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## A Comparative Analysis of Arbitration Efficiency in Real Estate Transactions: A Cross-Border Perspective

Raveena R Savadi<sup>a</sup> Annesha Gora<sup>b</sup>

<sup>a</sup>Symbiosis Law School, Hyderabad, India <sup>b</sup>Symbiosis Law School, Hyderabad, India

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*The law plays a vital role in any democratic society. It sustains order and bestows and maintains the rights of people. It also regulates interpersonal relationships and also governs the laws and customs associated with the properties of individuals. The real estate sector is an integral aspect of this function of law. It refers to the land and subsequent structures attached to the land, that include buildings, and monuments, among others. This paper is interested in understanding the process of legal resolution for disputes that will inevitably arise in real estate given its immense value in today's global economy. Indian real estate sector has seen significant growth in infrastructure and underway projects but along with this, several conflicts and disputes take place. It will analyse India's dispute resolution process for the same and conduct a comparative analysis with other countries that use alternate dispute resolution rather than the traditional process of court adjudication, namely arbitration. Arbitration is one of the most neglected but effective tools for resolving real estate industry disputes, both in the residential and commercial aspects. This article aims to bring out the need that there should be proper provisions in India's laws to streamline and customize the process in real estate and provide significant benefits to the disputing parties through arbitration. At the core of this paper, is the ardent effort to conduct a comparative analysis of arbitration laws regarding real estate in other countries with fixed mechanisms for the same. This comparative analysis is for the researchers to bring in their suggestions for a functional and effective model for arbitration in India.*

**Keywords:** *real estate, dispute, resolution mechanism, arbitration.*

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## INTRODUCTION

Real Estate is an essential sector in the Indian economy. It refers to property attached to land and is tangible. It is used for residential, commercial, or industrial purposes. It also includes any resources on the land such as water or minerals. India is the largest housing market in the world. The real estate market size in India will increase to US \$1 trillion in 2030. By 2025, the real estate industry is expected to contribute 13% of India's Gross Domestic Product. Hence, it is extremely essential to maintain regulations over this industry to prevent uncontrolled growth which will inevitably lead to its collapse. An essential aspect of this regulation is adequate dispute resolution.

Dispute resolution is the process of settling disagreements between parties. In a regulatory framework, dispute resolution is carried out by the state through either a judicial process or an executive process. This refers to the process of taking one's dispute to a neutral third party who will create a binding resolution to the dispute. The main goal of this paper is to understand the problems associated with the regulatory framework present in the current system and how arbitration can be answer to these problems. It also takes a special lens from specific countries around the world. The countries focused in the comparative analysis are the United States of America (USA), the United Kingdom (UK), Singapore, and Hong Kong. In understanding these countries' models for real estate in arbitration, this paper wishes to suggest a holistic and equitable model that works for real estate dispute resolution.

## RESEARCH QUESTIONS

This paper endeavours to answer the following questions through the course of this research:

1. Why is the current legal system for real estate not working in India?
2. Which countries' model for real estate dispute resolution entailing alternate dispute resolution, is efficient and what aspects make them so?

3. Can these aspects be implemented in India, and if so, how must they be altered to suit the Indian framework?

## **RESEARCH HYPOTHESIS**

The following are the hypothesis that this paper considered before delving into the research:

1. The current Indian legal system for real estate dispute resolution, especially arbitration, is not functioning as efficiently as required.
2. There are better alternatives for dispute resolution in real estate in other countries.
3. It is possible to consider some aspects utilised in other countries and apply them to India.

## **RESEARCH METHODOLOGY**

The current research employs a doctrinal form of research, otherwise known as standard judicial research, which entails covering the relevant judicial matter available like the conventional sources, and judicial precedents from the necessary case laws and legislation. The present legal doctrinal matter was imperative in this research.

The research also takes a non-empirical route that does not require public-opinion-based evidence and data but does need inputs from eminent jurists, judicial precedents and opinions, and relevant legislation. Explanatory and evaluative types of research were also vital to give a complete view of the topic. Explanatory research warrants presenting the information at hand and linking them together to give a complete picture of the topic. Evaluative research, much like analytical research, entails examining this information with an inquisitorial perspective and a critical mind to add newer details to the existing matter. The researchers utilised all of these methodologies to give a cohesive narrative and make necessary suggestions for the topic of conversation.

## LITERATURE REVIEW

The following research papers have been integral in shaping the course of this research paper. This paper will also attempt to fill the gaps found in these research papers, hence, they have been profound in formulating the research as well.

The first paper referred to was, 'Study of Indian Real Estate Market from Developer's Perspective'<sup>1</sup>. This gave the researchers an idea of the real estate legal framework in India, its various facets, and also a study of the market in India. However, it did not conclusively discuss the dispute resolution process in the real estate regulatory framework and the problems associated with it, which will be effectively communicated through this research paper.

The second essential paper reviewed was 'An Overview of the Indian Real Estate Sector'<sup>2</sup>. This paper helped to understand the socio-economic features behind the importance of real estate and its boom in the Indian market. It analysed the different trends and patterns of various factors associated with real estate and gave the researchers a concrete picture of the field. However, this paper did not cover the legal aspects of the issue effectively, something that this paper will attempt to cover.

The third paper referred to was, 'Dispute Resolution and Spirit of RERA vis-à-vis Real Estate Industry'<sup>3</sup>. It explained the various disputes that can arise in the ambit of real estate. This entails and is not limited to delays in the completion of projects, misappropriation, and lack of financing, not receiving certification for the project, among others. It also briefly discussed the dispute resolution process and hence, was useful to the composition of this paper.

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<sup>1</sup> Nasimuddin Sarkar et. al., 'Study of Indian Real Estate Market from Developer's Perspective' (2020) 8(6) International Journal of Creative Research Thoughts <<https://ijcrt.org/papers/IJCRT2006375.pdf>> accessed 12 July 2024

<sup>2</sup> Amit Kumar Sinha et. al., 'An Overview on the Indian Real Estate Sector' (2020) 7(4) International Research Journal of Engineering and Technology <<https://www.irjet.net/archives/V7/i4/IRJET-V7I4903.pdf>> accessed 12 July 2024

<sup>3</sup> Som Dutt Vyas, 'Dispute Resolution and Spirit of RERA vis-à-vis Real Estate Industry' (2020) 2(2) International Journal of Legal Science and Innovation <<https://ijlsi.com/dispute-resolution-and-spirit-of-rera-vis-a-vis-real-estate-industry/>> accessed 12 July 2024

The next paper referred to was, 'Dispute Resolution in Real Estate Transactions: Examining Factors Determining the Selection of Strategies Used'<sup>4</sup>, this was utilised in the comparative analysis aspect where different countries' framework was analysed to understand the gaps present in the Indian real estate laws. This paper projected only an American perspective of real estate laws.

The paper, 'Mediation in Real Estate Disputes as an Element of the State's Economic Security Policy'<sup>5</sup>, gave a European perspective on how mediation, as a form of alternate dispute resolution is used to handle real estate disputes in the continent, with a special view on the English framework. This paper along with the other countries for comparative analysis helped the researchers form their model suggesting changes to the existing model.

Another paper also useful to the comparative analysis was, 'Hong Kong: Mediation and the Future of Dispute Resolution'<sup>6</sup>. This gave an in-depth perspective into the arbitration and mediation system in Hong Kong and how it can also be used for real estate. Lastly, 'Harmony as Ideology, Culture, and Control: Alternative Dispute Resolution in Singapore'<sup>7</sup> also helped in structuring the comparative analysis of this paper. These were the papers most potently used in this research.

## ANALYSIS

The paper will first discuss the importance of the topic and the growth in the real estate market in India. Due to development in urbanization, improvement in technology, and interest from international investors, real estate has seen a boom in the Indian market<sup>8</sup>. There is also the

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<sup>4</sup> Ifeoluwa Benjamin Oluleye et. al., 'Dispute Resolution in Real Estate Transactions: Examining Factors Determining the Selection of Strategies Used' (2020) 14(1) International Journal of Real Estate Studies <<http://dx.doi.org/10.11113/intrest.v14n1.130>> accessed 12 July 2024

<sup>5</sup> Marcin Jurgilewicz et. al., 'Mediation in Real Estate Disputes as an Element of the State's Economic Security Policy' (2021) 24(3) European Research Studies Journal <<https://ersj.eu/journal/2397/download/Mediation+in+Real+Estate+Disputes+as+an+Element+of+the+States+Economic+Security+Policy.pdf>> accessed 12 July 2024

<sup>6</sup> Nadja Marie Alexander, 'Hong Kong: Mediation and the Future of Dispute Resolution' (2018) SSRN <<https://dx.doi.org/10.2139/ssrn.3757372>> accessed 12 July 2024

<sup>7</sup> K.B Tan, 'Harmony as Ideology, Culture, and Control: Alternative Dispute Resolution in Singapore' (2007) 9(1) Australian Journal of Asian Law <[https://ink.library.smu.edu.sg/sol\\_research/899/](https://ink.library.smu.edu.sg/sol_research/899/)> accessed 12 July 2024

<sup>8</sup> Sudip Banerjee and Lovely Goyal, 'Problems in Real Estate Sector in India' (20118) 4(1) Journal of Advanced Research in Accounting & Finance Management

constant growth in the Indian population that will need housing, buildings for healthcare, and education, among others. The government has also created initiatives for the same. While there is such a great demand for real estate, there are bound to be disputes as well in the arena.

Disputes mainly arise due to delays in real estate projects which could be a result of many reasons. These reasons include but are not limited to lack of project financing because of budgeting issues, conflicts that may arise because of joint ownership, delay in receiving permits and approvals for the governmental regulatory authority, and inability to receive a completion certificate due to bureaucratic issues. Once disputes of this nature arise, it becomes integral to seek resolution in the following ways.

Litigation, though still a potent tool in dispute resolution, has multiple drawbacks like the pendency of cases that leads to massive delays that the real estate market cannot afford to take. There is a significant loss of time and money in the process of litigation which brings the need for a better system in accessing dispute resolution.

The executive branch of the government has put forth a Real Estate Regulatory Authority (RERA) through the Real Estate (Regulatory & Development) Act, of 2016<sup>9</sup>. There is a RERA tribunal, a quasi-judicial body, established to facilitate this mechanism of dispute resolution<sup>10</sup>. It is a two-tier process starting with the aggrieved party approaching the RERA Adjudicating Officer<sup>11</sup>. Following the order passed by this adjudicating authority, the aggrieved party can then approach the Appellate Tribunal. The RERA appellate tribunal has a maximum of sixty days to dispose of this appeal by giving the necessary order for dispute resolution<sup>12</sup>. Some problems exist in this framework as well. While this two-tier mechanism can dispose of the cases filed, the execution by the state governments in charge of the RERA tribunal is lacking, at best. Proper execution fails to happen which derails the whole process. Moreover, if a party is

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<[https://www.researchgate.net/publication/371315308\\_Problems\\_in\\_Real\\_Estate\\_Sector\\_in\\_India](https://www.researchgate.net/publication/371315308_Problems_in_Real_Estate_Sector_in_India)> accessed 12 July 2024

<sup>9</sup> Shiv Sang Thakur and Parth Seth, 'Development of Dispute Resolution in the Real Estate Industry: Safeguarding Home Buyers Interest' (*Indian Society for Legal Research*, 04 October 2020)

<[https://indiansocietyforlegalresearch.in/2020/10/04/development-of-dispute-resolution-in-the-real-estate-industry-safeguarding-home-buyers-interest/#\\_ftn2](https://indiansocietyforlegalresearch.in/2020/10/04/development-of-dispute-resolution-in-the-real-estate-industry-safeguarding-home-buyers-interest/#_ftn2)> accessed 12 July 2024

<sup>10</sup> Real Estate (Regulatory & Development) Act 2016, s 31

<sup>11</sup> Real Estate (Regulatory & Development) Act 2016, s 44

<sup>12</sup> *Ibid*

aggrieved after the appellate tribunal's order, the only recourse available is going to the High Court which leads them back to the cumbersome process of litigation. An additional problem associated with tribunals is the anonymity in the passing of orders which in turn leads to the lack of precedential value of the cases which further harms the process of justice. Hence, while RERA tribunals are an admirable attempt at dispute resolution, it is not a concrete solution.

India has an Arbitration and Conciliation Act, 1996<sup>13</sup> that deals with seeking dispute resolution other than the courts and tribunals established by the judiciary and executive, respectively. Part III of the Act deals with conciliation efforts in disputes where the parties share a legal relationship irrespective of the requisite conciliation provision mentioned in a pre-existing contract<sup>14</sup>. The problems that persist in India for real estate alternate dispute resolution entail a lack of utilisation, awareness, and the desire to access this mode of resolution. What further aggravates the situation is that this aspect of real estate is not specifically conveyed for arbitration and conciliation laws. Hence, this paper will make a case for why it is important to separately codify laws that assimilate the two aspects through a global comparative study.

Litigation and dispute resolution are the two possible options for resolving a legal issue. Though Litigation is an expensive and time-consuming process it is also proven to be emotionally draining. On the other hand, we have dispute resolution which does not always serve as an ultimate option to resolve a dispute and win all the parts of the dispute in hand it is surely one of the best options which is less time-consuming and a quicker way to resolve the issue at hand and arrive at a conclusion. Now, considering how unusually the property disputes take time to resolve with the first legal option Alternate dispute resolution has proven to be the most probable option in resolving those.

## **ARBITRABILITY OF DISPUTES RELATING REAL ESTATE SECTOR**

The Act exists with numerous lacunas because of its lack in providing clarity on specific terms that are meant for arbitration. Sections 34(2)(b)<sup>15</sup> and 48(2)<sup>16</sup> of the Arbitration Act, among other

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<sup>13</sup> Arbitration and Conciliation Act 1996, s 2

<sup>14</sup> Arbitration and Conciliation Act 1996, s 61

<sup>15</sup> Arbitration and Conciliation Act 1996, s 34

<sup>16</sup> Arbitration and Conciliation Act 1996, s 48

things, prohibit a claim from being arbitrable and provide that an award may be contested if the dispute's subject matter is not thought to be suitable for arbitration. A legitimate arbitration agreement that stipulates the non-exclusion of the arbitration tribunal's jurisdiction is generally required for a particular case to be arbitrable. All civil and commercial disputes are, in theory, arbitrable; these disputes may arise out of contracts or from other sources. In *Booz Allen & Hamilton, Inc. v SBI Home Finance Ltd*<sup>17</sup>, the Supreme Court of India outlined the following criteria for determining whether a dispute is 'Arbitrable'. In this case itself, the court listed various cases that can be arbitrable property rights and real estate are some of the many cases. It is evident, nevertheless, that the Supreme Court has previously held in several cases that if a special court or tribunal is granted exclusive jurisdiction over a matter pertaining to public policy, the ordinary civil court's jurisdiction is excluded, and the dispute cannot be held arbitrable. This bores a lot of similarities to the details around the Consumer Act.

## **RERA AND ARBITRATION**

The purpose of the Real Estate (Regulation and Development) Act, 2016 is to govern the real estate industry, which is an unregulated sector. To protect the interests of the customers, it included specific provisions. The Act calls for each state to establish an Appellate Tribunal and a Real Estate Authority. The home buyer may file a complaint under this authority if he discovers any wrongdoing on the part of the builders or developers.

The Act mandates that the Central and State governments notify the Rules within the prescribed six-month timeframe. To this end, State Governments are required by Section 84 of the Act<sup>18</sup> to establish regulations for implementing the Act's provisions within six months of the RERA going into effect. The government of the state in question will be informed of the regulations.

Indian real estate buyers had few legal options before the Real Estate (Regulation and Development) Act, of 2016, however, they were nonetheless protected as consumers by several laws, including the Consumer Protection Act, of 1986<sup>19</sup> and the Indian Contract Act, of 1872<sup>20</sup>.

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<sup>17</sup> *Booz-Allen & Hamilton Inc v SBI Home Finance Ltd. & Ors* (2011) 5 SCC 532

<sup>18</sup> Arbitration and Conciliation Act 1996, s 84

<sup>19</sup> Consumer Protection Act 1986

<sup>20</sup> Indian Contract Act 1872



The Real Estate (Regulation and Development) Act, 2016 (RERA)<sup>21</sup> has brought consistency to the rights and obligations of major actors in the real estate industry, which were previously mostly regulated by State-specific municipal laws. Section 88 of the RERA<sup>22</sup> says that the RERA should be in addition to, and not in derogation of, any other legislation, which is one of the essential aspects of the REA that is of great relevance.

Simply reading the clause indicates that arbitration should be discouraged and should only be considered an alternative remedy available to the parties to the lawsuit who are at odds with one another. 'The provision of this Act shall have effect, notwithstanding anything inconsistent contained in any other law for the time being in force,' is another clause reinstated by section 89 of the RERA<sup>23</sup>. From this point on, an overriding effect is expressly provided for in section 89 of the RERA. Therefore, a plain reading of both clauses implies that the consequences of the REA would take precedence over the Arbitration Act.

Furthermore, if the Supreme Court's rulings in the Nataraj Studios case and the NCDRC's ruling are to be taken into account, then it is a well-established legal principle that, if special legislation is in place, the Tribunal's jurisdiction will be excluded rather than the special legislation's as a matter of public policy. Additionally, the general law must always pave the way for special laws to emerge.

There is undoubtedly a gap in the RERA Act due to the divergent interpretations of some clauses. An overriding impact is expressly provided for in Section 89 of the REA. Therefore, a plain reading of both clauses indicates that the consequences of the REA would take precedence over the Arbitration Act. This literal interpretation, however, is in direct opposition to section 8(1) of the Arbitration Act<sup>24</sup>, which requires that any case including an arbitration clause be referred to the Tribunal. Thus, it is clear that there is a direct conflict between the REA and the Arbitration Act over which of the two shall apply in real estate disputes. Confusion and poor management are brought about by such vague and contradictory laws in the real estate industry.

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<sup>21</sup> Real Estate (Regulation and Development) Act 2016

<sup>22</sup> Real Estate (Regulatory & Development) Act 2016, s 88

<sup>23</sup> Real Estate (Regulatory & Development) Act 2016, s 89

<sup>24</sup> Arbitration and Conciliation Act 1996, s 8

## **CROSS-BORDER PERSPECTIVE**

In the United Kingdom (UK) under the Arbitration Act, of 1996<sup>25</sup>, offers a quasi-judicial process that streamlines the process of involving a third-party adjudicator that will hear all the arguments and evidence and arrive at a conclusion that will be binding on the parties. They offer this opportunity when the party have entered such an arbitration clause in their contract. Civil Procedure Rules (CPR) provides rules and procedures for litigation in civil courts, including those related to real estate disputes. Another is the Landlord and Tenant Act, 1987<sup>26</sup>, this Act contains provisions related to disputes between landlords and tenants, including issues such as lease renewal, rent reviews, and repair obligations. Property Misdescriptions Act 1991<sup>27</sup>, this Act addresses false or misleading descriptions of properties and provides remedies for purchasers who are misled.

The Professional Arbitration on Court Conditions (PACT) scheme offers landlords and tenants an alternate means of resolving disputes about the conditions of a renewal lease under the 1954 Act. Normally, arbitration issues in the UK are addressed under the Arbitration Act 1996<sup>28</sup>. The 1954 Act stipulates that the courts will decide on a renewed lease's terms. An impartial third party, acting as an arbitrator or expert, is assigned the decision. Using this method has several advantages, such as the flexibility to select a third party who is not bound by the formalities of a court hearing and who possesses relevant professional knowledge. There can also be financial and time savings.

Regarding construction contracts, the Housing Grants, Construction and Regeneration Act, 1996 (HGCRA)<sup>29</sup> provides for a legislative type of arbitration known as adjudication regarding 'construction contracts,' that is, contracts involving the execution of 'construction operations'. A construction contract is defined as an agreement for the performance of construction operations or the supply of labour for the performance of construction operations for the HGCRA. It also covers agreements to provide advice on building, engineering, decorating, or landscape layout,

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<sup>25</sup> Arbitration Act 1996

<sup>26</sup> Landlord and Tenant Act 1987

<sup>27</sup> Property Misdescriptions Act 1991

<sup>28</sup> Arbitration Act 1996

<sup>29</sup> Housing Grants, Construction and Regeneration Act 1996

as well as agreements to perform architectural, design, or surveying work in connection with construction operations.

Though the term is broad, it is important to keep in mind that certain real estate contracts such as leases and some development agreements are not included. If a relevant construction contract does not include a scheme of adjudication that meets the criteria of the Act, the statutory scheme will take precedence over the contractual terms and a party may bring a dispute arising under the contract to adjudication. The process of adjudication is intended to be quick, and the rulings of adjudicators are ‘interim-binding,’ meaning that they take effect only after the dispute has been resolved through arbitration, court cases, or agreements. It is uncommon to successfully contest an adjudicator’s ruling, nevertheless.

So, when comes to the applicability of ADR to real estate disputes they must concluded in the above circumstances and instances. But the other form of application of ADR is through incorporating ADR clauses within the contract so that when a dispute arises parties must use the alternate solutions before opting for litigation. Lastly, The Property Ombudsman (TPO), while not a statute, is a voluntary redress scheme for resolving disputes between consumers and property agents in the UK. It provides an alternative to litigation for certain real estate disputes. Hence, there is a more comprehensive effort to focus on arbitration in connection to real estate issues in the UK. There are systemic regulations and other laws in place to ensure the same. In India, there is a lacuna in this area as there is no legislation that specifically focuses on combining these facts.

The paper will now shift to the setup in the United States of America (USA). To give sellers and buyers of real estate comprehensive disclosures on settlement costs, the US Congress passed the Real Estate Settlement Procedures Act (RESPA) in 1975<sup>30</sup>. Additionally, RESPA was designed to outlaw bribes, restrict the usage of escrow accounts, and end abusive activities in the real estate settlement process. The purpose of RESPA is to inform borrowers about the settlement expenses they will incur and to do away with referral fees and kickbacks that may drive up the price of

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<sup>30</sup> The Real Estate Settlement Procedures Act 1974

getting a mortgage. Lenders, mortgage brokers, and home loan servicers are required by RESPA to provide borrowers with all relevant information regarding the real estate transaction.

Parties involved in a real estate transaction can include an arbitration clause in their contract. Each state of the USA has its statutes governing real estate transactions and disputes. These laws outline procedures for resolving disputes related to property ownership, contracts, zoning, and other real estate matters. Many real estate transactions involve professionals who are members of local or national real estate boards or associations. These organizations often provide dispute resolution services for members and their clients, such as mediation or arbitration. Parties can also choose to use private alternative dispute resolution (ADR) providers, such as the American Arbitration Association (AAA) or JAMS, which offer arbitration and mediation services for real estate disputes. These mechanisms provide a range of options for resolving real estate disputes, allowing parties to choose the most appropriate method based on their specific circumstances and preferences. Therefore, the USA, like the UK has taken steps to ensure that both these aspects of real estate and arbitration work together and benefit real estate issues. The USA also has arbitration centres that are recognised nationally and around the world. India will benefit from incorporating these aspects.

In Singapore, resolving real estate disputes involves navigating a complex legal landscape governed by various provisions and statutes aimed at ensuring fairness, efficiency, and clarity in the resolution process. From negotiation to litigation, parties involved in real estate disputes have multiple avenues for seeking redress.

Firstly, the Building and Construction Industry Security of Payment Act (BCISPA)<sup>31</sup> serves as a mechanism for resolving payment disputes within the construction industry<sup>32</sup>. This act establishes an adjudication process to address payment issues, thus safeguarding cash flow and project continuity. The Land Titles Act (LTA) is another statute regulating land ownership and titles in Singapore. Under the LTA, provisions cover the registration of property ownership,

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<sup>31</sup> Building and Construction Industry Security of Payment Act 2004

<sup>32</sup> David Ulbrick, 'BCISPA's reforms to security of payment regime in WA come into force' (*Pinsent Masons*, 02 August 2022) <<https://www.pinsentmasons.com/out-law/guides/bcispa-reforms-to-security-of-payment-regime-in-wa-come-into-force>> accessed 12 July 2024

rights and interests in land, and mechanisms for resolving disputes arising from land titles<sup>33</sup>. For buildings with strata titles, such as condominiums and apartments, the Building Maintenance and Strata Management Act (BMSMA) plays a pivotal role<sup>34</sup>. This act governs the management and maintenance of such properties, addressing issues such as the formation and management of management corporations, resolution of disputes between management corporations and subsidiary proprietors, and enforcement of by-laws. The Land Acquisition Act (LAA) empowers the government to compulsorily acquire land for public purposes<sup>35</sup>. It includes provisions for assessing compensation for land acquisition and mechanisms for resolving disputes related to land acquisition.

In addition to these specific acts, the legal framework for dispute resolution in Singapore also encompasses general legislation such as the Arbitration Act<sup>36</sup> and the Civil Law Act, 1909<sup>37</sup>. The Arbitration Act provides the framework for arbitration proceedings, facilitating both domestic and international arbitration. On the other hand, the CPC governs the procedural aspects of civil litigation in Singapore courts, including the filing of lawsuits, service of court documents, case management, and trial procedures.

Overall, these provisions and statutes collectively form a robust framework for resolving real estate disputes in Singapore. Whether through negotiation, mediation, arbitration, or litigation, parties have access to a range of mechanisms tailored to address their specific needs and circumstances. By leveraging these legal tools, Singapore endeavours to uphold the rule of law and ensure that disputes in the real estate sector are resolved fairly, efficiently, and in accordance with established legal principles.

In Hong Kong, dispute resolution in real estate matters is governed by a comprehensive legal framework comprising statutes, provisions, and case laws. The primary avenues for resolving such disputes include negotiation, mediation, arbitration, and litigation. Under the Mediation

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<sup>33</sup> Land Transport Authority Act 1993

<sup>34</sup> Building and Management (Strata Management) Act 2004

<sup>35</sup> Land Acquisition Act 2008

<sup>36</sup> Arbitration Act 2001

<sup>37</sup> Civil Law Act 1909

Ordinance Chapter 620<sup>38</sup>, states that parties can opt for mediation. This ordinance outlines the principles and procedures for conducting mediations, with the courts empowered to encourage parties to consider this option.

Arbitration, governed by the Arbitration Ordinance Chapter 609<sup>39</sup>, provides a formal alternative to litigation. Based on the UNCITRAL Model Law<sup>40</sup>, this ordinance regulates arbitration proceedings and enforces arbitral awards. Parties can choose institutions like the Hong Kong International Arbitration Centre (HKIAC) for administering arbitration. Additionally, statutes such as the Land (Miscellaneous Provisions) Ordinance, Building Management Ordinance, and Conveyancing and Property Ordinance, contain provisions relevant to real estate disputes, covering leases, property management, and conveyancing matters.

Case laws further shape the landscape of real estate dispute resolution. For instance, in *Kwong Fai Construction Co Ltd v Project Jade Ltd*<sup>41</sup>, the Court of First Instance upheld the validity of an arbitration clause in a construction contract. In *Wong Yin Wah v Jackie Co. Ltd*<sup>42</sup>, the Court of Appeal clarified the principles of contractual interpretation in a lease agreement dispute. Overall, these provisions, statutes, and case laws provide a multifaceted approach to resolving real estate disputes in Hong Kong, offering parties flexibility to choose the most suitable method based on their circumstances.

## COMPARATIVE ANALYSIS

This paper has, until this point, explained the current system for dispute resolution in India where it is evident that there is no special legal accommodation for arbitration in real estate. For legal resolution in the traditional manner, litigation, the RERA tribunal, and its appellate tribunal are available. The Arbitration and Conciliation Act is also insufficient to specifically deal with real estate disputes given its general application that is not specific to matters requiring differences of procedure like real estate. India's present framework is ill-equipped to

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<sup>38</sup> Mediation Ordinance 2013

<sup>39</sup> *Ibid*

<sup>40</sup> United Nations Commission on International Trade Law, *UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996 with additional article 5 bis as adopted in 1998* (United Nations Publication 1999)

<sup>41</sup> *Kwong Fai Construction Co Ltd v Project Jade Ltd* [2016] HKCFI 549

<sup>42</sup> *Wong Yin Wah v Jackie Co. Ltd* [2014] HKCU 2515

deal with complex real estate issues because of the clogged dispute resolution mechanism both across the courts, and tribunals. Real estate issues are entwined with issues like paucity of time, which requires a swift and unambiguous dispute resolution mechanism in place.

The UK, through its interconnected legislations and enforcing arbitration clauses in real estate contracts through the Housing Grants, Construction and Regeneration Act, 1996 (HGCRA)<sup>43</sup> has a more apt mechanism in place. India, in direct comparison, does not possess an inter-connected system that leads to ambiguity which is ultimately unsettling for any business, let alone a real estate business to function. The USA also has the Real Estate Settlement Procedures Act (RESPA), 1975<sup>44</sup> which creates a similar unambiguous legal atmosphere to carry out alternate dispute resolution through arbitration, among others, and reach a settlement. More importantly, however, is the aspect where both the UK and the USA possess renowned international arbitration centres like the aforementioned AAA, JAMS, and London Court of International Arbitration (LCIA). India, in comparison, does not have such world-renowned dispute centres which puts it at a disadvantage in arbitrability of real estate disputes, especially with international players. This disadvantage can push back foreign investments through real estate ventures.

In Singapore, real estate disputes are addressed through a comprehensive legal framework, including specific acts like the Building and Construction Industry Security of Payment Act, Land Titles Act, Building Maintenance and Strata Management Act, and Land Acquisition Act. Additionally, general laws such as the Arbitration Act and Civil Law Act facilitate arbitration and litigation.

In India, real estate arbitration is primarily governed by the Arbitration and Conciliation Act, 1996 along with the Real Estate (Regulation and Development) Act, 2016 (RERA) playing a crucial role in real estate arbitrability. While both Singapore and India provide robust arbitration frameworks, Singapore's approach integrates sector-specific laws with general arbitration and civil procedures, promoting a specialized and holistic resolution process. India's emphasis on

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<sup>43</sup> Housing Grants Construction and Regeneration Act 1996

<sup>44</sup> The Real Estate Settlement Procedures Act 1974

RERA complements the Arbitration Act, targeting the unique challenges within its real estate market and enhancing consumer protection.

In Hong Kong, real estate dispute resolution encompasses negotiation, mediation, arbitration, and litigation, with mediation encouraged under the Mediation Ordinance (Chapter 620) and arbitration governed by the Arbitration Ordinance (Chapter 609) based on the UNCITRAL Model Law. Key statutes include the Land (Miscellaneous Provisions) Ordinance, Building Management Ordinance, and Conveyancing and Property Ordinance, complemented by influential case laws. Unlike Hong Kong, where specific ordinances target real estate, India relies more on RERA and general arbitration laws. Indian case law, such as in *Vidya Drolia v Durga Trading Corporation*, upholds arbitration agreements in tenancy disputes, emphasizing arbitration's applicability in real estate. Thus, while both jurisdictions support arbitration, Hong Kong's framework is more specialized for real estate, whereas India's approach integrates arbitration within broader regulatory mechanisms.

With this comparative analysis in mind, the paper will now present its suggestions and conclusion on what is the way forward for arbitration in real estate issues.

## **CONCLUSION AND SUGGESTIONS**

The paper will now propose a model that encapsulates the findings from the understanding sought from the comparative analysis of the countries of the USA, UK, Hong Kong, and Singapore. These countries were selected because of their superior arbitration models which also encompass real estate. Firstly, all these countries have provisions that ensure that real estate contracts have clauses that require parties to proceed to arbitration. In India, such clauses must be encouraged through legislation in specific cases where litigation or tribunals are not suitable.

Secondly, the United Kingdom has the Housing Grants, Construction and Regeneration Act, 1996<sup>45</sup> which has an in-built arbitration process. India needs a more centralised authority when it comes to arbitration in real estate and should be in collaboration with the state governments. Most of these nations also have arbitration centres widely regarded in their countries and

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<sup>45</sup> Housing Grants Construction and Regeneration Act 1996



worldwide to resolve disputes. India must also strive to develop a similar arbitration centre capable of dealing with real estate disputes and other disputes as well. Lastly, arbitration is an expensive process in certain situations and there must be state initiative to curb the expenses to ensure more promotion and participation of arbitration in real estate. There must also be awareness raised for the same.