

PANORAMA

ADR IN REAL ESTATE

**RERA, Builder-Buyer Issues, Lease
Disputes & Development Agreements**



Exclusive Interview with :
Satyajit Gupta
VP & Associate General Counsel,
EXL



Expert Lens: The Headlines
Adv Hitesh Ramchandani
Counsel | Arbitrator | Mediator

01

Welcome Note

1.1 CEO's Message

02

Events held at IIDRC

2.1 Institutional Collaborations

2.2 AAI Series Webinar on ADR in Real Estate

2.3 IIDRC Open House

03

Articles

3.1 ADR in Real Estate: Choosing the Right Path Between Mediation, Arbitration and RERA

3.2 Beyond Forum Shopping: Reconstructing the RERA–Consumer–Arbitration Interface in Real Estate Disputes

3.3 The Landowner Who Isn't a Creditor: How India's Insolvency Framework Treats Development Rights as Assets but Leaves Their Source Outside the Creditor Architecture

3.4 "The Homebuyer's Dilemma: Can Mandatory Arbitration Clauses in Builder-Buyer Agreements Survive RERA?"

3.5 The Clause the Builder Wrote for Himself: Can a Developer-Arbitrator Survive RERA?

3.6 "The Homebuyer as Financial Creditor: Navigating the Tri-Jurisdictional - Maze of RERA, IBC, and Arbitration in Distressed Real Estate Projects"

04

Interview

The Anatomy of a Dispute: Strategy, Judgment, and the Path to Resolution - In Conversation with Satyajit Gupta, Vice President at EXL

05

Expert Lens on ADR News

Expert Lens: What the Chandrachud Appointment Signals for Investment Arbitration - Hitesh Ramchandani on the Oschadbank Treaty Dispute

06

More about the Institution

5.1 Upcoming Events

5.2 Stay Connected

SECTION ONE · WELCOME NOTE

01

CEO'S MESSAGE



Somewhere in the agreement you signed for your flat there is an arbitration clause. You did not draft it. You did not negotiate it. In many cases it also decides who your arbitrator will be, selected from a panel the developer assembled, and you agreed to that as well, on an afternoon when you were mostly worried about the parking allotment.

Five articles this month, all on real estate, and they arrive at the same uncomfortable place. In this sector the dispute resolution machinery is usually written by the party it protects.

Piyush Soni says it in his title. The builder wrote the clause for himself. The judicial answer has been slow and then sudden. TRF held that an arbitrator ineligible to sit cannot nominate a substitute. Perkins held that a unilateral power to appoint the sole arbitrator cannot survive the requirement of equal treatment. In 2024 a five judge bench in Central Organisation for Railway Electrification carried the reasoning across to panels. A developer who used to choose both the forum and the person sitting in it is now finding it difficult to choose either.

Our fourth article moves a step earlier and asks whether such a clause should be enforced at all against a purchaser who never had the option of negotiating it. Madhava Raju answers from the drafting side, arguing for a tiered architecture that stops pretending parties can contract out of remedies they cannot lawfully waive. Our second article maps the three doors now open to an allottee and warns that walking through one can quietly close the others.

Amit Patra supplies the sharpest version of the problem. Development rights contributed by a landowner can fall into the insolvency estate of the developer, while the landowner who supplied them holds no seat in the Committee of Creditors. The asset is admitted. Its source is not.

Then read Hitesh Ramchandani on the appointment of Dr. Justice D. Y. Chandrachud as Russia's nominee in the Oschadbank dispute. It is the same question at a considerably higher altitude. His position is that nomination by a party does not make an arbitrator that party's representative, and that perceived bias and actual bias are not the same thing. Set that beside Perkins and you have the line this sector now has to draw. Nomination is legitimate. Control is not. The distance between them is narrower than most clauses admit.

Satyajit Gupta, our interviewee this month and our guest at the August Open House, offers the exit. Disputes, he says, rarely begin as legal problems. They begin as communication failures and misaligned expectations, which is why he thinks this field is heading towards prevention rather than resolution.

Our webinar on ADR in real estate on 1 August, moderated by Vinata Sahay, reached the same conclusion from the practitioner's side, with due diligence named as the most common failure. We also added collaborations across chambers, corporates and universities, among them Woxsen University, Yugalit and Lexveda Partners.

One question for this issue. In every dispute described here, ask who drafted the clause being argued about. It is almost never the person invoking it.

Hamid Baig
CEO, IIDRC

✉ hamid@iidrc.com

SECTION TWO · EVENTS

02

INSTITUTIONAL COLLABORATION

During the month of August, the Institutional and Industrial Dispute Resolution Centre (IIDRC) undertook a series of targeted collaborations and partnership initiatives with key institutions, law offices, and corporate entities, further strengthening its network within the dispute resolution and allied sectors.

The collaborations established and actively progressed during this period included associations with **Lexveda Partners OPC Pvt. Ltd.**, **Azhar Engineering Private Limited**, **Xyronix Labs Private Limited**, **Chamber of Arjun Harkauli**, **Yugality**, **Law Offices of Lakshay Kumar**, and **Woxsen University**. Each of these engagements reflects IIDRC's commitment to building a multi-sectoral ADR ecosystem, integrating legal expertise with industry-specific applications and academic collaboration.

In August, IIDRC's focus remained on formalising partnerships, initiating collaborative dialogues, and advancing agreement frameworks, particularly with organisations such as Yugality and other legal and corporate stakeholders. These efforts were directed towards enhancing online dispute resolution mechanisms, institutional tie-ups, and service integration models, thereby expanding accessibility and operational efficiency in dispute resolution.



Simultaneously, collaborations with academic institutions like Woxsen University were oriented towards knowledge sharing, training programmes, and academic engagement, creating opportunities for students and researchers to gain exposure to practical aspects of arbitration and mediation. Engagements with law offices and independent chambers, including the Chamber of Arjun Harkauli and Law Offices of Lakshay Kumar, contributed to strengthening professional linkages and fostering practice-oriented discussions and initiatives within the ADR space.

Further, IIDRC's interaction with corporate entities such as Azhar Engineering Private Limited and Xyronix Labs Private Limited during this period enabled exploration of sector-specific dispute resolution needs, particularly in areas requiring technical integration and customised ADR frameworks.

Overall, the month of August marked a phase of active collaboration building and strategic outreach for IIDRC, with a clear emphasis on expanding institutional partnerships, fostering interdisciplinary engagement, and reinforcing its position as a dynamic and collaborative dispute resolution platform.

SECTION TWO · EVENTS

02

INSTITUTIONAL COLLABORATION



Woxsen University



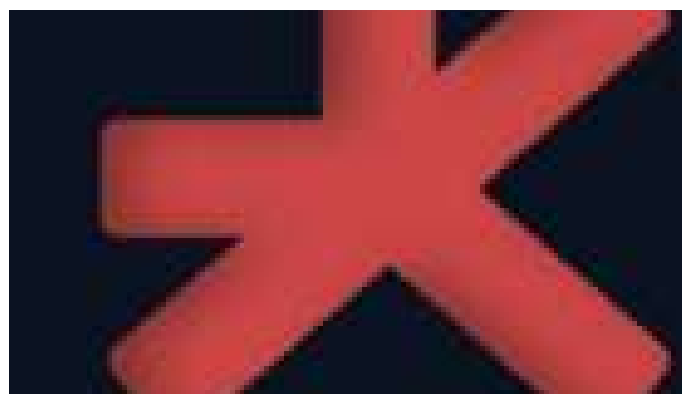
Lexveda Partners



Yugality



DAK Legal



Xyronix Labs Private Limited



3Sixty Law Group

SECTION TWO · EVENTS

02

WEBINAR ON ADR IN REAL ESTATE

Webinar Overview

The Institutional and Industrial Dispute Resolution Centre (IIDRC), as part of its Arbitration Across Industries (AAI) Series, continues to expand its footprint in sector-specific dispute resolution by successfully conducting a webinar on “ADR in Real Estate” on 1st August. The IIDRC webinar on “ADR in Real Estate: Builder–Buyer Issues, Lease Disputes, and Development Agreements” offered a comprehensive and practice-oriented discussion on one of the most dispute-prone sectors in India. The session brought together experienced practitioners and experts who examined the evolving role of Alternative Dispute Resolution (ADR) within the real estate landscape.

Expert Perspectives Shared

The webinar brought together an esteemed panel of speakers, including Mr. Adv. Gyan Prakash, Mr. Adv. Rizwan, Ms. Soma Hegdekatte, and Mr. Suraj Vishwakarma, and was ably moderated by Ms. Vinata Sahay, whose structured and engaging moderation ensured a seamless flow of discussion.

The discussion began by contextualising the growing complexity of real estate disputes, particularly in light of regulatory developments such as RERA. While the regulatory framework has enhanced transparency and accountability, it has simultaneously led to a rise in disputes involving delays, contractual breaches, and compliance issues.

A key theme that emerged throughout the session was the dual nature of ADR in real estate while it is increasingly recognised as an efficient mechanism, it is not always the default choice. The panel emphasised that the suitability of arbitration or mediation depends heavily on the nature, value, and parties involved in the dispute. For instance, disputes involving multiple stakeholders or statutory remedies often continue to be addressed through courts or regulatory forums.

From a practical standpoint, the discussion highlighted that real estate disputes typically arise at three critical stages land acquisition, regulatory approvals, and buyer-level conflicts such

as delays in possession. This layered nature of disputes reinforces the need for well-drafted agreements and proactive legal planning.

Another important insight was the continued preference for litigation, despite the advantages of ADR. Factors such as enforceability, involvement of multiple parties, statutory remedies under RERA, and public confidence in courts contribute to this trend. Additionally, it was acknowledged that arbitration is not always faster or cost-effective in practice, especially in high-value disputes.

The panel also stressed the importance of due diligence and contract awareness, identifying it as one of the most common mistakes made by parties entering real estate transactions. Overlooking arbitration clauses or treating them as boilerplate provisions was noted as a recurring issue.

A strong emphasis was placed on mediation and out-of-court settlements, with speakers highlighting the potential for innovative, mutually beneficial solutions. The discussion underscored that many disputes could be resolved efficiently if parties adopt a more collaborative and solution-oriented approach.



Concluding Reflections

The session concluded by reaffirming that while litigation remains relevant, ADR—particularly mediation and arbitration offers faster, cost-effective, and relationship-preserving solutions when used strategically.

Overall, the webinar successfully highlighted the practical realities, limitations, and opportunities of ADR in the real estate sector, offering valuable insights for practitioners, students, and stakeholders alike.

SECTION TWO · EVENTS

02

IIDRC HIGH TEA & OPEN HOUSE



As part of its continued efforts to foster engagement, accessibility, and awareness in Alternative Dispute Resolution (ADR), the Institutional and Industrial Dispute Resolution Centre (IIDRC) successfully conducted its Open House Session in the month of August. The session was designed as an interactive and inclusive platform, encouraging open dialogue between the institution and individuals interested in understanding and engaging with dispute resolution mechanisms.

A key highlight of the August Open House was the presence of Mr. Satyajit Gupta, Vice President at EXL, as a distinguished guest. His participation added significant value to the session, offering participants an industry-oriented perspective on dispute resolution, corporate practices, and the practical relevance of ADR in today's professional landscape.

The Open House provided participants with a comprehensive introduction to IIDRC's functioning, services, and initiatives, while also addressing practical queries relating to arbitration, mediation, and emerging frameworks such as Online Dispute Resolution (ODR). The format of the session encouraged free-flowing discussions, allowing attendees to engage directly with experts and gain clarity on real-world applications of ADR.

Participants had the opportunity to understand institutional processes, and discuss the growing importance of ADR across industries. The interaction with Mr. Satyajit Gupta further enriched these discussions, particularly by bridging the gap between legal frameworks and corporate expectations, and highlighting the skills and perspectives required for professionals entering this space.

The session witnessed active participation from students, young professionals, and aspiring practitioners, reflecting a growing interest in structured and efficient dispute resolution mechanisms. It also served as a platform to introduce attendees to IIDRC's ongoing initiatives, training programmes, and collaborative engagements.

Overall, the August Open House stood out as a valuable knowledge-sharing and networking initiative, reinforcing IIDRC's commitment to building a well-informed and connected ADR community, while making dispute resolution more accessible, practical, and industry-relevant.



IIDRC

International Institute for Dispute Resolution Centre



SCHOOL OF LAW
WOXSEN UNIVERSITY

Presents

LEX PAX 2.0

Mediation Competition

9TH - 10TH OCTOBER, 2026

VIRTUAL MODE

REGISTRATION LINK

- <https://forms.gle/ufx3ZThh6rFdhtdJ7>

REGISTRATION FEE - INR 3000 /- PER TEAM

PERKS & PRIZES

- Prize Pool of ₹55,000
- Internship Opportunities With IAMC, KFCRI and IIDRC
- Awards across 6 categories

SCAN TO PAY THE REGISTRATION FEE



IMPORTANT DATES

- Registration Opens: 25th August, 2026
- Registration Closes: 1st October, 2026
- Competition Dates: 9th & 10th October, 2026

CONTACT DETAILS - OC

Mohana Murali - +91 9666458490
Sreya Shah - +91 8096972618

kalravkrishna.tripathi@woxsen.edu.in

SECTION THREE · ARTICLES

03

ADR in Real Estate: Choosing the Right Path Between Mediation, Arbitration and RERA

This article has been authored by:

Adv. S. Madhava Raju

Panel Arbitrator, Indian Council of Arbitration

ABSTRACT

Real-estate disputes frequently overlap contractual obligations, statutory regulation and consumer remedies. This article examines how mediation, arbitration, RERA and consumer remedies can be coordinated through careful dispute-resolution drafting. It argues for a tiered ADR architecture that preserves mandatory statutory remedies while directing appropriate contractual disputes toward mediation and, where legally permissible, arbitration.

INTRODUCTION

Real-estate disputes are rarely confined to a single legal issue. A delayed project may involve contractual obligations, possession, refund, interest, construction quality, statutory compliance and consumer rights at the same time. The central ADR question is therefore not simply whether a contract contains an arbitration clause, but whether the chosen dispute-resolution mechanism fits the nature of the dispute and the statutory forum available to the parties. India's real-estate framework now provides a layered dispute-resolution landscape involving the Real Estate (Regulation and Development) Act, 2016 (RERA), the Arbitration and Conciliation Act, 1996, the Consumer Protection Act, 2019, and the Mediation Act, 2023. The practical challenge for lawyers and contract drafters is to coordinate these mechanisms rather than treat them as interchangeable.

1. MEDIATION: THE FIRST PRACTICAL OPPORTUNITY

Mediation is particularly suitable for real-estate disputes because many disputes are capable of commercial settlement without determining a winner and loser. Developers may need time to complete work; allottees may prefer possession, revised payment schedules, rectification or a negotiated refund; investors may value confidentiality and preservation

of business relationships.

The Mediation Act, 2023 expressly recognises mediation agreements and permits parties, whether or not a mediation agreement already exists, to voluntarily pursue pre-litigation mediation before filing civil or commercial proceedings, subject to the statutory framework. A mediated settlement agreement is enforceable in the manner provided by the Act and the Code of Civil Procedure. For real-estate contracts, a well-designed clause can therefore provide for negotiation followed by institutional mediation, with clear time limits and authority for representatives to settle. Such a clause should not create uncertainty about whether arbitration is mandatory if mediation fails. The contract should state what happens after an unsuccessful mediation: ordinarily, the dispute may proceed to the agreed arbitral or statutory forum.

2. ARBITRATION: USEFUL, BUT ONLY FOR THE RIGHT DISPUTES

Arbitration remains valuable for contractual and commercial real-estate disputes, particularly disputes between promoters, contractors, architects, consultants, investors, lenders and other commercial participants. Section 7 of the Arbitration and Conciliation Act, 1996 requires an arbitration agreement in writing and permits an arbitration clause to cover disputes arising from a defined legal relationship.

Drafting is therefore critical. Clauses such as “the parties may refer disputes to arbitration if mutually agreed in future” can create an avoidable argument about whether a present arbitration agreement exists. A stronger clause should express the present intention to submit defined disputes to arbitration and should identify the institution or appointment mechanism, seat, language and number of arbitrators.



However, the existence of an arbitration clause does not automatically place every real-estate dispute before an arbitral tribunal. The Supreme Court has distinguished rights in personam, which are generally amenable to arbitration, from rights in rem and disputes requiring adjudication by a public forum. The fourfold test in *Vidya Drolia v. Durga Trading Corp.* remains an important guide to arbitrability.

Accordingly, disputes involving purely contractual obligations—such as payment, delay, contractual damages, defects or other inter-party claims—may be suitable for arbitration depending on the applicable statutory framework and the precise relief sought. By contrast, questions that affect third-party rights, operate erga omnes, or fall within functions entrusted exclusively to a statutory authority require particular caution.

3. RERA AND THE LIMITS OF A SIMPLISTIC “RERA VERSUS ARBITRATION” APPROACH

RERA creates a specialised regulatory and adjudicatory framework for the real-estate sector. Section 79 bars a civil court from entertaining a suit or proceeding in respect of matters that the Authority, adjudicating officer or Appellate Tribunal is empowered under the Act to determine. At the same time, Section 88 expressly states that RERA is in addition to, and not in derogation of, other laws; Section 89 gives RERA overriding effect where there is inconsistency.

The statutory scheme therefore should not be reduced to the proposition that “all RERA disputes are non-arbitrable.” The correct question is: what is the nature of the dispute, what relief is sought, which authority is empowered to grant that



relief, and is there a valid arbitration agreement covering the contractual dispute?

The Supreme Court’s decision in *Imperia Structures Ltd. v. Anil Patni* is especially important for this analysis. The Court held that remedies under the Consumer Protection Act are additional to remedies under special statutes such as RERA.⁵ The decision in *IREO Grace Realtech (P) Ltd. v. Abhishek Khanna* subsequently reaffirmed the availability of consumer remedies notwithstanding RERA.

Similarly, in *Emaar MGF Land Ltd. v. Aftab Singh*, the Supreme Court upheld the consumer forum’s jurisdiction despite an arbitration clause in the agreement. The principle is important for drafting: an arbitration clause cannot simply be assumed to extinguish a statutory consumer remedy where the applicable law gives the consumer a choice of forum.

This makes real-estate drafting more sophisticated. A promoter’s standard agreement should not merely insert a broad arbitration clause. It should recognise the statutory environment and avoid language suggesting that parties can contract out of mandatory statutory remedies.

4. DRAFTING A WORKABLE ADR CLAUSE FOR REAL-ESTATE CONTRACTS

A practical dispute-resolution clause should answer at least six questions. First, what disputes are intended to be resolved contractually? Secondly, is mediation a mandatory preliminary step or only an optional settlement mechanism? Thirdly, if mediation fails, is arbitration the agreed next step? Fourthly, which disputes remain subject to RERA, consumer protection law or another statutory forum? Fifthly, what is the seat and venue of arbitration? Finally, how will the arbitrator or arbitral institution be selected?



A useful structure is a tiered clause: good-faith negotiation, followed by mediation within a defined period, followed—where legally permissible and covered by the arbitration agreement—by institutional arbitration. The clause should also contain a savings sentence making clear that nothing in the agreement is intended to exclude a remedy that cannot lawfully be waived. This approach reduces jurisdictional disputes at the threshold. It also makes the clause more useful operationally: the parties know what to do immediately after a dispute arises rather than beginning another dispute about the dispute-resolution clause itself.

5. CONCLUSION

ADR in real estate should be viewed as a coordinated system rather than a contest between arbitration and litigation. Mediation can preserve relationships and unlock practical solutions;

arbitration can provide a private adjudicatory mechanism for appropriate contractual disputes; and RERA and consumer legislation provide specialised statutory protections and remedies that parties cannot simply contract away.

For practitioners, the central lesson is one of precision. Before drafting or invoking an ADR clause, identify the parties, the legal relationship, the nature of the dispute, the relief sought and the statutory forum competent to grant that relief. A carefully drafted clause should complement the statutory framework, not collide with it.

In India's expanding real-estate market, effective dispute resolution will depend not merely on having an ADR clause, but on having the right ADR architecture.



SECTION THREE · ARTICLES

03

Beyond Forum Shopping: Reconstructing the RERA Consumer Arbitration Interface in Real Estate Disputes

This article has been authored by:

Hemant Mudhe

*Maharashtra National Law University,
Chhatrapati Sambhajanagar*

I. INTRODUCTION

A homebuyer facing a delayed or defective flat in India today confronts not one remedy but three: the Real Estate Regulatory Authority, the consumer commission, and, where the agreement so provides, an arbitral tribunal. Commentary on this overlap often reaches for a single label "forum shopping" and a single fix. This article asks a narrower question: how should Indian law distinguish legitimate choice among concurrent real estate remedies from impermissible successive pursuit and does the case law supply one doctrine of election, or three related but distinct ones? The RERA–consumer, consumer–arbitration, and RERA–arbitration relationships, this article argues, share a judicial vocabulary of "choice," "election," and "opting for" a remedy, but not a single legal test.



II. CONCURRENCY AND THE NARROW DOCTRINE OF ELECTION

RERA and consumer remedies are concurrently available to an aggrieved allottee. RERA's saving clause and the Consumer Protection Act's mirror-image provision each preserve the other's remedies rather than displacing them, and the Supreme Court confirmed in *Imperia Structures* that Section 79 RERA bars only civil courts, leaving consumer commissions untouched. Pioneer Urban had already established the same concurrency as consumer, RERA, and insolvency remedies. "Choice" in this sense means only that more than one forum is legally open at the point a claimant first seeks relief; it does not itself address what happens afterward.

That is the office of election. In *IREO Grace Realtech*, the Supreme Court held that where two concurrent remedies exist, choosing one forecloses simultaneous pursuit of the other for the same cause of action but only where the remedies' "ambit and scope" are not "essentially different." That qualifier is easily overlooked and important to retain election bites on substantive overlap, not on the bare fact that two statutes both apply.

M/s Kabra & Associates v. Hemdev (2026) is the first case to apply this doctrine to an individual claimant's own sequence of filings, and recent commentary has read it broadly as barring any RERA-first claimant from later reaching a consumer forum, even absent a merits hearing. The order does not support reading so wide. The complainants' earlier registration complaint had been decided; MahaRERA held registration was not mandatory for the project and that determination attained finality. That finding did not itself decide the merits of the separate Section 18 refund claim. At a subsequently heard refund complaint, the complainants conceded that no relief remained available considering that finality and withdrew with liberty confined to refiling before the same Authority and never returned. The Court held that the earlier order, "correct or erroneous," had bound the parties, and that the complainants could not "retract" from their withdrawal and invoke the Consumer Protection Act instead. The ratio, properly stated, is narrower than the headlines suggest: a final, binding determination on a



predicate question, combined with a conscious procedural exit from the very forum whose order had become final, forecloses recourse elsewhere for the same relief. Filing alone does not; nor did the earlier order decide the refund claim's merits.

III. ARBITRATION: TWO EDGES, NOT ONE

The consumer–arbitration relationship is comparatively settled. Emaar MGF held that an arbitration clause cannot compel a consumer forum to refer an admitted dispute to arbitration, because the Consumer Protection Act creates a special, additional remedy a private clause cannot defeat. T.K.A. Padmanabhan (2026) reaffirms this, anchoring it in the proviso to Section 12(4) of the 1986 Act, which bars transfer of an admitted complaint to any other tribunal. The Supreme Court has also expressed this relationship in the vocabulary of claimant "choice" between public and private fora, independent of any admission-based statutory bar: in Hemalatha Devi, a consumer who had not submitted to arbitration and had instead informed the court of her pending complaint was held to have made her "choice" for the public forum. That vocabulary of choice, in other words, is not confined to the RERA-facing edges of the triangle.

The RERA–arbitration relationship is genuinely contested. The Bombay High Court, in *Rashmi Realty*, held RERA's jurisdiction survives a contractual arbitration clause even for what was, on its face, an ordinary Section 18 refund claim reasoning, in terms not confined to that claimant's own procedural history, that RERA determinations affect allottees

generally and are therefore not purely rights in personam. The Delhi and Gauhati High Courts have gone the other way, but on an election-based rationale, not a categorical one: in each case the petitioners had not first invoked RERA before seeking arbitration, and the courts held that a party who has not opted for the special statutory remedy remains free to arbitrate. On their facts, the split is consistent with an invocation-based explanation RERA already invoked in *Rashmi Realty*, not invoked in the others. But its reasoning is broader than that explanation requires, and no case has tested a claimant who had not invoked RERA before the Bombay High Court. The apparent conflict is therefore an open question combining a reasoning-level disagreement with an untested factual distinction, not a settled split. No Supreme Court authority has decided the point on the merits; an SLP against *Rashmi Realty* was dismissed at the leave stage without reasoned engagement.



IV. RECONSTRUCTING THE INTERFACE

A threshold objection deserves a direct answer. RERA's own text preserves remedies "without prejudice to any other remedy available," which might seem to license unrestricted movement between forums. But that language preserves availability; it does not speak to what follows once a claimant has substantively engaged one forum and obtained a final, binding determination there as Kabra's narrow ratio shows.

What emerges is not one unified doctrine but a shared vocabulary applied with different consequences across three distinct relationships: preclusion, on Kabra's facts, where a claimant seeks to relitigate a finally-settled predicate question in a second forum; a statutory bar on transfer, under Emaar MGF and Padmanabhan, once a consumer complaint is admitted; and, on the RERA–arbitration edge, an unresolved combination of categorical and invocation-based reasoning. Existing doctrine does not yet address a further, related problem: the risk of inconsistent outcomes or double recovery where two forums remain legitimately open on related but non-identical claims arising from the same transaction. No authority in this body of case law speaks to disclosure of parallel proceedings or judicial adjustment for amounts already recovered elsewhere. Developing such a coordination norm requiring, at minimum, disclosure of prior or parallel proceedings before a second forum entertains a related claim is accordingly a matter for reform, not a description of existing law.



V. CONCLUSION

The RERA–consumer–arbitration interface is not one problem calling for one rule. It is three related relationships, unified by a shared judicial vocabulary of choice and election but governed by distinct triggers and distinct consequences. Read this way, Kabra is a narrow corrective, not a general bar; the Bombay–Delhi–Gauhati division on RERA and arbitration remains a genuinely open question for the Supreme Court, not a resolved conflict; and Indian courts should, prospectively, address what happens when two legitimately open forums risk producing inconsistent outcomes on the same real estate grievance.

SECTION THREE · ARTICLES

03

The Landowner Who Isn't a Creditor: How India's Insolvency Framework Treats Development Rights as Assets but Leaves Their Source Outside the Creditor Architecture

This article has been authored by:

Amit Kumar Patra

4th Year, BA.LLB | National Law University, Odisha

Once a real estate developer faces bankruptcy, the Insolvency and Bankruptcy Code, 2016 brings up a troubling yet direct inquiry: who is recognized to hold a position of financial interest in the bankrupt company?

The answer is easy for banks and financial institutions. It is difficult to answer for homebuyers, whose interests were addressed as a result of the amendment made by the Parliament in 2018 when money collected from the real estate buyers was deemed financial indebtedness. However, there still remains an unclear situation for a landowner who allows the developer to use his land.

The landowner signs a joint development agreement in order to give the land to the developer and gets the right to share the construction results or proceeds from selling the construction. However, when the developer goes bankrupt, the situation of the landowner does not allow calling him either a financial or even operational creditor.

The divergence grows deeper when the insolvency cases regard development rights, which were created as contributed property, as an asset owned by the company undergoing insolvency proceedings.

The question is whether the insolvency legislation can recognize development rights as an asset of the company while failing to give the person who provided this asset a place in the debt restructuring process.

THE FIRST DOOR: FINANCIAL CREDITOR

Financial debt is defined in Section 5(8) of the IBC through a meaning derived from a payment made for the time value of money. The decision of the Supreme Court in *Anuj Jain, IRP for Jaypee Infratech Ltd v Axis Bank Ltd* underscores the importance of this definition.

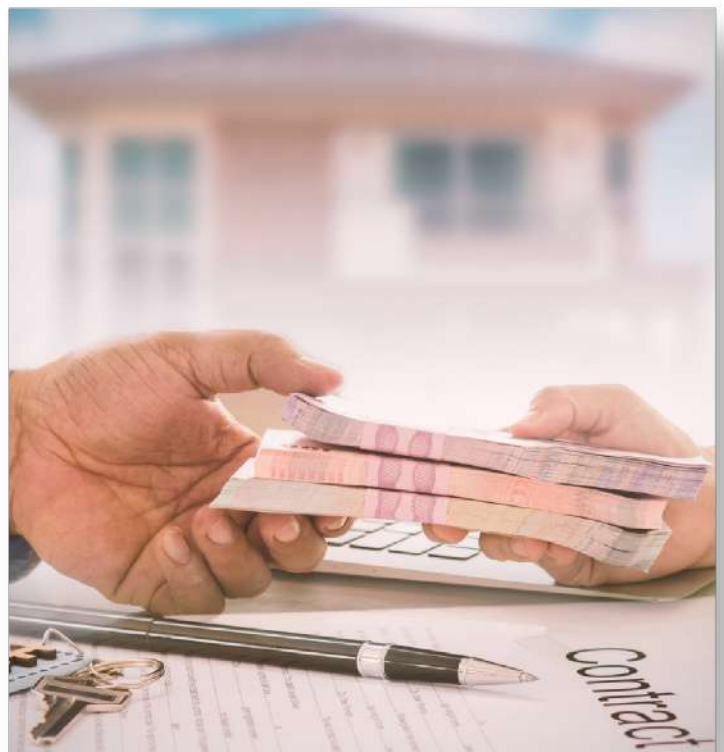
A conventional joint development agreement does not present itself appropriately in this model. The landowner does not typically lend any money to the developer. Rather,

the landowner provides the land and grants development rights in exchange for receiving some compensation in the form of constructed units or a share of sales.

The NCLAT faced such a situation in *Namdeo Ramchandra Patil v Vishal Ghisulal Jain*. The landowners had an entitlement of 45% of the constructed premises based on their development agreement and claimed to be a financial creditor in the course of the CIRP. The NCLAT dismissed this claim because no payment was made based on the time value of money.

The same rationale was applied by the NCLAT in *Ashoka Hi-Tech Builders Pvt Ltd v Sanjay Kundra* where the landowner had provided land under a development agreement and was eligible to receive a part of the saleable construction. The tribunal characterized the landowner as a collaborator rather than as a financial creditor.

Given the current statutory language, it is hard to contest this stance. Land is not money and a development agreement is not simply a financing deal.



THE HOMEBUYER COMPARISON

The comparison with home buyers makes the position even clearer.

Before 2018, home buyers were also in an uncertain place under the IBC. Their payments were based on contracts for acquisition of property rather than regular loans. Thus, the Parliament added the Explanations to Section 5(8)(f), which made it possible to include in financial debts the amounts received from the real estate allottees.

The Supreme Court approved of this decision in *Pioneer Urban Land and Infrastructure Ltd v Union of India*.

The amendment shows the government's readiness to change insolvency rules if important parties, such as real estate owners, are left out of the Committee of Creditors. There is no such classification for landowners despite the fact that their involvement can be crucial for the project – it can be even a prerequisite for the developer's rights.



NOT A FINANCIAL CREDITOR. NOT NECESSARILY AN OPERATIONAL CREDITOR.

If an approach via financial creditor fails, the other possible option to consider is operational debt. Section 5(21) defines operational debt in relation to claims that arise from the provision of goods or services, but it would not be easy to classify the activity of a landowner who grants development rights. This is because the contribution does not fall neatly into either of those categories.

This results in a classification problem because the developer wants the right to develop land for the sake of getting a money-generating activity whereas the landowner expects to receive some return.

When insolvency happens, the landowner contribution may end up not being classified properly.

THEN COMES THE HARDER QUESTION: WHAT HAPPENS TO THE DEVELOPMENT RIGHTS?

This is when things become complicated. In the case of *Victory Iron Works Ltd v Jitendra Lohia*, the Supreme Court looked with interest into the world of property, analysing the difference between the ownership of land and the rights and interests of the developer in regard to property. In this case, it became quite clear why there should be a distinction between the title to the land and contractual development rights.

This distinction became applicable to the case brought by NCLT in Kochi in the case of *Jossy Steephen Kattur v Cherupushpam Films Pvt Ltd*.

In this case, the matter of the Kerala Trade Centre project and development rights arising from joint development arrangement was discussed. The owner of the land raised the question about a wrong interpretation of the project and development rights as regards to the assets of the corporate debtor.

NCLT, in its turn, held that development and allied rights created in favor of the corporate debtor were to be considered an asset for the purposes of the CIRP; however, at the same time, it stated that the ownership of land stayed with the landowner and ordered him to assist in the realisation of the resolution plan.

THE LAND REMAINS THE LANDOWNER'S.

The development rights may form part of the corporate debtor's insolvency estate.

Yet the landowner may have no corresponding position in the Committee of Creditors.

While property rights and creditor rights are separate legal concepts, there is no direct contradiction in doctrine. However, it raises an institutional problem, which is that the procedure may depend on a party with a direct interest in the project without the Code having a clearly defined place for that party.

The Real Problem Is Participation

We should not argue that any landowner automatically becomes a financial creditor. This approach would overreach Section 5(8)'s true meaning. It would also engage in an invalid categorization of land as financial debt.

A stronger argument would be that while both creditor status and the role of stakeholders are important, they do not have to match.

A landowner from JDA has a unique situation, for the owner retains title while the company in debt has the development rights over that land. The problem is that the existing types of creditors do not include some stakeholders whose property interests may be crucial during the process of liquidation.

How should laws be changed?

The framework of the IBC Act must be adjusted so that there is a type of stakeholder who may not have voting powers, but may have other rights. This adjustment would grant the following rights to such stakeholders:

- The right to receive information about some of the steps;
- The right to express one's opinion on some crucial decisions;
- The right to see information related to the development plan;
- The right to receive compensation if one's rights are breached without consideration;
- The right to receive instructions on how to calculate the landowner's stake in the process;
- The right to get information about the power of the landowner in case the liquidation takes place.

At that, the members of the Committee of Creditors will still hold power regarding decision-making.



CONCLUSION

The Indian insolvency framework is not designed around sophisticated joint development modalities. The judgments in *Namdeo Ramchandra Patil* and *Ashoka Hi-Tech Builders* create a strong doctrinal bar against regarding an ordinary JDA landowner as a creditor. There are good reasons for this. However, the issue of development rights is trickier. Do development rights have the potential to be of value to a corporate debtor during the CIRP and do their existence necessitate a degree of cooperation from the landowner? If the answer is 'yes', then does it automatically follow that the landowner is an irrelevant claimant under the process of resolution?

"Not a creditor" is not synonymous to "never participate in the process of insolvency".

The treatment of homebuyers in 2018 shows that Parliament can adjust insolvency mechanisms if the regular categories do not work well. The situation of the JD landowner is different. Although the landowner neither gave a loan, nor provided a service nor voted at the meeting of creditors, it has provided the land from which the project as well as development rights were born. Thus, Indian insolvency law has a dilemma it has not yet resolved: if the development rights can enter insolvency estate, can the legal framework consider the party that owns such development rights an outsider? The fate of real estate insolvency may not lie with re-designating the JDA landowner as a creditor, but rather with accepting that current definitions hardly apply to this category of stakeholders.

SECTION THREE · ARTICLES

03

The Homebuyer's Dilemma: Can Mandatory Arbitration Clauses in Builder-Buyer Agreements Survive RERA?

This article has been authored by:

Bhavi Pungliya

Advocate, Legal Researcher

INTRODUCTION

A homebuyer signs a builder-buyer agreement drafted entirely by the developer, containing a clause requiring all disputes to be referred to arbitration. When the developer delays possession or fails to deliver promised facilities, the buyer approaches the Real Estate Regulatory Authority under the Real Estate (Regulation and Development) Act, 2016 ("RERA"). The developer resists, arguing that the arbitration clause precludes the statutory forum. This captures a recurring tension: standard-form builder-buyer agreements routinely contain arbitration clauses, yet RERA was enacted precisely to correct the structural imbalance between individual purchasers and organised developers. Arbitration promises speed and specialised adjudication, and party autonomy remains a foundational value of contract law; but a purchaser who signs a non-negotiable agreement exercises little genuine choice. This article argues that an arbitration clause should not be treated as an automatic exclusion of RERA remedies. Its enforceability must instead be assessed against the nature of the dispute, the statutory scheme, the arbitrability of the subject matter, and the circumstances in which the clause was accepted.



II. THE AGREEMENT AND THE ARBITRATION CLAUSE

Builder-buyer agreements are almost invariably drafted by developers and presented on a take-it-or-leave-it basis, leaving little room to negotiate individual clauses, including the arbitration clause. This asymmetry does not automatically vitiate consent, but it complicates the assumption that formal acceptance reflects meaningful autonomy.

In *Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan*, the Supreme Court held that a builder could not bind a flat purchaser to contractual terms that were "wholly one-sided and unfair," and that a term is not binding where the purchaser "had no option but to sign on the dotted line" on a contract framed unilaterally by the builder. Although *Pioneer Urban* did not concern arbitration, its reasoning on standard-form unfairness is directly relevant to how an arbitration clause embedded in such an agreement should be assessed.

Section 7 of the Arbitration and Conciliation Act, 1996 defines a valid arbitration agreement, and Section 8 generally obliges judicial authorities to refer parties to arbitration where a valid clause covers the dispute. This article asks whether such reference operates identically where the resisting party is a homebuyer invoking a specialised statutory regime.

III. THE STATUTORY FOUNDATION UNDER RERA

Section 18 of RERA entitles an allottee to withdraw and claim refund with interest, or to remain and claim interest for delay, where a promoter fails to complete construction or hand over possession as agreed. Section 31 allows an aggrieved person to file a complaint with the Authority or adjudicating officer. Section 79 bars civil courts from entertaining any matter that the Authority, adjudicating officer, or Appellate Tribunal is empowered to determine. Properly read, this bar excludes only civil court jurisdiction; it neither expressly extends to arbitral tribunals nor automatically confers exclusivity on RERA authorities over otherwise-arbitrable disputes. Section 89 gives RERA overriding effect over inconsistent provisions in other law,

while Section 88 clarifies RERA remedies are additional to, not in derogation of, other laws. Sections 79, 88, and 89 thus yield no simple answer; each case requires asking whether a clause is genuinely "inconsistent" with the statutory scheme.

IV. THE JUDICIAL JOURNEY

In *Emaar MGF Land Ltd. v. Aftab Singh*, the Supreme Court upheld the NCDRC's view that consumer disputes remain non-arbitrable despite an arbitration clause, reasoning that a complaint under a special welfare statute must proceed regardless. This shows that a contractual arbitration clause cannot automatically extinguish a statutory consumer remedy, but the case concerned the Consumer Protection Act specifically and is not a direct pronouncement on RERA.

In *Imperia Structures Ltd. v. Anil Patni*, the Supreme Court held that remedies under the Consumer Protection Act remain available to allottees notwithstanding RERA, describing remedies under the two statutes, and the Insolvency and Bankruptcy Code, as concurrent, and holding Section 79 bars only civil courts, not quasi-judicial fora. This confirms RERA was not intended to occupy the field exclusively, but concurrent statutory remedies are analytically distinct from a finding that arbitration is unavailable for every RERA dispute. Neither judgment holds arbitration clauses void in the RERA context; both show judicial reluctance to let contractual mechanisms override protective forums without closer inquiry.



V. PARTY AUTONOMY V. STATUTORY PROTECTION

The case for enforcing arbitration clauses rests on genuine values: parties voluntarily agreed to the clause, arbitration resolves technical construction disputes efficiently, and commercial certainty depends on courts respecting bargains as struck. These considerations should not be dismissed merely because one party is an individual consumer. The homebuyer's counterargument centres on standard-form contracting: purchasers rarely negotiate individual clauses, bear disproportionate arbitration costs relative to claim size, and often lack capacity to influence the arbitrator, seat, or procedure chosen. Read with Pioneer Urban's recognition that one-sided, non-negotiated terms may not bind a purchaser, this raises a pointed question: if a homebuyer had no meaningful opportunity to negotiate the clause, should formal acceptance alone suffice to displace a remedy designed to correct that same bargaining imbalance?

VI. WHEN SHOULD AN ARBITRATION CLAUSE BE ENFORCED?

Rather than a blanket rule, a contextual assessment is preferable, informed by five factors: the nature of the dispute, since a straightforward payment dispute sits differently from a claim invoking the Section 18 withdrawal-and-refund mechanism; the nature of the right asserted, whether an ordinary contractual obligation or a right created by RERA; the validity and scope of the arbitration agreement, tested against the four-fold arbitrability framework in *Vidya Drolia v. Durga Trading Corp.*, asking whether a dispute involves actions in rem, affects third parties with erga omnes effect, concerns sovereign functions, or is non-arbitrable under a specific statute, building on *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.* unequal bargaining power, assessed through the Pioneer Urban lens of whether the clause was genuinely negotiated or merely imposed; and whether compelling arbitration would undermine RERA's low-cost protective purpose.

VII. STANDARD-FORM ARBITRATION CLAUSES DESERVE SEPARATE SCRUTINY

A clause stating simply that "all disputes shall be referred to arbitration" conceals significant consequences: it silently determines the arbitrator's appointment, the seat and venue, cost allocation, whether proceedings are institutional or ad hoc, and the purchaser's ability to secure timely interim relief. A purchaser accepting such a clause without negotiation cannot be assumed to have appreciated these downstream consequences. Its mere existence therefore does not establish that arbitration offers a remedy of equivalent accessibility to the statutory RERA process.

VIII. THE ROLE OF MEDIATION

The Mediation Act, 2023 offers a complementary, non-adjudicatory avenue that may suit disputes over delayed possession, payment schedules, or minor defects better than arbitration or formal adjudication. Its relevance is limited but important: the debate need not be framed as a binary choice between RERA and arbitration. A layered model, proceeding from negotiation to mediation before resort to RERA or arbitration, may reduce escalation while preserving statutory protection where genuinely required.



IX. A COMPARATIVE NOTE

Other jurisdictions address mandatory arbitration in consumer and standard-form contracts through enhanced disclosure, substantive fairness review, and, in some sectors, restrictions on pre-dispute mandatory arbitration. These approaches confirm that treating standard-form arbitration clauses as presumptively suspect, rather than binding, is neither unusual nor inconsistent with a functioning arbitration regime; the lesson for India lies in coupling deference to arbitration with a genuine fairness check.

X. A PROPOSED FRAMEWORK

Courts and RERA authorities could adopt a four-part inquiry before enforcing a mandatory arbitration clause against a homebuyer: whether the clause was genuinely negotiated or merely incorporated into a standard-form agreement; whether the dispute concerns an ordinary contractual obligation or a right created by RERA; whether arbitration would impose disproportionate burdens relative to the claim; and whether enforcement would undermine RERA's protective purpose. This framework neither invalidates arbitration clauses wholesale nor treats them as automatically dispositive; it asks the forum to look past the clause's mere existence to its practical effect.

XI. CONCLUSION

Arbitration remains a legitimate, often efficient mechanism, and contractual autonomy retains independent value. RERA, however, exists because individual homebuyers and organised developers rarely bargain on equal terms. An arbitration clause should not, by itself, defeat a statutory remedy; the character of the dispute, the right invoked, and the circumstances of consent must all be examined. Indian jurisprudence should continue moving toward this balance, so that real estate dispute resolution is not a choice between contractual autonomy and consumer protection, but a framework in which efficiency does not dilute substantive statutory rights.

SECTION THREE · ARTICLES

03

The Clause the Builder Wrote for Himself: Can a Developer-Arbitrator Survive RERA?

This article has been authored by:

Piyush Soni

Fifth-Year B.A. LL.B. Student, Symbiosis Law School, Nagpur

If you purchase a flat in almost any Indian metro these days, you will find an arbitration clause somewhere in the builder-buyer agreement, and an interesting fact will usually stand out: a "neutral" arbitrator is actually chosen by the developer, and in some cases, the developer has created a panel from which the arbitrator will be selected. Once the homebuyer discovers that construction is delayed or possession withheld for years, the dispute will be settled by a decision maker the developer, not the allottee, chose. For a field as asymmetrical as real estate, where an allottee negotiates a corporate developer's standard-form contract, this is no longer a hypothetical matter: is such a clause recognizable in arbitration law, and more importantly, in a special statute such as the Real Estate (Regulation and Development) Act, 2016, which was enacted specifically to even out the playing field?

TWO REGIMES, ONE DISPUTE: THE STATUTORY LANDSCAPE.

RERA was designed as beneficial legislation to protect allottees. Section 31 allows any "aggrieved person," including allottees, to file a complaint with the Real Estate Regulatory Authority against a promoter for violations such as delayed possession, deviation from the sanctioned plan, or failure to register a project. Section 18 gives allottees a right to refund, or compensation, if a promoter doesn't finish the development as promised. Sections 43 and 44 create the Real Estate Appellate Tribunal to serve as an avenue of appeal with respect to orders made by the Authority.

The arbitration debate hinges on two provisions. Section 79 bars civil courts from entertaining any suit or proceeding over matters RERA is empowered to determine. Section 88, on the other hand, provides that the provisions of RERA "shall be in addition to and not in derogation of" any other law "for the time being in force", while Section 89 provides

that the provisions of RERA shall be "overriding", notwithstanding anything inconsistent contained in any other law.

Contrary to this is the Arbitration and Conciliation Act, 1996, under which a judicial authority, on receipt of an application and in the presence of a valid arbitration agreement, is bound to refer parties to arbitration under Section 8 — interpreted by the Supreme Court in *P. Anand Gajapathi Raju v. P.V.G. Raju* (2000) as mandatory, leaving only narrow discretion once a valid agreement is shown. The statutory collision is easy to state and harder to resolve: does a valid arbitration clause bar an allottee from approaching the RERA Authority, or does RERA's non-obstante and additional-remedy wording preserve that right?

THE CENTRAL DEBATE: SPECIAL STATUTE VS. PARTY AUTONOMY.

The debate is about the collision of two long-standing and competing principles of Indian law. Some statutes, however, have long been understood in India to create rights in favour of a weaker party by special, beneficial provisions that cannot be waived in a standard, non-negotiated contract, such as an arbitration clause, where the weaker party does not have real bargaining power to negotiate the clause. The issue of whether an arbitration clause trumps RERA jurisdiction falls into this second category and, unsurprisingly, has been addressed by Indian courts by analogy to an identical issue under consumer protection law.



THE AFTAB SINGH PRECEDENT AND ITS RERA AFTERLIFE

Of course, the most important precedent is the NCDRC's 2017 decision in *Aftab Singh v. Emaar MGF Land Ltd.*, affirmed by the Supreme Court in 2018 in *Emaar MGF Land Ltd. v. Aftab Singh*. There, the consumer fora had been approached by home buyers, whose builder-buyer contracts contained an arbitration in their builder-buyer contract. The NCDRC held, and the Supreme Court agreed, that the remedy under the Consumer Protection Act is an additional remedy granted to the consumer which is different from the ordinary civil remedy, and that no provision of Arbitration Act prevents the consumers from invoking this special remedy. The reasoning was based on the previous consumer protection law cases of *Secretary, Thirumurugan Cooperative Agricultural Credit Society v. M. Lalitha* (2004) and *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy* (2012), which both ruled that consumer fora have jurisdiction despite the presence of an arbitration clause.

This line of reasoning has been consistently extended by real estate authorities and High Courts to RERA. Both RERA Authorities (Maharashtra RERA and UP RERA) as well as various High Courts have interpreted Section 88 as preserving other remedies and Section 89 as an overriding, non-obstante provision, and have advanced the argument that an arbitration clause in a builder-buyer agreement does not oust an allottee's statutory rights to approach RERA Authorities under Section 31. Although not actually squarely decided on the arbitration question, the Supreme Court's decision in *Newtech Promoters and Developers Pvt. Ltd. v. State of U.P.* (2021) had bolstered this trend, stating that the right to refund and interest under Section 18 is unrestricted in nature and that RERA is supposed to be a "seamless and comprehensive code" governing the real estate sector, which is hard to reconcile with the position of arbitration clauses being able to completely displace the authority's jurisdiction.



EVEN IF ARBITRABLE, IS THE CLAUSE ITSELF VALID? - THE SECOND FRONT.

If parties do go to arbitration, either as a result of a proceeding under RERA or for other reasons, a second, distinct doctrinal issue arises: whether the developer-drafted arbitrator clause meets the neutrality protections added by the 2015 amendment to the Arbitration Act. The disqualification in Section 12(5) takes effect in conjunction with the Seventh Schedule, which bars from serving as arbitrator those who have certain relationships with the party or the subject matter. In *TRF Ltd. v. Energo Engineering Projects Ltd.* (2017), the Supreme Court ruled that a person rendered ineligible by law to act as arbitrator cannot, for that reason alone, exercise the power to nominate someone else in their place — the power to nominate is extinguished along with the eligibility, regardless of the nominee's own suitability. The principle has been further extended in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.* (2019) where the Court concluded that a clause granting unilateral power to one party to appoint the sole arbitrator is invalid because, in its presence, the other party will not be accorded the benefit of the equal treatment guaranteed by the Arbitration Act.

Such authority was again considered and given significant force by a five-judge Constitution Bench in *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)* (2024) which, by majority, found that the clauses providing for a party to unilaterally choose an arbitrator from a panel which the other party has to accept violate the principle of equal treatment that forms the core of arbitral neutrality. This is new jurisprudence that has been applied to the standard developer-drafted builder-buyer

agreement, which allows the developer to choose or appoint the arbitrators and which is separate and apart from the RERA question of jurisdiction.

A CLAUSE DOUBLY COMPROMISED IS A CRITICAL INSIGHT

Hence, in Indian real estate contracts is vulnerable to challenge on two different grounds, both of which are in the same direction. Firstly, when read in the light of the beneficial character and non-obstante provisions of RERA, the clause cannot take away the allottee's statutory right in the first instance to approach the RERA Authority. Second, even if the dispute does reach arbitration, the TRF–Perkins–CORE line of authority creates a well-founded, neutrality ground for unilateral developer-controlled appointment mechanisms. A clause that survives neither the jurisdictional test nor the impartiality test, leaving almost no room to breathe as drafted.

CONTEMPORARY RELEVANCE

While the real estate sector is gradually recovering from the pandemic, RERA Authorities in all the states are finding that the number of complaints by allottees is on the rise, real estate developers are making changes to their standard-form agreements either by omitting the arbitration clause or by updating the appointment procedure in line with Perkins and CORE. Unilateral appointment of arbitrators is now being identified as a red flag in the scrutiny of the project registration process by regulatory bodies and model agreement formats issued under various state RERA rules, highlighting that they are looking to influence the process, and not only the outcome of such disputes after they have occurred.



THE GOAL IS TO HAVE AUTONOMY WITHIN STATUTORY PROTECTION, NOT IN PLACE OF IT

In fact, the developer-arbitrator clause was always a gambler's bet, in some way, on a structural imbalance: an attempt to channel a weak allottee's grievance via a process that could be easily managed by the stronger party. Over the years, Indian jurisprudence, starting with Aftab Singh's defense of special statutory remedies, and followed by Perkins and CORE's insistence on arbitral neutrality, has gradually shut down that line of attack. The next issue for the sector is less of a legal one and more of a practical one: will actual arbitrators, selected under these revised, Perkins/CORE-compliant clauses, be truly independent or will litigation remain the only way for homebuyers to know?

SECTION THREE · ARTICLES

03

The Homebuyer as Financial Creditor: Navigating the Tri-Jurisdictional Maze of RERA, IBC, and Arbitration in Distressed Real Estate Projects

This article has been authored by:

Damaraju Pradeep Kumar & Dr. Rajbir Kumar

Research Scholar in Law & Associate Professor in Law

INTRODUCTION

The recognition of homebuyers as financial creditors under Section 5(8)(f) of the Insolvency and Bankruptcy Code, 2016 (IBC) fundamentally reconfigured the legal position of allottees in distressed real-estate projects. The 2018 amendment, treating amounts raised from allottees as having the commercial effect of a borrowing, was constitutionally upheld in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*, (2019) 8 SCC 416. That decision affirmed concurrent remedies under the Real Estate (Regulation and Development) Act, 2016 (RERA), the Consumer Protection Act and the IBC, while clarifying that Section 238 of the Code prevails only in the event of actual conflict.

Yet the elevation places the allottee at the intersection of three distinct regimes: RERA's specialised project-level regulation and adjudication; the IBC's collective, time-bound resolution process; and contractual arbitration clauses that seek private determination of disputes. Recent Supreme Court decisions—from *Manish Kumar v. Union of India*, (2021) 5 SCC 1, through *Mansi Brar Fernandes v. Shubha Sharma*, 2025 INSC 1110, *Amit Nehra v. Pawan Kumar Garg*, 2025 INSC 1086, and *Elegna Co-operative Housing and Commercial Society Ltd. v. Edelweiss Asset Reconstruction Company Ltd.* (2026)—have refined the doctrinal boundaries, distinguishing genuine allottees from speculative investors, clarifying locus and moratorium limits, and largely excluding RERA-covered disputes from arbitration. This article examines five critical dimensions of the resulting tri-jurisdictional maze.

I. DOCTRINAL RECOGNITION OF THE HOMEBUYER AS FINANCIAL CREDITOR

Prior to 2018, allottees occupied an uncertain position in insolvency proceedings, as illustrated by the representational vacuum in *Chitra Sharma v. Union of India*, (2018) 18 SCC 575.

The amendment to Section 5(8)(f) remedied this by expressly classifying allottee advances as financial debt. *Pioneer Urban* sustained the provision against challenges under Articles 14, 19(1)(g) and 300-A, holding that the classification rests on an intelligible differentia—homebuyers supply substantial project finance and bear the risk of non-delivery—and bears a rational nexus to the Code's objects of resolution and value maximisation.

The Court further held that homebuyers form a distinct class within financial creditors entitled to initiate Corporate Insolvency Resolution Process (CIRP) under Section 7 and to participate in the Committee of Creditors (CoC) through an authorised representative. Subsequent refinement in *Manish Kumar* upheld the statutory threshold of 100 allottees or 10 per cent of the total allottees of the same project (whichever is lesser) as a reasonable classification designed to prevent opportunistic filings while preserving access for genuine stakeholders. These decisions establish that financial-creditor status is constitutionally secure yet carefully calibrated.

II. THE SPECULATIVE-INVESTOR FILTER AND ADMISSION-STAGE SCRUTINY

Not every allottee is entitled to trigger CIRP. *Mansi Brar Fernandes v. Shubha Sharma*, 2025 INSC 1110, crystallised the speculative-investor doctrine. Allottees whose agreements feature assured returns, buy-back options or high short-term yields, and whose primary object is refund or profit rather than possession, cannot initiate proceedings under Section 7.



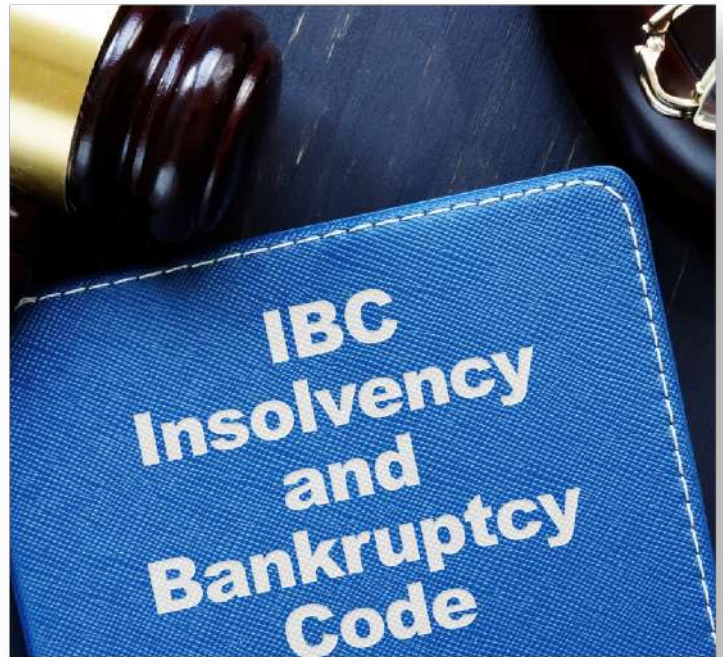
The Court emphasised that the distinction protects bona fide homebuyers, deters misuse of the insolvency framework, and prevents the Code from being converted into a recovery mechanism.

Importantly, the filter operates only at the admission stage. Speculative investors retain the right to file claims for the principal amount invested and to pursue remedies before other fora. Elegna (2026) reinforced that once financial debt and default are established, admission is mandatory; considerations of substantial completion or project viability are extraneous at that stage. Together these rulings ensure that the IBC remains a tool of last resort directed at revival rather than individual recovery.

III. HIERARCHICAL INTERPLAY BETWEEN RERA AND THE IBC

Section 88 of RERA provides that its provisions are in addition to, and not in derogation of, any other law. Section 238 of the IBC contains a non-obstante clause. Pioneer Urban resolved the tension by holding that the statutes occupy different fields and must coexist harmoniously; the IBC yields only where an operational conflict arises. An allottee may therefore pursue RERA remedies for possession or refund until the moratorium under Section 14 intervenes. Upon admission of CIRP, proceedings against the corporate debtor are stayed, yet the underlying claim continues as financial debt.

Amit Nehra (2025) clarified that once a homebuyer's claim is verified by the Resolution Professional and published in the list of financial creditors, it acquires full legal recognition. Such a claimant cannot be relegated to residual or haircut clauses merely because the claim was submitted after CoC approval of the resolution plan. Elegna further affirmed that RERA remains the primary forum for individual grievances, while the IBC functions as a collective mechanism of last resort aimed at project completion.



The moratorium, moreover, protects only the corporate debtor; proceedings founded on the independent liability of promoters or directors may continue.

IV. NON-ARBITRABILITY OF RERA-COVERED DISPUTES

Agreements for sale almost invariably contain arbitration clauses. Judicial authority has consistently held that disputes falling within RERA's regulatory and adjudicatory domain are non-arbitrable. Applying the tests laid down in *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, (2011) 5 SCC 532, and *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1, courts have characterised such disputes as involving rights in rem and public-policy considerations that produce erga omnes effects on the entire body of allottees and third-party interests.

An individual determination on project delay, registration or structural defects cannot be confined to private adjudication without undermining the statutory scheme. The doctrine of election further constrains sequential forum-shopping: once an allottee consciously elects the RERA route for a given cause of action, subsequent invocation of arbitration for the same relief is barred. Pre-dispute contractual clauses cannot oust RERA's specialised jurisdiction, although mutual post-dispute consent to arbitration remains permissible. This jurisprudence safeguards the allottee from being relegated to a private process lacking regulatory machinery and collective perspective.

V. LOCUS, THRESHOLDS, RESOLUTION DESIGN AND STRUCTURAL FRICTIONS

Despite doctrinal clarity, practical frictions persist. Elegna

agreed that a cooperative society or residents' welfare association lacks independent locus to intervene in Section 7 proceedings at the pre-admission stage unless it has itself advanced funds or is a statutorily recognised authorised representative. Creditor status arises from the underlying financial transaction, not from representational capacity alone.

The numerical threshold, while constitutionally valid, can still exclude allottees in smaller projects. Resolution plans frequently prioritise institutional financial creditors, compelling homebuyers to accept deep haircuts even after substantial payment. Although the Insolvency and Bankruptcy Board of India has begun framing sector-specific guidelines following Mansi Brar Fernandes, the general architecture of the IBC remains imperfectly suited to a stakeholder class whose primary interest is the physical asset rather than monetary recovery. Project-wise resolution, mandatory ring-fencing of allottee receivables, and clearer sequencing of concurrent remedies remain unfinished institutional tasks

CONCLUSION.

Supreme Court jurisprudence has constructed a coherent hierarchy within the tri-jurisdictional maze: RERA as the primary specialised forum for individual project-related grievances; the IBC as the collective resolution mechanism of last resort, equipped with an overriding clause in cases of conflict; and arbitration largely excluded from the RERA domain. The homebuyer's status as financial creditor is constitutionally secure, tempered by thresholds and the speculative-investor filter. Verified claims must be given full effect, including possession where feasible, and the moratorium cannot be weaponised by promoters to escape personal liability.



Yet doctrinal harmony has not eliminated structural vulnerability. Genuine allottees still confront high initiation barriers, protracted proceedings and resolution plans that undervalue possession rights. A dedicated real-estate insolvency framework—featuring project-specific CIRP, stronger RERA–IBBI coordination, and explicit prioritisation of completion over pure recovery—remains the logical next institutional step. Until such reform materialises, continuing judicial vigilance will constitute the principal safeguard of the homebuyer's interest in shelter and of the integrity of India's insolvency architecture.



PODCAST SERIES | 2026

PARTNER WITH IIDRC

Podcast

Be Part of Meaningful Conversations.
Build Lasting Impact.

Associate your brand with the IIDRC Podcast — a platform that brings together legal experts, industry leaders and thought leaders for insightful, engaging and forward-looking conversations.



Brand
Visibility



Thought
Leadership



Professional
Networking



Digital
Content Creation

**Get in Touch**

to explore partnership opportunities



+91 92205 25006

www.iidrc.comsaasha@iidrc.com

Manaar Tower, B 28, 3rd floor,
Sector-132, Noida, U.P.

SECTION FOUR · INTERVIEW

04

The Anatomy of a Dispute: Strategy, Judgment, and the Path to Resolution

In Conversation with Satyajit Gupta, Vice President at EXL



Satyajit Gupta is a senior legal leader with extensive experience in corporate law, M&A, governance, compliance, and ESG strategy. As VP and Associate General Counsel at EXL, he leads India & APAC Legal. He has worked with top law firms and actively contributes to global legal forums, mentoring, and thought leadership. He is passionate about building high-performing legal teams aligned with business growth. He loves mentoring law students and young professionals.



Q | Your career spans law firms, media, and now in-house leadership. How has this journey shaped your approach to dispute resolution?

A | If I look back, the biggest evolution in my thinking is that I have become less interested in "winning" disputes and more interested in solving problems.

As a younger lawyer, I was naturally focused on legal arguments and outcomes. Over time, working in media, technology, analytics, and now leading legal and CSR functions, I have realized that disputes rarely start as legal problems. They usually start as communication failures, misaligned expectations, commercial pressures, or human behavior.

Today, when a dispute lands on my desk, my first question is often not, "Who's right?" but "What outcome are we actually trying to achieve?" That mindset has probably saved more disputes than any legal argument I have ever made.

SECTION FOUR · INTERVIEW

04

The Anatomy of a Dispute: Strategy, Judgment, and the Path to Resolution

In Conversation with Satyajit Gupta, Vice President at EXL

Q | From an in-house perspective, how often do legal teams already know the likely outcome of a dispute but still pursue arbitration for strategic reasons?

A | Quite often.
For example, in India's fast-growing technology and outsourcing sectors, companies may have a reasonably clear legal position but still seek an arbitral determination because the underlying issue affects future contracts, service delivery models, intellectual property rights, pricing disputes, or regulatory obligations.
Sometimes arbitration serves an important governance function. Boards, auditors, shareholders, or multinational clients may expect a formal adjudication rather than a negotiated compromise. So while the legal outcome may be reasonably foreseeable, the strategic value of obtaining an independent determination remains significant.

Q | Can ADR play a role in resolving community conflicts?

A | Absolutely, and this is something I feel quite strongly about because of my involvement in CSR and community initiatives.
Some of the most difficult disagreements are not commercial disputes at all. They involve communities, expectations, trust, and perceptions. In those situations, people often want to be heard as much as they want a solution.
I've seen that when stakeholders are genuinely listened to and brought into the conversation early, the outcome is usually far more sustainable than one imposed through formal processes. ADR works because it creates space for dialogue, and in many community situations, dialogue is exactly what's missing.

Q | Arbitration is often praised for confidentiality, but do you think this confidentiality sometimes shields systemic issues or prevents accountability?

A | This is an increasingly important question in India.
Confidentiality is essential in commercial disputes because it protects trade secrets, pricing models, intellectual property, and sensitive business information. However, there are situations where broader public interests may be involved, particularly in sectors connected with public infrastructure, environmental impact, governance failures, or large-scale stakeholder interests.
The challenge is ensuring that confidentiality protects legitimate commercial interests without preventing institutions, regulators, or policymakers from learning from recurring systemic issues. Striking that balance will become increasingly important as India's economy continues to grow.

SECTION FOUR · INTERVIEW

04

The Anatomy of a Dispute: Strategy, Judgment, and the Path to Resolution

In Conversation with Satyajit Gupta, Vice President at EXL

Q | What is one truth about arbitration or dispute resolution that professionals know but rarely say openly?

A | Most disputes become much harder because people become emotionally invested in being right. I've sat in enough negotiations and dispute discussions to know that once a matter becomes about pride or principle, the economics often stop making sense. The uncomfortable truth is that many disputes could be resolved far earlier if parties focused less on winning the argument and more on achieving a sensible outcome.

Q | Have you seen instances where pursuing arbitration was legally sound but commercially unwise?

A | Yes, particularly in industries where long-term relationships matter. Many Indian businesses operate in ecosystems where customers, suppliers, regulators, and strategic partners interact repeatedly over many years. A company may have a strong legal claim and a realistic chance of success, but the cost of damaging a strategic commercial relationship may outweigh the benefit of an award. As in-house counsel, our role is not simply to evaluate legal rights. It is to assess overall enterprise value. Sometimes preserving a 10-year customer relationship is more important than winning a dispute worth a fraction of that value.

Q | With ESG gaining importance, do you foresee new categories of disputes emerging?

A | Definitely. In India, I expect disputes relating to sustainability disclosures, supply-chain practices, workforce welfare, diversity commitments, responsible AI usage, data governance, and climate-related representations to increase significantly. India's corporate sector is already adapting to enhanced ESG reporting obligations and increasing stakeholder expectations. As investors, customers, regulators, and employees place greater emphasis on ESG performance, disputes will increasingly focus not only on what organisations do, but also on what they publicly claim to do. The next wave of disputes may arise from the gap between commitments and execution.

Q | Is ADR in India evolving fast enough to meet the demand?

A | India has made remarkable progress over the past decade. We have seen significant legislative reform, increased judicial support for arbitration, the establishment of stronger arbitral institutions, growing acceptance of mediation, and a conscious effort to position India as a global arbitration destination. However, demand is growing even faster. India's economy is expanding rapidly, foreign investment continues to increase, and cross-border commercial relationships are becoming more complex. The next phase should focus on institutional quality, predictability, availability of specialist arbitrators, and greater adoption of mediation for commercial disputes. The direction is positive, but there remains significant room for growth.

SECTION FOUR · INTERVIEW

04

The Anatomy of a Dispute: Strategy, Judgment, and the Path to Resolution

In Conversation with Satyajit Gupta, Vice President at EXL

Q | If you could change one thing about India's dispute resolution system, what would it be?

A | I would improve predictability and enforceability across the entire dispute resolution ecosystem. Businesses can manage risk. What they struggle with is uncertainty. Whether through courts, arbitration, mediation, or regulatory proceedings, greater certainty regarding timelines, interim relief, enforcement, and finality would significantly improve investor confidence and reduce the overall cost of doing business in India. For a country aspiring to be a major global economic powerhouse, predictability is a competitive advantage.

Q | What shifts have you personally observed in dispute resolution over the last decade?

A | Three shifts stand out. First, disputes have become far more data-intensive. Today's cases frequently involve digital evidence, electronic communications, cloud-based records, and technology-driven investigations. Second, boards are increasingly involved in dispute strategy. Disputes are no longer viewed purely as legal events; they are governance, risk, and reputation issues. Third, India has become far more internationally connected. A dispute may involve Indian law, global data flows, multinational stakeholders, foreign regulators, and cross-border enforcement issues simultaneously. The complexity has increased significantly.

Q | If you had to predict one major transformation in ADR, what would it be?

A | I believe the biggest transformation will be the convergence of AI and dispute prevention. Traditionally, ADR focused on resolving disputes after positions became entrenched. Going forward, AI can help organisations identify contractual deviations, recurring claims, compliance gaps, supplier risks, and early indicators of conflict before disputes formally arise. For a country like India, where the scale of commercial activity is enormous, preventing even a small percentage of disputes could create tremendous economic value. The future of ADR may ultimately be less about resolution and more about prevention.

Q | What skills should young lawyers develop to specialise in ADR?

A | The advice I give young lawyers is simple: don't just study law, study people and business. Of course, you need legal knowledge. That is the entry ticket. But the lawyers who stand out are usually the ones who understand commercial realities, communicate clearly, negotiate effectively, manage relationships, and remain calm when tensions rise. The older I get, the more I believe that exceptional dispute resolution is as much about emotional intelligence and judgment as it is about legal expertise.

Expert Lens: What the Chandrachud Appointment Signals for Investment Arbitration

Hitesh Ramchandani on the Oschadbank Treaty Dispute



Adv. Hitesh Ramchandani

Counsel | Arbitrator | Mediator

Adv. Hitesh Ramchandani is a Counsel, Arbitrator and Mediator with over 13+ years of experience, specialising in contractual disputes and Alternative Dispute Resolution. He has presided as Sole Arbitrator in numerous Arbitration matters and has successfully mediated several disputes. He is empanelled as an Arbitrator and Conciliator with the Hon'ble Bombay High Court and as an Arbitrator with the Hon'ble Punjab & Haryana High Court for the Chandigarh Arbitration Centre. Internationally, he is empanelled with the Dubai International Arbitration Centre, London Court of International Arbitration, Asian International Arbitration Centre, Hong Kong International Arbitration Centre, Thailand Arbitration Centre and among others

The growing participation and recognition of Indian Arbitrators... marks another step towards India becoming a leading international hub for Arbitration.

Appointment of Former CJI Dr. D.Y. Chandrachud as Russia's Nominee Arbitrator in the Oschadbank Investment Treaty Dispute.

The appointment of Dr. Justice D. Y. Chandrachud, former Chief Justice of India, as the Arbitrator nominated by Russia in the Oschadbank investment treaty dispute is a significant development in the field of International Arbitration. The matter raises three important issues in Arbitration: Arbitrator independence, the influence of geopolitical tensions, and the expanding role of Indian Arbitrators.

Arbitrator Independence and Party Appointments

One of the first questions that arises in a party appointed Arbitration is whether an Arbitrator can remain completely neutral. In my view, the answer is yes. The fact that an Arbitrator is appointed by a particular party does not mean that the Arbitrator acts for that party. Party appointment is part of the Arbitral process, while independence and impartiality are continuing duties of the Arbitrator.

Expert Lens: What the Chandrachud Appointment Signals for Investment Arbitration

Hitesh Ramchandani on the Oschadbank Treaty Dispute

The fact that an Arbitrator is nominated by one party does not mean that the Arbitrator represents that party. The real test should be whether the Arbitrator can decide the dispute independently, fairly and on the basis of the evidence and applicable law. Perception of bias and actual bias are not the same. An Arbitrator may appear connected to one side because of the manner in which the Arbitrator was appointed, previous professional associations or the political background of the dispute. That alone should not establish actual bias. The more important question is whether there are objective circumstances suggesting that the Arbitrator cannot decide the dispute fairly and independently.

Parties must be able to raise legitimate concerns, but challenges should not become a strategy to delay proceedings or remove an Arbitrator simply because a party dislikes the appointment or anticipates an unfavourable decision. The credibility of party appointed Arbitration ultimately depends on maintaining a clear distinction between the source of an Arbitrator's appointment and the Arbitrator's duty to the tribunal and the proceedings.

Geopolitics and International Arbitration

International Arbitration is based on legal principles and is intended to provide a neutral mechanism for resolving disputes. However, it would be unrealistic to say that Arbitration operates completely outside geopolitical realities. Investment disputes may arise directly from wars, sanctions, territorial changes, diplomatic disagreements or government actions. These circumstances can make proceedings more complex and sensitive.

Arbitration is therefore designed to remain independent from political considerations, but it cannot always be completely separated from geopolitical tensions. The disputes being brought before Arbitral Tribunals increasingly arise from politically complex circumstances involving sanctions, armed conflicts, territorial disputes, sovereign interests and changing international relations. This does not necessarily mean that Arbitration itself has become political.

Nevertheless, the role of an Arbitral Tribunal is not to resolve political disputes, but to determine the legal issues placed before it. If Tribunals continue to apply the treaty, applicable law and evidence objectively, Arbitration can remain an effective legal forum even during serious geopolitical tensions. Geopolitical tensions may influence the environment surrounding an Arbitration, but they should not determine the outcome of the proceedings. Maintaining this balance will be critical to preserve Arbitration's credibility.

Expert Lens: What the Chandrachud Appointment Signals for Investment Arbitration

Hitesh Ramchandani on the Oschadbank Treaty Dispute

Strategic Choice, Symbolism and India's Emerging Role

The appointment of Dr. Justice D. Y. Chandrachud, former Chief Justice of India, as an Arbitrator can be seen as both a strategic choice and a symbolic one. His long judicial experience, reputation and understanding of complex legal issues make him a significant choice for such an important Arbitration. The appointment may also reflect the value placed on having an experienced and respected jurist on the Tribunal.

At the same time, the appointment sends a positive message about the role of experienced judges in international Arbitration. It carries significance not only for the particular dispute but also for the wider development and credibility of International Arbitration. It may also demonstrate that experienced Indian jurists can contribute to complex international disputes involving States and investment treaty obligations.

This can also be viewed as an encouraging development for India's Arbitration community. Indian judges, Arbitrators and Mediators have increasingly contributed to the international Arbitration and Mediation landscape. Such appointments can demonstrate that Indian legal expertise is capable of contributing to complex international disputes and can strengthen confidence in India as an important participant in global Arbitration.

India has a large and experienced legal community, and Indian professionals are increasingly participating in international Arbitration, Mediation and other forms of dispute resolution. The involvement of Indian Arbitrators in international matters can help showcase the country's legal expertise beyond domestic disputes. If Indian Arbitrators continue to receive appointments in significant cross border disputes, India can build a stronger pool of globally recognised professionals. This could gradually contribute to greater international visibility for Indian Arbitration expertise.

The growing participation and recognition of Indian Arbitrators in international Arbitration marks another step towards India becoming a leading international hub for Arbitration.

— Hitesh Ramchandani

Key Insight:

In assessing arbitral legitimacy, the distinction between perception and reality remains fundamental to preserving institutional trust.

“Perception of bias and actual bias are not the same.” — Hitesh Ramchandani

SECTION FIVE · MORE ABOUT THE INSTITUTION

06

UPCOMING EVENTS

SEP 2026

18

IIDRC OPEN HOUSE

Join us for an informal interaction as we showcase our state-of-the-art center

OCT 2026

03

AAI WEBINAR SERIES

Webinar on ADR in Healthcare: Medical Negligence, Hospital-Contract Disputes & Pharma Licensing Issues

OCT 2026

09-10

LEX PAX 2.0

Mediation Competition hosted by Woxsen University | School of Law
Supporting Organisation: IIDRC

2026

OCT

IIDRC PODCAST SERIES

IIDRC Podcast Series | Launching October 2026
Conversations that matter in dispute resolution

*Stay Updated: Follow **IIDRC & IIDRC Edge** on LinkedIn
and Instagram for the latest news and updates.*

**iidrcedge****IIDRC**
IIDRC Edge

STAY CONNECTED



FOR PROFESSIONALS

Stay plugged into the evolving ADR landscape by joining the official WhatsApp channel.

“IIDRC Notice Board”

Get priority updates on conferences, panel discussions, advanced training programmes, and institutional initiatives led by IIDRC.

This channel is designed for practitioners and experts who want timely insights, meaningful engagement, and a front-row seat to developments shaping dispute resolution in India.



IIDRC NOTICE BOARD
PROFESSIONALS' WHATSAPP GROUP



FOR STUDENTS

Looking to build a strong foundation in arbitration and mediation? Join the official WhatsApp channel.

“IIDRC Students Network”

Receive curated updates from the Institutional and Industrial Dispute Resolution Centre (IIDRC) on **internships, workshops, certificate courses, competitions, and academic programmes.**

Discover opportunities that help you learn, practice, and prepare for a career in dispute resolution right as they are announced.



IIDRC STUDENTS NETWORK
STUDENT'S WHATSAPP GROUP