tenant conflicts emerge due to violation of lease agreements and disputes regarding the rent or maintenance of the property. These issues can be addressed by revisiting the rights and duties of the parties and making them compliant in adhering to the terms. Disputes regarding the inherited property acquired through a will often cause uncertainty in the ownership of the estate. Such problems can be solved by acquiring title deeds and relevant legal documents. Boundary issues are also common real estate disputes. As the name suggests, the owners dispute the existence of the property line between the two adjacent lands. Construction disputes also come under the umbrella of Real estate disputes as they

¹ Transfer of Property Act 1882

² Indian Easement Act and the Real Estate (Regulation and Development Act) 2016

involve the completion or modification of a particular project on a piece of land. Disputes can involve incompleteness of the plan, delays, and cost overruns. Understanding the different types of real estate sectors and disputes has to be emphasised as it helps to analyse and choose the most relevant form of resolution method.³

Real estate disputes require speedy and effective resolution as they involve a certain personal element attached as well as hefty sums of money. These properties might be utilised for wrongful purposes or withheld from being used by the rightful owner. These conflicts often escalate, causing costly litigation and prolonged resolution. Consequently, section 32 of the Real Estate (Regulation and Development Act), 2016⁴ promotes the use of alternative dispute resolution methods '*to facilitate amicable conciliation of disputes between the promoters and the allottees*' and '*establish a transparent and robust grievance redressal mechanism against acts of omission and commission of competent authorities and their officials.*'

ROLE OF ARBITRATION IN RESOLVING REAL ESTATE DISPUTES

As the real estate sector is experiencing a surge in growth, accompanying this trend, there is a notable increase in disputes within the industry. One of the effective forms of resolving these disputes involves the use of Arbitration.

Arbitration is a form of alternative dispute resolution wherein the parties engage in a less adversarial, less formal, and more flexible forum of dispute resolution and abide by the judgment of a neutral third party known as the arbitrator instead of carrying it to the established courts of justice. This mechanism allows for anonymity and confidentiality of negotiations between the parties, which is important in handling disputes in the real estate sector. Arbitration provides a confidential setting where the parties can informally voice out their concerns and claims. This aspect certainly becomes very useful, especially in the sphere of real estate where sensitive information like financial records or business strategies may be involved. Maintaining confidentiality during the whole arbitration process provides an opportunity for parties to

³ 'Real Estate Litigation: Common Disputes and How to Resolve Them' (*Harr Law Firm*, 29 August 2023) <<https://harrlawfirm.com/news/real-estate-litigation-common-disputes-how-to-resolve-them/>> accessed 02 April 2024

⁴ Indian Easement Act and the Real Estate (Regulation and Development Act) 2016, s 32

protect their image and trade secrets. This builds trust and helps preserve business relations, which are critical for the real estate industry. The characteristics of arbitration are different from those of a traditional litigation procedure, which will be discussed in further sections.

The process of arbitration is instigated by two means. One can be in the form of an arbitration clause present in the agreement between the parties that stipulates resolving their disputes through the arbitral mechanism or through a court referral of Arbitration, wherein the court deems the settlement of the dispute through the arbitration method. The procedure for arbitration, once its commencement, is the same in both cases.

It is to be noted that in real estate transactions, parties opt to include an arbitration clause or agreement in order to resolve their disputes outside of traditional court proceedings. This binds the party to follow the arbitration process in case of any violations of the agreement. As per section 7(2) of the Arbitration and Conciliation Act, 1996⁵, *'an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.'* An arbitration agreement or an arbitration clause is a vital component in a real estate contract. It must be written in the most clear and unambiguous manner that reflects the intention of the parties, as has been highlighted in the case *Anupam Mittal v Westbridge*⁶. The arbitration clause must be written considering the nature of the real estate transaction and assessing whether this form of dispute resolution is suitable in that scenario. The selection of the arbitrator must be evaluated precisely to ensure fairness and neutrality. The relevant laws and regulations must be complied with while drafting the arbitration clause through consultation with lawyers' experiences in the realm of real estate law.

By abiding by the above guidelines, this clause allows for a more streamlined and cost-effective process of dispute resolution as it involves arbitrators possessing specialised knowledge in real

⁵ Arbitration and Conciliation Act 1996, s 7

⁶ *Anupam Mittal v Westbridge Ventures II Investment Holdings* [2023] SGCA 1

estate matters.⁷ To efficiently adjudicate the issues. Furthermore, the arbitration clause must establish the rules and procedures to be followed during arbitral proceedings.

Arbitration allows flexibility in resolving disputes. This nature of flexibility makes it a perfect form of dispute resolution method for the real estate sector. Let's consider the following examples to understand how arbitration can be used in this sector.

In the case of a commercial lease agreement, the landowner and tenant may dispute over the maintenance issues of the property. In this case, the disagreements occur due to vagueness in the agreement about the responsibilities of the landowner and tenant regarding maintenance. This form of dispute can be resolved swiftly and effectively through arbitration. The parties can present their evidence and claims before an informal setting and arrive at a mutually acceptable solution provided by the arbitrator. This solution may be in the form of parties mutually compensating for the damages or one party seeking damages from the other at a minimal cost due to the lack of clarity in the agreement. They can also agree to make amendments to the lease agreement by clarifying the responsibilities of the landowner and tenant in case of maintenance to prevent future disputes.

In case of title disputes, disagreements or uncertainty exist between the parties over the ownership of the property. Such disputes emerge during property transactions for the transfer of property from the buyer to the seller, where the rights of the buyer to sell the property are questioned due to the discrepancies regarding the title. Therefore, Arbitration is the perfect form of dispute resolution as it helps to quickly resolve disputes and move forward with the transaction. The parties will have to present evidence such as historical records, property deeds, and surveys, including khata certificates, property tax records, etc. After a thorough examination of the evidence presented, the arbitrator renders a fair and just arbitral award, avoiding prolonged litigation procedures.

⁷ 'Arbitration Clause in Real Estate Agreements: What You Must Know' (*Faster Capital*, 26 June 2024) <<https://fastercapital.com/content/Arbitration-Clause-in-Real-Estate-Agreements--What-You-Must-Know.html#>> accessed 02 April 2024

The above case studies highlight the role of arbitration in resolving disputes in the real estate sector. Arbitration allows flexibility and allows the parties to expedite the resolution process to resolve matters in a timely manner. Arbitration always emphasises confidentiality; it is done to protect the interests of all parties and their reputation in the real estate industry, and trained arbitrators who have in-depth knowledge of real estate issues make for better and fairer decisions. On the other hand, an important consideration to be made is connected with possible shortcomings of the arbitration clauses. The limited judicial review of the arbitration decisions is likely to impose a brake on bidirectional arbitration, and well-balanced attention should be paid to the potential bias in the selection of arbitrators. Besides, the arbitration proceedings are subject to findings and appeals limits. So, the possibility of bringing up a detailed case and contesting decisions will be restricted.

In spite of the foregoing, Arbitration in real estate disputes is a recoverable and indispensable mechanism for the resolution of conflicts in the industry due to efficiency, confidentiality, and specialized expertise. After a thorough examination of the pros and cons, the parties to a contract can draft a clear-cut arbitration clause or an agreement tailored to the nature of the real estate transaction. As a result, the transactions become seamless, and the relationships that are critical to businesses are preserved.

ROLE OF MEDIATION IN RESOLVING REAL ESTATE DISPUTES

Resolving disputes in the real estate sector through traditional litigation proceedings is seen to be challenging in terms of cost, time, and arriving at an effective settlement. Real estate disputes often involve extensive negotiations, sophisticated economic issues, and voluminous documentation.⁸ In addition, the confrontational nature of the litigation process tends to escalate the tension, especially in situations where investors' feelings might run high following the fall of the business. Beyond these challenges, mediation can hold the key as a suitable alternative option, the one that will shift the disputes in the sector upward from a new angle with a more collaborative and harmonious outcome.

⁸ Yaroslav Sochynsky, 'Real Estate Law: Mediating Real Estate Disputes' (1999) 16(2) GP, Solo & Small Firm Lawyer <<https://www.jstor.org/stable/23783152>> accessed 02 April 2024

Mediation is another recognised form of alternative dispute resolution. Mediation is a facilitated negotiation.⁹ This method of ADR is a nonbinding proceeding where the disputing parties appoint a neutral third party to facilitate the mediation process in order to achieve an acceptable and voluntary agreement. Mediation is an informal, flexible forum that allows the parties to openly speak out their grievances. The mediator, throughout the proceedings, renders a helping hand by facilitating healthy conversation and negotiation between the parties to arrive at a mutually agreeable settlement. Unlike litigation, which likely causes a disruption to ongoing business activities, the mediation process can help arrive at early settlement of conflicts in a way that helps maintain the business relationship as well as the possibilities of future dealings. Mediation, like arbitration, offers confidentiality in the settlement of disputes as the parties in the process involve the mediator, the client, and his council. There is an absence of a stenographer, discovery, and evidence or testimony. The rules of engagement are decided by the conflicting parties and the mediator.¹⁰

There are mainly three types of mediation techniques that can be used according to the nature of the real estate dispute. Evaluative mediation can be an invaluable asset in mitigating a dispute between the landlord and the tenant during the maintenance conflict. In the case of the above-mentioned dispute, the mediator assesses the extent of responsibilities borne by the landowner and tenant in the agreement and advises on the lease terms, judges the condition of the property, and considers the laws concerning maintenance obligation. In light of these considerations, the evaluative mediator expresses his views on what might be a fair settlement between the landowner and tenant in terms of one bearing the whole or splitting the repair costs. The role of an evaluative mediator is advisory in nature as he evaluates the strengths and weaknesses of each side's arguments and makes predictions about what might happen if the parties pursue litigation. A mediator can draw the parties to a settlement by pointing out the risks associated with extended litigation and the costs that go with it. Finally, by evaluative mediation, both parties are able to proceed with well-informed decisions concerning the maintenance dispute,

⁹ *Ibid*

¹⁰ Michael F. Donner and Dennis L. Greenwald, 'Alternative Dispute Resolution for Real Estate Disputes: Is ADR Really Faster, Better, and Cheaper?' (*Probate & Property*, 18 May 2006) <https://www.americanbar.org/content/dam/aba/publications/probate_property_magazine/v20/2006-pp-v20-03-article-real-estate-disputes.pdf> accessed 02 April 2024

and the mediator's advisory role helps to bridge the gaps and facilitates a productive conversation that allows both parties to reach a mutually beneficial agreement.

In a boundary dispute where the property owners come from neighbouring areas, facilitative mediation is a mediation technique that is capable of resolving the dispute. While the mediator leads a structured dialogue between both parties, each of them explains their concerns and the facts about the property boundaries. The mediator does not dictate solutions but facilitates the parties in finding a resolution to the matter. He acts as the guardian and directs the dispute resolution process. For instance, the parties may agree to conduct a shared investigation or come to an agreement about the readjustment of boundary lines. Facilitative mediation encourages open communication throughout the process, which starts with dialogue and leads to parties finding a mutually agreeable solution.

Considering the case of a title dispute, wherein conflicting claims to ownership of property exist, a mediation technique known as transformative mediation can be adopted to resolve the matter. In this situation, the mediator provides an empowering environment by allowing and encouraging deliberation, decision-making, and perspective-taking between the parties in a respectful and open form of dialogue. A transformative mediator is likely to pay close attention to the dynamics in conversation as he or she observes the mediation sessions, opening up avenues for empowerment and recognition. These avenues either emerge naturally during conversations, or the mediator identifies those moments to direct the conversations. A case such as one in which one party expresses an emotional connection to the property could be a good example, and the mediator can encourage the other side to acknowledge and validate these feelings and then help recognise the emotional charges received about the property. Thus, a micro-focused approach to communication helps the disputing parties to understand one another's perspectives and interests more clearly. This transforms the way parties view the conflict and empowers the parties to choose a common ground, such as shared desires for property security and peaceful coexistence. This approach provides the possibility of compromises, clarifications of legal matters, or alternative solutions. The transformative mediation generates a way for open dialogue, and it also leads to the empowerment and

recognition of the disputant parties to arrive at a constructive resolution in real estate matters such as title disputes for property owners.

Here, the mediator may shed light on the pros and cons of the positions of each party and distinguish the key issues that are triggering the dispute and the real interests of the parties. The mediator will then initiate the process of bargaining, in which he/she acts as the one who communicates proposals to and from the parties. The mediators generally do not order to adjourn the mediation unless it is crystal clear that there is no hope of winning the case, thereby letting the parties either draw up a binding memorandum that contains the elemental terms of their settlement or conclude the mediation.

Being very useful in settling legal matters, mediation proves especially effective in dealing with emotionally laden disputes. For instance, disputes regarding real estate matters consist of substantial amounts of money at the heart of a dispute, and there are strongly held feelings attached to the disputed property. The mediation process provides a setting where parties can air their feelings and find the root cause of the problem, fuelling a practical and constructive dispute resolution approach. Psychologically, the parties will be able to let go of their tension and emotions, and through the mediation process, they will receive a reality check on the validity of their grievances and the risks they might have to take in litigation, which may finally lead them to behave reasonably and settle the case.

The axiom that truly drives the efficiency of mediation in resolving real estate disputes is this: if mediation is successful and leads to a settlement, it is undoubtedly the fastest, best, and, therefore, the cheapest mechanism for conflict resolution. Although lawsuits can for sure be faster at reaching the result, mediation is usually even more rapid and less expensive than litigation and arbitration. The question of whether mediation is 'better' hinges on its likelihood to be swift and lead to a settlement, which is often the case given the right conditions: a good mediator who is experienced, wise, and practical, and clients who are focused on the process and the result. Thus, mediation itself can be the foundation upon which understanding, communication, and exploring possible solutions exist that can help further negotiations and maybe even build up a groundwork for future resolutions.

Laws and rules governing mediation in the real estate sector are stipulated under the MSMED Act, the Commercial Courts Act 2015, and the Real Estate (Regulation & Development) Act 2016.

COMPARATIVE ANALYSIS OF ARBITRATION AND LITIGATION IN REAL ESTATE MATTERS

Parties have to make the critical decision of opting for arbitration or litigation to resolve the dispute. Both approaches offer their own sets of advantages and disadvantages. Through a comparative analysis of arbitration and litigation, we examine the differences between them by focusing on key factors such as time, confidentiality, and enforceability of decisions.

Time: One of the major components that differentiates arbitration from traditional litigation procedures is the time taken to resolve the dispute. In terms of speed, Arbitration is known for its celerity and is faster than litigation, particularly in cases in which there are court backlogs. The timeline of the process of arbitrating is generally shorter, and a final hearing may even be reached within a year, depending on the case's complexity. On the contrary, court proceedings often take an extended time frame, which is occasioned by various delays and uncertainties. Litigation can run over several years due to court backlogs and administrative inefficiencies. The postponements, rescheduling, and last-minute cancellations account for the prolonged nature of litigation. In terms of flexibility, arbitration proceedings have more flexibility to determine how things will be done procedurally, including selecting the venue, scheduling hearings, and submitting written materials. Parties have control over how they shape arbitration processes, such as document management capabilities through technology tools and virtual hearing platforms according to their wishes. This kind of adaptability enhances efficiency, making it a lot smoother. In the case of litigation, it is quite formal, and the steps are prescribed by the statutes, regulations, and guidelines issued by the court. Although litigation provides a structured mechanism for dispute resolution, it doesn't offer the flexibility that arbitration entails. The court practices are very rigid; thus, the litigant parties have limited control over procedural issues and the manner in which the trial is run.

Enforceability of Decisions: The doctrine of res judicata literally means a matter that has been adjudicated¹¹. It has been defined under section 11 of the Civil Procedure Code¹² and refers to the fact that once a case has been decided by a court of competent jurisdiction, it cannot be contested again. It is an order, judgment, or decree by a judicial or other tribunal authority having jurisdiction over the subject matter as well as the cause of action for adjudicating all the matters fundamental to the dispute. Res judicata guarantees that judgments are final and conclusive as between parties to a suit and their privies, and they may not be re-litigated among those bound by such judgment.

The 2015 Amendment to Section 36 of the 1996 Act¹³ has a profound impact on real estate disputes. Previously, the automatic stay on arbitral awards upon filing a challenge under Section 34¹⁴ Delayed enforcement causes financial strain and uncertainty for parties awaiting resolution. The removal of the automatic stay ensures that awards are immediately enforceable unless a separate stay application is filed and granted by the court. This change promotes quicker resolution and enforcement, which is crucial in real estate transactions where timely execution of decisions can affect project timelines, investor returns, and property values.

The Supreme Court in *Pam Developments Private Limited v State of West Bengal*¹⁵ clarified that courts must have 'due regard to' rather than strictly follow the provisions of the CPC 1908¹⁶ when deciding on stays for money awards. This distinction ensures that awards passed in real estate disputes are enforced with fewer procedural delays.

Statutory Fiction for Enforcement: The statutory fiction that treats arbitral awards as decrees of the court under the 1996 Act¹⁷ simplifies enforcement in real estate disputes. Unlike traditional litigation, where a judgment must be followed by a decree, arbitral awards are immediately enforceable. This efficiency is important in real estate disputes as delays may accrue huge monetary losses. Consequently, parties can secure and execute awards promptly without any

¹¹ *Ibid*

¹² Code of Civil Procedure 1908, s 11

¹³ Arbitration and Conciliation Act 1996, s 34

¹⁴ *Ibid*

¹⁵ *Pam Developments (P) Ltd. v State of W.B.* (2019) 8 SCC 112

¹⁶ Code of Civil Procedure 1908

¹⁷ Arbitration and Conciliation Act 1996

halt in their projects. In *Dhirendra Bhanu Sanghvi v ICDS Ltd.*¹⁸, the Bombay High Court emphasised that arbitral awards should be treated as enforceable as court decrees, though they are not decrees per se. This legal fiction allows for more straightforward enforcement processes in real estate, where expediency is often critical.

Settlement Awards: In real estate disputes, settlements are often a practical solution to complex issues. The enforceability of settlement awards under Section 30¹⁹ and Section 73²⁰, treated similarly to arbitral awards, encourages parties to resolve disputes amicably. This is beneficial in real estate, where maintaining ongoing business relationships and ensuring project continuity are often priorities. In *Mysore Cements Ltd. v Svedala Barmac Ltd.*²¹. The Supreme Court upheld that settlement agreements reached through conciliation are enforceable as arbitral awards. This encourages amicable settlements in real estate disputes, providing a reliable enforcement mechanism for mutually agreed resolutions.

Ex-Parte Awards: The ability of tribunals to issue ex-parte awards under Section 25(c)²² ensures that parties cannot indefinitely delay proceedings by failing to appear. In real estate disputes, this provision prevents parties from obstructing enforcement through non-participation, ensuring that decisions are rendered and enforced promptly.

Jurisdiction for Enforcement: The Supreme Court's clarification in *Sundaram Finance Limited v Abdul Samad*²³ that enforcement can occur in any jurisdiction where the debtor's assets are located is particularly relevant in real estate disputes. Real estate assets are often spread across multiple jurisdictions, and this flexibility allows for enforcement in the most practical location, ensuring that awards are executed efficiently.

In *Daelim Industrial Co. Ltd. v Numaligarh Refinery Ltd.*²⁴, the Delhi High Court observed that for enforcement purposes, the definition of 'court' under Section 2(1)(e) of the Arbitration and

¹⁸ *Dhirendra Bhanu Sanghvi v ICDS Limited* (2003) SCC OnLine Bom 302

¹⁹ Arbitration and Conciliation Act 1996, s 30

²⁰ Arbitration and Conciliation Act 1996, s 73

²¹ *Mysore Cements Ltd. v Svedala Barmac Ltd.*, (2003) 10 SCC 375

²² Arbitration and Conciliation Act 1996, s 25

²³ *Sundaram Finance Ltd. v Abdul Samad* (2018) 3 SCC 622

²⁴ *Daelim Industrial Co. Ltd. v Numaligarh Refinery Ltd.* (2009) SCC OnLine Del 2188

Conciliation Act, 1996²⁵, does not apply. Instead, the term ‘court’ in Section 36 is meant to create a legal fiction, giving arbitral awards the same force as a decree to facilitate enforcement. This means that the ‘court’ in Section 36 holds a different significance compared to Section 2(1)(e), focusing on the enforceability of the award rather than conferring territorial jurisdiction. The Court affirmed this view, noting that parties do not need to obtain a transfer decree from the court with jurisdiction under Section 2(1)(e) for enforcement. Consequently, an award can be enforced by any court within the jurisdiction where the assets of the award holder are located.

The interpretation is particularly fitting when it comes to real estate disputes where assets such as land and properties are often found in various jurisdictions. This could make enforcing arbitral awards on real estate situated in different cities or states challenging. The enforcement of awards anywhere the property can be located significantly facilitates the process. It relieves them from having to get transfer decrees from courts that had original jurisdiction over the arbitration proceedings. Consequently, this allows for a more direct and fast-track enforcement mechanism, hence leading to shorter processes of resolving and enforcing arbitrations in real estate disputes. Therefore, efficiency within this industry is very important because its retardation could result in adverse financial and operational repercussions. Therefore, this interpretation supports a more practical and efficient manner of settling property issues through arbitration.

Confidentiality of Proceedings: In comparison to litigation, arbitration guarantees a higher level of privacy during the course of dispute resolution. The fact that arbitrations are done outside the public domain means the proceedings are not part of public records, limiting media and third-party attendance in the hearing process and ensuring confidentiality. Conversely, court litigation is conducted in open courts, which puts them into the public domain and is accessible to media and other third parties. Court filings, hearings, and trial proceedings are open to the public; therefore, they might expose sensitive information and conflicts for scrutiny by members of the public. For this reason, confidentiality provisions are often incorporated in arbitration agreements to protect settlement terms and negotiation information. Parties may also agree not to disclose any aspect of their settlement agreement or any other information that can

²⁵ Arbitration and Conciliation Act 1996, s 2

be considered private or confidential. Although it is possible for parties in litigation to have confidentiality agreements, they may not provide similar levels of guarantee as those found in arbitration. In litigation, generally, court filings, as well as trial proceedings, remain open to the general public, thus making its confidentiality provisions almost ineffective.

The comparison underlines the most prominent points of arbitration that distinguish it from litigation, which are time efficiency, the enforceability of the decisions made, and the confidential nature of the proceedings. Arbitration is another easy way to solve a dispute, which enables a faster process, offers more flexibility in procedural matters, and also ensures a high level of secrecy.

JUDICIAL INTERVENTION IN ARBITRAL PROCEEDINGS

Section 9 of the Arbitration and Conciliation Act of 1996²⁶ was designed to impose limitations on judicial involvement in arbitral proceedings. Thus, the use of the word 'minimal' in the provision is to underscore the legislative intent of creating a more efficient means of dispute settlement. Section 5²⁷ of the Act, as seen as similar to Section 5 of the UNCITRAL Model Law²⁸ and identical to the English Arbitration Act, states that 'no court shall intercede' in the arbitration process unless as provided under the Act. This non-obstante clause highlights a deliberate legislative choice to limit court involvement, thereby ensuring arbitration remains a swift and cost-effective alternative to traditional litigation. In *Videocon Industries Ltd. v Union of India*²⁹, the Hon'ble Apex court observed that the intervention of courts is expressly barred, except in situations specifically provided for in the Act itself.

However, the role of the judiciary in arbitration proceedings is only partially devoid of oversight. The Court's intervention is restricted to administrative support rather than adjudication, as elucidated in *Surya Dev Rai v Ram Chander Rai*.³⁰ This case acknowledged that

²⁶ Arbitration and Conciliation Act 1996, s 9

²⁷ Arbitration and Conciliation Act 1996, s 5

²⁸ UNCITRAL Model Law on International Commercial Arbitration 1985

²⁹ *Videocon Industries Ltd. v Union of India* (2011) 6 SCC 161

³⁰ *Surya Dev Rai v Ram Chander Rai* (2003) 6 SCC 675

while the Court's involvement is generally circumscribed, it retains discretion in exceptional circumstances to prevent undue delays or errors of law.

In practical terms, this limited judicial intervention profoundly impacts sectors like real estate, where arbitration is a standard method for resolving disputes. For instance, in cases where arbitration agreements are contested, as seen in *Rashtriya Ispat Nigam Ltd. v Verma Transport Company*³¹, the Court's role is to ascertain whether parties have waived their arbitration rights without delving into the dispute's merits. Similarly, under Section 9 of the Act³², Courts can grant interim measures to preserve rights before the arbitration tribunal, a role articulated in *M/s. Sundaram Finance Ltd. v M/s. N.E.P.C. India Limited*³³. This provision is vital in real estate disputes, where interim reliefs such as injunctions can be crucial for maintaining the status quo pending arbitration.

Post-arbitral proceedings, Section 34³⁴ provides grounds for challenging an arbitral award, with a significant emphasis on 'public policy,' which has been judicially interpreted in landmark cases like *ONGC Ltd. v Saw Pipes Ltd.*³⁵ and *Associate Builders v Delhi Development Authority*³⁶. The concept of public policy has evolved to cover fundamental legal principles, which, while narrowing the scope of intervention post-2015 amendments, still allows for significant judicial scrutiny in real estate disputes where issues of morality and justice are prevalent.

Moreover, appeals from arbitral tribunals under Section 37³⁷ further delineate the extent of judicial review. For instance, appeals against orders relating to interim measures under Section 17³⁸, as highlighted in *Hindustan Petroleum Corpn. Ltd. v Pink City Midway Petroleum* is subject to limited review, ensuring that arbitral decisions remain the primary mechanism for dispute resolution.

³¹ *Rashtriya Ispat Nigam Ltd. v Verma Transport Co.* (2006) 7 SCC 275

³² Arbitration and Conciliation Act 1996, s 9

³³ *Sundaram Finance Ltd v Npec India Ltd.* (1999) 2 SCC 479

³⁴ Arbitration and Conciliation Act 1996, s 34

³⁵ *ONGC Ltd. v Saw Pipes Ltd.* (2003) 5 SCC 705

³⁶ *Associate Builders v DDA* (2015) 3 SCC 49

³⁷ Arbitration and Conciliation Act 1996, s 37

³⁸ Arbitration and Conciliation Act 1996, s 17

In the real estate sector, these judicial interventions, whether in the form of granting interlocutory reliefs, upholding the doctrine of separability of the arbitration clause, or in consideration of substantive appeals or references in respect of the terms of the arbitration and its award, impact on the resolution of high stakes disputes concerning property development, lease agreements, and construction contracts. Arbitration is an independent process, and courts are supposed to operate within the guidelines of the Arbitration Act to promote and not derail the arbitral process, which is aimed at reducing delays and introducing efficient mechanisms for the resolution of disputes.

While judicial interference in arbitral proceedings is designed to be minimal, its application in real estate disputes demonstrates both the opportunities and limitations of this intervention. Cases such as *Phulchand Exports Ltd. v OOO Patriot*³⁹ and *State of Jharkhand v HSS Integrated SDN*⁴⁰ showcase the evolving nature of judicial oversight, which, while generally restrained, remains a crucial aspect of ensuring arbitration serves its intended role as an efficient alternative to traditional litigation.

CONCLUSION

from the discussion on the use of arbitration and mediation in the resolution of real estate disputes, it can be seen that these procedures present various benefits over conventional litigation. This is because the real estate business has recently become even more complicated, and issues being raised in sales, leasing, or subleasing often lead to protracted legal battles. Arbitration is considered the most efficient means of resolution of disputes; it takes less time than court proceedings and allows for the procedures to be adjusted to the given dispute. It also provides enforceability of awards through statutory provisions that accord them the status of decrees of the court, which is vital in real estate, where time is of the essence since the cost of delay could be very high. While litigation entails a decision being imposed on the parties by the court, mediation offers the parties a structured process for negotiation in which they reach solutions that they consider to be satisfactory, with the business relationship of the parties being

³⁹ *Phulchand Exports Ltd. v O.O.O. Patriot* (2011) 10 SCC 300

⁴⁰ *State of Jharkhand v HSS Integrated Sdn* (2019) 9 SCC 798

maintained, and often with more inventive solutions being found than if the matter were litigated.

The 2023 statistical report published by the International Chambers of Commerce in regard to dispute resolution states that ICC arbitrations arise from a very broad range of contracts, with the five most frequent types being construction/engineering (21.2%), purchase and sale (16.3%), purchase/transfer of shares and shareholders' agreement (8.5%), distribution/franchising (7.4%), and joint venture/consortium/partnerships contracts (4%). Out of the 1766 cases pending and 870 new cases registered in 2023, 520 awards (29%) were passed and approved by the ICC. Statistical evidence supports these claims, as studies show that arbitration and mediation typically resolve disputes faster and with less expense compared to traditional court proceedings. For instance, data indicates that arbitration can conclude disputes in less than a year on average, compared to several years for litigation. Mediation statistics reflect similarly positive outcomes, with a high percentage of cases reaching settlements that are acceptable to all parties involved.

Based on these advantages, there is a need to promote the use of ADR techniques in real estate disputes, such as arbitration and mediation. Through the encouragement of these mechanisms, much pressure is shifted off the courts, the costs and time spent on the resolution of disputes are decreased, and parties have the opportunity to have more private and friendly resolutions. This study recommends that governments and legal institutions should encourage ADR processes through legislation, raising awareness of the benefits of ADR processes, and establishing strong ADR frameworks. The analysis of the theoretical models and application of ADR indicates the effectiveness of the methods in solving disputes and improving the legal system. Hence, a change of strategy by encouraging arbitration and mediation in real estate disputes is not only desirable but essential for an effective and efficient legal procedure.