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DELAY IN CONSTRUCTION PROJECTS: ARBITRATION AS A REMEDY FOR HOMEBUYERS AND CONTRACTORS

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1. Introduction / Statement of Research Problem

Construction project delays have proved to be one of the greatest and most prevalent threats to the real estate industry, more so in India. Not only do these delays interrupt the project timelines, they have far-reaching financial, legal and social impacts. Homebuyers usually have to take long waiting periods before they can actually possess the property, and this results in their straining of finances as they have to keep paying rent as well as repay housing loans. Meanwhile, contractors and developers will experience liquidity limitations, cost increases, and contract penalties, as well as reputational harm.¹

Such delays are complex in nature and tend to be interconnected. They encompass bottlenecks in regulation, delays in acquiring statutory approvals, land acquisition challenge, poor plan of the projects, and financial mismanagement. The problem is aggravated by external aspects like recessions, policy risks, and force majeure like a natural disaster and the global pandemic. All these complexities often create conflicts amongst stakeholders especially between homebuyers, developers and contractors.

Historically, conflicts due to delays in construction were settled by using litigation. Nevertheless, the Indian legal system has had a long history of poor procedures, backlog of cases in courts, and excessive cost of litigation, such that arbitration has taken the center stage as a means of alternative dispute resolution that is efficient and flexible.²

The legislative source of arbitration in India is majorly unified in the Arbitration and Conciliation Act, 1996, the core of which is laid in the UNCITRAL Model Law. A number of advantages in arbitration are party control, confidentiality, flexibility in procedures, and the

¹ Gary B. Born, *International Commercial Arbitration* 71–75 (2d ed. 2014).

² Fali S. Nariman, *Harmony Amidst Disharmony: The Indian Experience in Arbitration* 48–52 (2011).

selection of subject-matter experts to serve as arbitrators this has rendered arbitration quite appealing with construction disputes being complex, with special expertise necessary in resolving the dispute.

Nevertheless, in spite of the theoretical benefits, arbitration has its limitations. Issues of expensive arbitration, inaccessibility to individual homebuyers and the perception of bias due to one-sided arbitration provisions incorporated by developers remain a concern, thus diminishing the role of arbitration as a quick solution. Furthermore, co-existence of arbitration and statutory remedies as provided at the Real Estate (Regulation and Development) Act, 2016 and involving consumer protection also introduces overlaps and legal uncertainties regarding jurisdiction.

Against this backdrop, this paper will critically look at the applicability of arbitration in curbing delays in construction project. It seeks to evaluate the efficacy and impartiality of arbitration in settling disputes among homebuyers and contractors and to determine the legal and practical issues that need to be tackled to make it more useful in the Indian real estate industry.

2. Review of Literature

Even the current literature on construction dispute and arbitration yields a developing agreement that arbitration has become a viable tool of addressing complex commercial disputes, especially in disciplines that heavily rely on technical knowledge and efficiency such as construction. Researchers have always highlighted the fact that arbitration provides a very adaptable and specialized platform that can deal with complex nature of construction disputes which in most cases entails elaborate interpretation of contracts and engineering factors.

The international arbitration fraternity has pointed out the world adoption of arbitration as a good conflict resolving tool by the leading experts in arbitration like Gary B. Born. According to Born, the key advantage of arbitration is that this provision can be enforced in various jurisdictions with the help of global agreements, such as the New York Convention, and can also offer neutrality and expertise in solving the conflicts related to construction contracts with more than two parties and cross-border investments.³

³ Gary B. Born, *International Commercial Arbitration* 91–95 (2d ed. 2014).

In the Indian context, the cross-focus of arbitration and real estate regulation has gained scholarly interest particularly after the introduction of the Real Estate (Regulation and Development) Act, 2016 (RERA). The scholarly literature indicates that RERA is a major shift towards consumer protection, through the creation of specialised adjudicatory processes designed to promote transparency, accountability, and timely project delivery. But the presence of RERA and arbitration has created a lot of conflict between jurisdiction and forum selection.⁴

According to some scholars, arbitration clauses that are found within builder-buyer contracts are usually confusion causing and legally uncertain clauses. Although arbitration is aimed to offer a privatized method of dispute resolution, the RERA, and the consumer protection law provide a statutory remedy that is not easily abrogated. The tension has resulted in the conflicting meanings on the enforceability of the arbitration clauses within the real estate contracts. Judicial rulings, notably in *Emaar MGF Land Ltd. v. Aftab Singh* have strengthened the primacy of consumer protection forums over arbitration in some situations, making the use of arbitration in construction disputes more difficult.

Scholars of arbitration in India, such as Fali S. Nariman, have critically discussed the history of arbitration in India, and the practical restrictions of arbitration. Nariman points out that, even after changes by the law were done to limit the role of the judiciary in the dispute resolution process, arbitration in India is still cited to suffer as a whole, being delayed, court invasive at times, and procedure wasteful.⁶

Literature also shows that cost is an important challenge to the availability of arbitration. Arbitration proceedings can have significant monetary undertakings, including administrative expenditures and arbitrator fees (unlike litigation in consumer forums or pursuant to RERA). This becomes an inherent imbalance because individual homebuyers might be discouraged to use arbitration due to financial reasons, whereas bigger and more commercially sound parties are better positioned to meet the cost of arbitration.⁷

The other significant literature strand is concerned with the concept of standard form contracts in the construction industry. The inequality between the parties in the former cases and the

⁴ Ministry of Hous. & Urb. Affs., Real Estate (Regulation and Development) Act, 2016: An Overview (2017).

⁵ *Emaar MGF Land Ltd. v. Aftab Singh*, (2019) 12 SCC 751.

⁶ Fali S. Nariman, *Harmony Amidst Disharmony: The Indian Experience in Arbitration* 60–65 (2011).

⁷ Avtar Singh, *Law of Arbitration and Conciliation* 210–12 (11th ed. 2018).

absence of bargaining power also highlight that builder-buyer contracts are often contracted by developers and frequently offer a unilateral arbitration clauses that invigilate the procedural rights of homebuyers.⁸

Against these observations, this current study aims to fill this research gap by making a critical analysis of arbitration as a solution towards delays arising in construction works, with a lot of concern on the effect of arbitration on homebuyers and contractors. Combining the doctrinal examination with practical aspects, the research is meant to assist in creating a more balanced and comfortable dispute resolution system within the Indian construction industry.

3. Study Objectives.

- To examine the reasons behind and the effects of construction project delays.
- To investigate arbitration as one method of resolving disputes in construction disputes.
- To analyse the efficiency of arbitration to homebuyers and contractors.
- To determine legal and procedural arbitration related challenges of construction delays.
- In order to propose solutions to make arbitration more available and fair.

4. Research Questions

- Which are the major causes of construction project delays?
- What is the success rate of arbitration in settling disputes based on such delay?
- The question is: does arbitration equally remedy both homebuyers and contractors?
- What are the best weaknesses of arbitration in construction disputes?
- What needs to be done to enhance arbitration to accommodate disputes related to delay?

5. Research Methodology

The current research will take the form of a doctrinal (analytical) research approach that mainly entails the logical analysis and interpretation of legal principles and statutory provisions, as well as judicial precedents where construction delays and arbitration are concerned. The method is especially suitable, considering the legal context of the research issue, which will presuppose a profound analysis of the existing legislation and its real-life implementation in solving the conflicts between the buyers and the homebuyers and contractors.

⁸ K.K. Chitkara, Construction Contract Claims 134–36 (2d ed. 2016).

The paper has heavily used secondary sources of data, which is the foundation of doctrinal research. These sources are statutory enactments, case laws, scholarly writings and institutional reports. The important pieces of legislation reviewed in the paper are the Arbitration and Conciliation Act, 1996 and the Real Estate (Regulation and Development) Act, 2016. These laws are the basis in arbitration and real estate laws in India and are subjected to critical analysis to comprehend the scope, applicability and limitations of the laws as far as construction delays are concerned.

Another significant element of the research methodology is judicial decisions. The paper will also carefully examine some of the landmark rulings by the Supreme Court and other High Courts that have influenced the legal nature of arbitration and protection of consumer rights as applied in the real estate industry. Such cases are Emaar MGF Land Ltd. v. Aftab Singh, and Vidya Drolia v. Durga Trading Corp. to appreciate the issues surrounding arbitrability, jurisdictional overlap, and enforceability of arbitration agreement. These decisions of the court are studied not only on a descriptive level but also critically looking at them with a perspective to reaching some doctrinal inconsistencies and a new tendency.

The study utilizes other academic materials besides primary legal sources such as books, peer-reviewed journal articles, commentaries, and reports released by arbitration institutions and government agencies. The works of prominent scholars in the area of arbitration offer abundant information about the theoretical foundations and practical concerns of the arbitration practice and specifically its application in the construction disputes. Institutional reports like those of the Law Commission of India and international arbitral centers are also consulted to get a feel of policy developments and reforms moves.

One important aspect of this investigation is that a comparative analytical approach is used. The research focuses on arbitration proceedings on construction disputes in some of the selected jurisdictions, namely the United Kingdom and Singapore, which boast of well-developed arbitration systems. This comparative view allows the assessment of the best practices based on their efficacy of the procedures, their cost-effectiveness, and equity. The study aims to compare these frameworks with the Indian legal framework with the aim of finding loopholes and points that could be improved in the domestic arbitration regime.

Moreover, the methodology encompasses a critical analysis approach where legal laws and

court decisions are considered in relation to not only their doctrinal soundness but also their practicality over its consequences in regard to the stakeholders. The specific focus is put on the dissimilar effects of arbitration on both the homebuyer and contractor, particularly in the context of; inequality of bargaining forces, cost factors, and procedures. This would make sure that the study is not as descriptive but rather provides to the normative legal discourse.

Another crucial factor to keep in mind is that the analysis is not based on the gathering of empirical information, including surveys and interviews, and as such is restricted to the doctrinal and comparative analysis. Although this can limit the potential existence of real-time experiences with the stakeholders, the dependence on the authoritative sources of law guarantees the credibility and scholarly rigor of the study.

To sum up, the selected research methodology, which is a combination of doctrinal analysis and comparative and critical analysis, offers a all round framework of the study of arbitration as a solution to delays during construction. It allows understanding both legal principles and practical challenges of the issue in a more subtle way, contributing towards the formulation of informed recommendations on how the usefulness and impartiality of arbitration in the construction business can be enhanced.

6. Discussion / Analysis

6.1 Causes of Construction Delays

Delays in construction projects are not normally caused by a single factor, they are normally caused by a combination of various related factors that influence the planning, implementation and completion of projects. In the Indian real estate industry, these reasons can be classified into financial, regulatory, managerial, contractual, and external reasons in general. These causes are important in determining how conflicts emerge and the possibility of arbitration to resolve them.

Financial constraints to developers are one of the main causes of construction delays. Construction projects are a heavy capital investment and any mishap in the channel of money circulation could have a big influence on the plan of constructing the project. Homebuyers or external funding to the developers in the form of banks and other financial institutions usually offer advance payments. Lack of funding and delay leads to stagnation or decrease in the

construction activities. Moreover, escalating prices of raw materials, labor force, and interest rates also exacerbate the financial resources leaving developers struggling to work within agreed deadlines.⁹

Another major factor contributing to delays is regulatory approvals and land acquisition issues. In India, the construction industry is highly controlled and one has to take numerous approvals of a government at any given phase of the project. The issues of delay in receiving environmental clearances, building permits, zoning approvals, and other statutory approvals may delay a project in a very significant way. The process of acquiring land is not an easy task as well, with the difficulty of conflicting ownership, compensation and legal issues.¹⁰

Delays in construction also are caused by poor project management. Delays during the execution may be caused by inefficient planning, ineffective coordination between the stakeholders, insufficient risk evaluation and ineffective supervision. The construction projects include various parties such as architects, engineers, contractors, and suppliers and any failure of communication between them, or inability to coordinate their activities may disorient the process of work. Moreover, the project execution is impacted by delayed delivery of materials, labor, and insufficient monitoring systems.¹¹

Uncertainties in contracts also contribute towards delays, and can very easily be a source of litigation. Contracts in the construction industry often have undefined or ill-formulated provisions on schedule, duties, punishment, and mechanisms of dispute resolution. A lack of clarity in the terms of the contracts can create a case of differing interpretation by the parties culminating into clash of responsibilities and liabilities. In most occasions, standard form contracts as prepared by developers have been associated with favoring one party, thus creating imbalances which make it difficult to resolve disputes and also increases the project completion time.¹²

Lastly, the external factors including pandemics, natural disasters and other force majeure are also an important cause of construction delays. The COVID-19 pandemic and similar events

⁹ K.K. Chitkara, *Construction Project Management: Planning, Scheduling and Controlling* 212–15 (3d ed. 2019).

¹⁰ Real Estate (Regulation and Development) Act, 2016; Ministry of Hous. & Urb. Affs., *Manual for Model Building Bye-Laws* (2016).

¹¹ J.K. Sharma, *Construction Management and Accounts* 145–48 (2d ed. 2018).

¹² Avtar Singh, *Law of Arbitration and Conciliation* 198–200 (11th ed. 2018).

stopped supply chains, stalled construction work, and resulted in the migration of labor, with severe delays experienced throughout the industry. On the same note, the natural disasters such as floods, earthquakes, and cyclones may cause destruction of infrastructure, slow down construction timelines and add up expenses. Such unpredictable conditions are normally outside the control of the involved, and result in complicated legal challenges in terms of liability and contractual law.¹³

Conclusively, construction delays are caused by a mix of financial, regulatory, managerial, contractual, as well as external factors. These factors not only can delay the project completion but also provide a clear platform of conflicts between the homebuyers, developers and contractors.

6.2 Effect on Home Buyers and Contractors.

Construction delays have extensive impacts on all the stakeholders, especially home buyers and contractors. It is not only financial but covers psychological, contractual, socio-economic aspects as well. Such effects in most cases form the basis of conflict hence the need to have effective dispute resolution techniques including arbitration.

The burden of the effects of construction delays is worst to homebuyers. Among the most direct effects are financial losses as the buyers will usually have to keep servicing housing loans by paying equated monthly installments (EMIs) along with the current rent paid by other housing to stay elsewhere. This two-fold financial burden imposes a huge burden to individuals and families, particularly in instances where the period of delay stretches over many years. Besides foregoing the result of direct financial losses, the opportunity cost of blocked investments is also experienced by the homebuyers as their investments remain untapped and are not in any way yielding any returns.¹⁴

The other important implication is the rent burden, which worsens financial difficulty. Several house purchasers use this as a reason to invest in property hoping that they will soon be able to own it, thus they usually plan their finances around this situation. Late arrivals upset these arrangements compelling them to spend more on living. Regulatory requirements and courts

¹³ Int'l Labour Org., Impact of COVID-19 on the Construction Sector (2020).

¹⁴ Ministry of Hous. & Urb. Affs., Real Estate (Regulation and Development) Act, 2016: Implementation Status Report (2019).

have appreciated this plight and in various instances, have granted reparation on account of delay in possession.¹⁵

Other than the economic consequences, there are also emotional and psychological consequences that follow lost time in the construction process. Uncertainty about the completion of the project, absence of transparency on the part of the developers, and legal battles may leave homebuyers anxious, frustrated, and helpless. Although hard to quantify, this non-pecuniary damage is an important dimension of the total effect of delays and has gained more and more recognition in the consumer jurisprudence.

To contractors and developers the adverse effects of construction delays are also dramatic. Delayed payments are one of the major problems and cause disruption in cash flow and impact financial stability of construction companies. Timely payment is usually important in enabling contractors to meet labor expenses, obtain the material, as well as maintain continuous operations. Delays in payment have a ripple effect, causing additional delays and inefficiencies in implementing the project.¹⁶

Also, the contractors have to pay more because of extended project durations. Rises in cost of raw materials, rise in labor wages and long life of equipment also add to high costs overruns. Such incremental costs are not necessarily recoverable, especially where contracts are not clearly escalated or contracts have no risk allocation measures. This monetary pressure can have dire consequences on the profitability and viability of construction projects.

Imposition of contractual penalties and contractual liabilities is another dire impact. Construction contracts frequently contain clauses of liquidated damages which trace punish the contractors who fail at completing the projects on time. Although these clauses are aimed at providing timely delivery, they may be cumbersome in circumstances that lead to any delay and cannot be avoided by the contractor including the hurdles enforced by the government, or even force majeure. Controversies are often relevant to the interpretation and application of such clauses and result in arbitration or litigation.

¹⁵ Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan, (2019) 5 SCC 725.

¹⁶ K.K. Chitkara, Construction Contract Claims 156–60 (2d ed. 2016).

Moreover, procrastination could ruin the reputation and credibility of contractors and developers in terms of their future projects or financing. History of poor project timing can greatly depreciate business opportunities and confidence of stakeholders in a competitive market.¹⁷

To sum up, the time delays in construction have extensive and multiplexing effects on homebuyers and contractors. Whereas home buyers suffer most in regard to economic and emotional losses, the contractors experience problems of operation and contract harmonies which pose risks to viability of the projects. These conflicting and overlapping interests underline the necessity of efficient and equal dispute resolution system, including the arbitration system; due to which the interests of both parties could be supported.

6.3 Role of Arbitration

Arbitration has also become a more desirable tool to settle disputes occasioned by arrears of construction due to its efficiency, flexibility, and specialization. Within the Indian legal framework, arbitration is guided by the Arbitration and Conciliation Act, 1996, promoting little involvement of the judiciary and autonomy of the parties. The arbitration process in construction disputes plays a crucial role because the arbitration process reduces most of the constraints caused by the litigation process.¹⁸

Among the key benefits of arbitration, it is possible to count the aspect of resolution faster than in courts. The Indian judicial system is said to have a large backlog of cases with unnecessary litigations that can take years to deliver verdicts. Arbitration proceedings, in turn, supposedly should be time-determined and efficient so that parties can find a solution to disputes within a comparatively shorter time. The fast-track timelines introduced to the Arbitration and Conciliation Act also contributes to the goal of quick dispute resolution especially in construction dispute cases where a delay in the process of dispute resolution may make the project more expensive and delayed.¹⁹

Access to technical expertise in form of arbitrators is another important aspect of arbitration. The issue with construction disputes is usually in the form of numerous problems with

¹⁷ Kailash Nath Associates v. Delhi Development Authority, (2015) 4 SCC 136.

¹⁸ Arbitration and Conciliation Act, 1996, § 29A.

¹⁹ Gary B. Born, International Commercial Arbitration 78–80 (2d ed. 2014).

engineering, architecture, project management, and contractual interpretation. As opposed to a traditional courts, arbitration gives parties the opportunity to select arbitrators who are knowledgeable of the subject matter so that disputes are resolved by someone who has a strong grasp of the technical aspect of the matter at hand.

There is also privacy in arbitration and this is a vital consideration to commercial entities. Compared to court proceedings that are usually open to all, arbitration proceedings are confidential. This safeguards sensitive business information, trade secrets and reputational interests of involved parties; in construction disputes this confidentiality is a great benefit due to the commercial property involved and the need to protect reputations.

Moreover, arbitration is flexibility in the process, and parties can tailor the process of dispute resolution to their requirements. Parties are free to choose rules of procedure, decide who to appoint as arbitrators, where to have arbitration, and what law to apply. This allows a more customized and effective resolution process, especially to complicated construction disputes which might demand special procedures or schedules.

The role of arbitration has also been strengthened in the commercial disputes through judicial pronouncements. The Supreme Court asserted in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, the doctrine of non-intervention in judicial matters and guaranteed the independence of arbitral procedure. At the same time, in the case *Vidya Drolia v. Durga Trading Corp.*, the Court was able to define the limits of arbitrability and enforce the pro-arbitration status of Indian jurisprudence.²⁰

Although these benefits exist, it should be noted that the success of arbitration is dictated by the fact that it should be implemented and made accessible. Although arbitration has a number of advantages in comparison to litigation, cost as well as enforcement challenges could exercise some limitations to the application of arbitration especially to the individual home buyers. However, its effectiveness as an effective and specialized mechanism of dispute resolution makes it an important instrument in seeking solutions to construction delay disputes.

²⁰ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552; *Vidya Drolia v. Durga Trading Corp.*, (2021) 2 SCC 1.

6.4 Issues in Arbitration

Although arbitration is generally considered to be an effective and custom tailored approach to resolving disputes, in a practical application of the method to construction disputes (especially in matters about homebuyers), it is clear that there are a number of major challenges that can arise. All these bring out concerns about the accessibility, fairness, and general effectiveness of arbitration as a solution to construction project delays.

The high cost of arbitration proceedings is one of the most noticeable issues. In contrast to a traditional litigation within the consumer forums or the litigation conducted in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016, arbitration can be characterized by huge costs, such as the fees paid to arbitrators, institutional costs, venue fees, and attorney fees. In the case of individual homebuyers, these expenses may be prohibitive and therefore, restrict access to arbitration as a solution, where developers and contractors, who usually have access to more money, are better placed to access arbitration.²¹

The final, but important issue is the existence of one-sided arbitration clauses in builder-buyer contracts. Developers tend to write these contracts and offer it on a take-it or leave-it basis and homebuyers have no or little negotiation leverage. K.K. Chitkara, *Construction Contract Claims* 140–42 (2d ed. 2016).²² These can include clauses that prescribe the selection of an arbitrator, jurisdiction or procedural provisions to benefit the developer. This brings into question the nature of voluntariness and fairness in arbitration agreements especially when it comes to consumer sales; In the case of *Pioneer Urban Land and Infrastructure Ltd. v Govindan Raghavan* the Supreme court noted that the bargaining power between homebuyers and developers was unequal and that the interests of consumers in such agreements should be safeguarded.²³

Another problem is in the enforcement of arbitral awards. Whereas the Arbitration and Conciliation Act, 1996 offers the framework of recognition and enforcement of arbitral awards, in reality, enforcement can take protracted procedures since under Section 34 of the Act, there can be challenges to the enforcement by the courts. Avoidance of arbitral awards by parties is a common occurrence on several grounds, and the end result is years of litigation coming in the

²¹ Avtar Singh, *Law of Arbitration and Conciliation* 205–08 (11th ed. 2018).

²² K.K. Chitkara, *Construction Contract Claims* 140–42 (2d ed. 2016).

²³ *Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan*, (2019) 5 SCC 725.

way of the hoped-for resolution of disputes.²⁴

Other issues that persist in order to make arbitration in India more efficient are judicial intervention and procedural delays. Despite legislative intention of proclaiming arbitration reforms a measure to lessen court intervention, courts nonetheless assume a major role in numerous procedures such as selection of arbitrators, interim relief and awards enforcement. This usually causes delays and heightens the time and costs of the dispute resolution process. The Supreme Court in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* observed that little judicial intervention is to be considered, however pragmatics are faced in reality.²⁵

The other critical challenge is that there is a jurisdictional gap between arbitration and the statutory remedies especially under the RERA and consumer law statutes. Most of the time homebuyers are confused on which forum can best be used to resolve disputes as they are allowed to refer to arbitration, RERA authorities, and consumer forums. In *Emaar MGF Land Ltd. v. Aftab Singh*, the Supreme Court said arbitration clauses did not preclude other systems of redress, thus making the consumer forums a parallel remedy system, which has legal uncertainty and forum shopping.²⁶

Moreover, there have been concerns over the lack of institutionalisation of arbitration in India. A large percentage of arbitration proceedings is performed on an ad hoc basis; therefore, this can cause inconsistencies in the arbitration procedure, insufficiency of administration support and inefficiency in the management of the cases. The Indian construction industry has not made use of institutional arbitration that provides a structured rule-making and administrative supervision.

Lastly, there are the problems of delays in arbitrating itself. However fast arbitration is supposed to be compared with the litigation process, in reality, the process may turn out to be slow because of adjournments, complications during the proceedings, and no rigid adherence to the schedule. This erodes the major merit of arbitration and casts doubts on the efficacy of arbitration as a time-saving process.

²⁴ Arbitration and Conciliation Act, 1996, § 34.

²⁵ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552.

²⁶ *Emaar MGF Land Ltd. v. Aftab Singh*, (2019) 12 SCC 751.

To sum up, arbitration has got a number of benefits as far as settlement of construction disputes is concerned; however, its application to practical issues is not easy because there are problems concerning cost and dealing with fairness and enforcement on one hand, as well as judicial intervention and overlapping jurisdictions on the other. All these issues outline the necessity of reforms that will effectively make arbitration more open, efficient and equitable, especially concerning individual homebuyers. It is critical that these concerns are tackled to make sure that arbitration serves its purpose in the construction industry as an effective method of resolving disputes.

7. Case Laws / Case Analysis

The ruling in *Emaar MGF Land Ltd. v. Aftab Singh* was a landmark case in safeguarding homebuyers against the implied enforcement of arbitration provisions. The Supreme Court in this situation determined that the presence of an arbitration clause in a builder versus buyer contract should not be consistent with the jurisdictional ability of consumer forums. The Court highlighted the fact that damages according to the consumer protection law are extra and not alienable by contractual commitments. This ruling is especially significant when it comes to building delay case, as it does not allow a developer to subject a homebuyer to arbitration when there is an obvious one-sided bargaining power asymmetry. It strengthens the point of the impossibility of arbitration prevailing over the statutory safeguards a consumer can obtain.²⁷

The problem of unchallenged unfair terms of a contract between a builder and a buyer was resolved in *Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan*. The Court believed that one-sided conditions that give much preference to developers do not bind the homebuyers. It had an appreciation that agreements of this nature are usually written unilaterally giving the buyers a low bargaining force. The case is very critical on the issue of arbitration as it indirectly questions the validity of arbitration clauses of such unfair contracts. It empowers homebuyers and makes fairness in contracts a very primary consideration in dispute resolution.²⁸

Vidya Drolia v. Durga Trading Corp. is an historic case, which brought to life the meaning of arbitrability under the Indian law. The Supreme Court came up with a fourfold test to evaluate

²⁷ *Emaar MGF Land Ltd. v. Aftab Singh*, (2019) 12 SCC 751.

²⁸ *Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan*, (2019) 5 SCC 725.

the possibility of resolving a dispute by arbitration and underlined the assumption of minimum involvement by the judicial authority. This ruling encourages the use of arbitration as it restricts the court intervention at the referral level and is also clear on the types of disputes arbitrable. It provides increased legal legitimacy to arbitration with respect to construction disputes, and acknowledges that disputes that concern the rights of the public might be beyond its remit.²⁹

In *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO)*, the Supreme Court affirmed the principle of territoriality in arbitration law, deepening Part I of the Arbitration and Conciliation Act, 1996, substantiated that Indian courts lack jurisdiction over arbitrations seated outside India. Though this case is mainly an international arbitration, it made democracy in favour of arbitration in India even stronger by dismissing the judicial interference and boosting certainty. Its enhanced effect is the creation of trust in arbitration as a functioning tool of dispute resolution, even in case of disputes concerning construction.³⁰

The case of *Kailash Nath Associates v. Delhi Development Authority* dealt with the problem of liquidated damages and imposing penalties in a contract breach battle. The Court determined that even in the presence of a penalty provision it is necessary to prove actual loss or damage to receive compensation. This rule is most applicable in a construction delay dispute as sanctions against delays are usually imposed on the contractors. The ruling assures that these penalties are not administered capriciously, and must be allocated based on evidence of loss, which helps to advance fairness in contractual enforcement and in arbitration.³¹

And lastly, in *Lucknow Development Authority v. M.K. Gupta*, the Supreme Court acknowledged the authority of consumers to be compensated beyond loss of money to mental torture and harassment due to poor services. The case broadened the area of consumer protection in India and it is commonly referred in cases concerning postponed property conveyance. It puts light on the greater human effect of construction delays and the significance of offering effective solutions to home buyers not to compensate them with money only.³²

²⁹ *Vidya Drolia v. Durga Trading Corp.*, (2021) 2 SCC 1.

³⁰ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552.

³¹ *Kailash Nath Associates v. Delhi Development Authority*, (2015) 4 SCC 136.

³² *Lucknow Development Authority v. M.K. Gupta*, (1994) 1 SCC 243.

8. Findings

The analysis presented in this context indicates that construction delays in India are multi-causal and systemic; they occur due to a complicated combination of a lack of finances, regulatory barriers, managerial inefficiency, contract ambiguity and external interference. The aspects are not independent but rather play together in causing chronic delays in the entire real estate sector. Consequently, conflicts that are occasioned by such delays are not single cases but manifest underlying structural problems in the construction sector.

The study also concludes that arbitration also works in settling commercial disputes especially those that involve contractors, developers and other business organizations. It is well suited to deal with complicated construction disputes because of its benefits, including increased resolution speed, flexibility in the procedures, and expertise. Nonetheless, arbitration is not as available to individual home buyers mostly because of its expensive nature, intricate processes and lack of awareness. This results in unbalanced system in which commercially stronger parties would be at an advantage in taking advantage of arbitration as a dispute resolution tool.

The other important observation is that there exists a jurisdictional overlap of arbitration, RERA, and consumer forums. Even though arbitration is an alternative conflict settlement method, there are statutory regulations, such as the Real Estate (Regulation and Development) Act, 2016 and the consumer legislation, parallel to arbitration to help homebuyers. The presence of this coexistence can create confusion on what forum to be used thus creating forum shopping and legal uncertainties.

Another aspect noted by the study is that the arbitration clauses in construction contracts tend to benefit the developers but this was the result of unequal bargaining forces between the developers and homebuyers. Builder-buyer contracts are normally standard form contracts which had been drafted by developers and had no room to be negotiated on. Homebuyers might face procedural disadvantages due to such clauses, which can question the issue of fairness and voluntariness in arbitration agreements.

Lastly, the paper determines that implementation of arbitral awards in India is a significant issue. Even though arbitration is believed to be a solution to an expeditious resolution, enforcement can be postponed because of legal obstacles and court action. This compromises

the effectiveness of arbitration and makes it an inefficient substitute to a traditional litigation.

Conclusively, the results indicate that as much as arbitration can be an effective arbitration in a construction delay dispute, it is not practically usable because of the problems of accessibility, fairness, jurisdictional overlaps and enforcement difficulties. These issues need to be addressed to make sure that arbitration can be used as a fair and effective solution to both homebuyers and contractors.

9. Recommendations / Suggestions

To resolve the problems stated in the paper and increase the efficiency of arbitration as a solution to the delays in construction, there is a need to introduce some legal and policy changes.

To begin with, standardisation of arbitration clauses in builder-buyer contracts must be done. Such clauses are now commonly written in isolation by developers and thus creating terms that are skewed towards one party. Unified or standardized arbitration clauses, preferably trying to follow the regulations or be present in the Real Estate (Regulation and Development) Act, 2016, would assist in providing equity, transparency, and balance in contract relations. This would also minimize conflicting or one sided provisions.

Second, institutional support should be done to decrease cost of arbitration among homebuyers. The cost of arbitration is still one of the biggest hindrances. Arbitration can be made more affordable by setting up subsidized arbitration systems, fostering institutional arbiter offices and setting up costs caps or cost schedules on a specific type of dispute. Possibilities of government-supported or RERA-associated arbitration courts to offer affordable dispute resolution should also be investigated.

Third, there is a need to enhance the links between RERA and arbitration systems. The existing convergence between the arbitration, RERA government and consumer courts is complex and inefficient. A merged framework with clear boundaries of jurisdiction and where the mechanisms can be used complementary would boost legal certainty. As an example, technical and contractual disputes may be further promoted to arbitration, whereas RERA may remain responsible to consumer-related matters, e.g., possession delays and compensation.

Fourth, it should focus on enhanced marketing of fast-track arbitration of construction disputes. Considering that the processes of such disputes are time sensitive, expedited procedures with tight schedules, adjournment limitation, and streamlined procedures would contribute greatly to efficiency. Promoting expedited arbitration, and the application of the Arbitration and Conciliation Act, 1996, would aid in bringing about a quick solution and elimination of a long wait to both home buyers and contractors.

Fifth, transparency and fairness in appointment of the arbitrators need to be increased. Neutrality and independence of the arbitrator are crucial to the credibility of the arbitration. Prejudice can be minimized by introducing systems that ensure unbiased selection: this may be achieved through institutional methods of appointing, or even by neutral boards, where one of the parties has a bigger share of the bargaining power.

Lastly, there should be an encouragement of awareness among the homebuyers on the options of dispute resolution. There is little awareness among homebuyers about their rights under RERA, consumer laws and arbitration regimes. Buyer awareness, legal assistance programs and easy access to informational tools can help enable buyers to be informed in their decision making, and in selecting the right forums to resolve their disputes.

To summarize, the given recommendations are expected to establish a more balanced, accessible, and efficient arbitration scheme in the respect of protecting the interests of both homebuyers and contractors. Through filling the current gaps and enhancing the institutional mechanisms, arbitration can be developed into a smarter tool that will help solve construction delay disputes in India.

10. Conclusion

Construction delays remain a significant issue in the home construction industry with both customers and contractors having been severely impacted. To homebuyers, such delays lead to financial burdens, confusion, and frustration and to contractors and developers, higher costs, loss of cash flows, and contractual obligations are realized. The outcomes of this are usually complicated conflicts that need effective and professional modes of resolution.

Arbitration has in this case become a more desirable dispute resolution method owing to its

flexibility, how fast it is, confidentiality and the technical expertise it can acquire. The Arbitration and Conciliation Act, 1996 framework has made arbitration more powerful in India and is a more significant trend towards more alternative dispute resolutions. Nonetheless, there are limitations to arbitration in spite of its benefits. Problems like the excessive price, its unavailability to individual homebuyers, and the complexities within the procedure as well as unequal bargaining power between the parties still hamper its efficiency.

Moreover, the overlapping effect that the presence of arbitration has had on statutory remedies in the Real Estate (Regulation and Development) Act, 2016 and consumer protection laws has led to jurisdictional overlaps and legal uncertainties. Although judicial rulings have tried to reconcile such structures, a natural absence of coordination still becomes a problem of who best to adjudicate with which postulates as the most pertinent forum of settling disputes.

To make arbitration really an effective solution to construction delay disputes, it is necessary to make reforms that will result in greater inclusiveness, affordable nature, and procedural fairness. The increased institutional backing, unified contractual procedures, and a better integration with regulatory frameworks are needed so that arbitration would be affordable to all parties especially individual homebuyers.

Ultimately, a balanced and integrated approach is necessary—one that preserves the efficiency and autonomy of arbitration while safeguarding the rights of weaker parties. Only through such reforms can arbitration evolve into a fair, reliable, and effective dispute resolution mechanism capable of addressing the complexities of construction delays in India.

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