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THE REDRESSAL MECHANISM UNDER THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT 2016: AN EVICTION OF THE ARBITRATION TRIBUNAL

Abstract:

The Real Estate (regulation and development) Act 2016 was introduced by the Parliament of India for the regulation of the sector of real estate. This act helps in the protection of the innocent buyers as well as providing them with a speeding redressal mechanism. This act helps in providing a break to the irritated buyers who were till now in the pity of the dishonest builders and the litigation. This act even helps in seeking compensation to the consumers which they used to receive from the consumer forums. If we have a close look to the new provisions of this act and the procedure which is used for the filing of complaints then we will observe that because of the formation of two different forums for the enforcement as well as the compensation is leading to the formation of a strange position of law which is further leading to the diversity of the complaints about the same action, due to the unnecessary willpower of the jurisdiction, there is a possibility of having conflicts in the views. This paper will argue in favour of the jurisdiction of the arbitration tribunals so that there can be speedy redressal of the disputes arising in the real estate sector.

Keywords: Regulation, Buyers, Compensation, Forums, Jurisdiction.

Introduction:

The new act which is passes recently known as the Real Estate (Regulation and Development) Act¹ 2016 also referred to as REA was much appreciated and welcomed with open hands by the consumers who were highly irritated because of the money which was stuck in the projects of the real estate sector for many years. These consumers didn't even have the idea that when will the projects get completed and when the consumers will get possession. As compared to the other countries² the real estate sector of India is highly unregulated³ because of which the constructors, contractors as well as builders were taking huge advantage of the consumers⁴. Since a lot of time

¹ The Real Estate (Regulation and Development) Act, 2016.

² Axel derogate, Housing Market Regulations and Housing Market Performance in the United States, Germany and Japan in Social Protection versus economic Flexibility: is there a trade-off? 119, 119-156 (2008).

³ C.f. The Maharashtra Housing (Regulation and Development) Act, 2012

⁴ The Real Estate (Regulation and Development) Act, 2016, §2(zk) (this provision defines a "promoter").

there are reports about the cases where fraud is taking place because the land is not owned by the builders, there are incidents of misrepresentation related to the licenses for the authorities, etc⁵. Due to such incidents there was a huge amount of frustration in the buyers and lots of arguments took place in respect to the builders, there was a huge delay in the delivery of the possession of the property and a delay in providing litigation in the stages of purchasing a property.

Before there was an enactment of REA the buyers had received a break from the forums formed for the consumers which were formed under the Consumer Protection Act 1986 (COPRA)⁶. Even the existence of this act the builders were delaying the process of litigation for many years. To avoid this scenario the builders had started to include the clause of arbitration in the contracts or agreements due to which the buyers had no alternative left for seeking remedy because of the cost of arbitration or because there were buyers who did not know the concept of arbitration⁷.

The Government of India was noticing the dishonest extortion which the buyers were suffering which was passed by the REA because of three primary reasons:

- For the promotion and the regulation of the real estate sector.
- So that the interest of the consumer could be protected in the real estate sector.
- For the formation of an adjudicating mechanism so that there can be speedy dispute redressal.⁸

For the fulfilment of these objectives the REA had developed two forums which were:

- The real estate regulation authority (RERA)
- The adjudicating officer (AO)

The agreements made for real estate contain the clauses for the arbitration so that if any dispute arises then it will be referred to arbitration. Because of the presence of such clauses in an agreement, there is a clash taking place usually against the method which needs to be followed for the dispute resolution. Usually, the choice is given between the REA and the arbitration and Conciliation Act 1996 which is also known as the Arbitration Act. Under section 71 of the REA, the act mentions the compensation which is needed to be paid to the buyer which in turn gets decided by the AO. The act of REA is applied to the projects which are still under construction

⁵ The Economic Times, Top 6 Real Estate Scams and How Home Buyers Can Avoid Them, April 5, 2010, available at <http://economictimes.indiatimes.com/wealth/personal-finance-news/top-6-real-estate-scams-and-how-home-buyers-can-avoid-them/articleshow/46930255.cms> (Last visited on January 13, 2017).

⁶ E.T. Realty, Homebuyers Can Now Move NCDRC Directly Against a Builder, October 13, 2016, available at <http://realty.economictimes.indiatimes.com/news/regulatory/homebuyers-can-now-move-ncdrc-directly-against-a-builder/54823235> (Last visited on January 13, 2017).

⁷ Ben Giaretta, Changing the Arbitration Law in India, September 1, 2015, available at <https://www.ashurst.com/en/news-and-insights/legal-updates/changing-the-arbitration-law-in-india/> (Last visited on February 14, 2017).

⁸ The Real Estate (Regulation and Development) Act, 2016 (as contained in the preamble).

which even examines the authenticity and the validity of the clauses of arbitration present in the builder- buyer agreements.⁹

Protecting buyers:

The new act of REA is developed for the protection of innocent buyers who spend all of their life savings in the real estate sector¹⁰. Before this act came into force the buyers and builder's relationship were managed and regulated under the sole basis of the agreement, they signed therefore any person who had no experience or had no proof of their finance used to enter into the real estate projects and used to execute them¹¹. Further, there were no qualifications mentioned which were needed to become a builder. The builders used to take advantage of the same and used to exploit the buyers.¹² The builders used to deceive the consumers by actually forming new schemes through which they could get the hard-earned money of the buyers and didn't have to comply with the agreed terms. After this, the builders did not complete the projects on time and they used the money of the buyers in the existing projects.

For the protection of the buyers, the REA had made several new provisions were formed which were quite stringent and had further helped the buyers to increase their bargaining powers. Now there is a rule that there is a need for the builders to register their project under the RERA act from the time of their marketing except for the projects in which the land area is not exceeding the 500 sq. Meters or is eight apartments¹³. The projects which are already started to build but have still not received a certificate of occupancy, such projects also need to get themselves registered under the RERA act.

When the builder gets the registration done under the REA at that time the builder is required to submit the provision of the performers of the agreement and additionally there is a need to file an affidavit wherein it is mentioned that how much time the builder requires to complete the project. The affidavit even states the amount which the builder receives from the buyers, the seventy percent of that amount needs to be deposited in a separate bank account. Through this, there will

⁹ Hindustan Times, Compensation Clause in Builder-Buyer Agreement is Unfair, One-Sided, July 18, 2015, available at <http://zeus.firm.in/wp-content/uploads/Compensation-clause- in-builder-buyer-agreement-is-unfair-one-sided.pdf> (Last visited on February 14, 2017);

¹⁰ The Economic Times, Consumer Activism: Buoyed by Social Media and Pro-Consumer Courts, Homebuyers Take on Errant Builders, October 22, 2014, available at <http://economictimes.indiatimes.com/wealth/personal-finance-news/consumer-activism-buoyed-by-social-media-and-pro-consumer-courts-homebuyers-take-on-errant-builders/articleshow/44903267.cms> (Last visited on February 14, 2017).

¹¹ Malathi Iyengar, Real Estate (Regulation and Development) Bill – What's in it for Home Buyers?, April 20, 2015, available at <http://emicalculator.net/real-estate-regulation-and-development-bill-what's-in-it-for-home-buyers/> (Last visited on February 14, 2017).

¹² Lalit Wadhvani, Passage of Real Estate Bill: Blessing for Both, Home Buyers & Developers, March 29, 2016, available at <http://www.freepressjournal.in/mumbai/>

¹³ Id., §3(2).

be a surety that the cost which is required for the building of land will be covered through that amount.

Further, the REA provides the statutory recognition to the class action suit through which the recognition is provided to the locus standi of any association of the buyers which is further registered under any law. This is now recognized by the national consumer redressal commission for solving the disputes arising in consumers under the COPRA¹⁴. Before the introduction of this act, the consumers had to file separate complaints about their grievances such as the delay in possession or the quality of the construction, etc.¹⁵

The REA has even introduced new compliances and has reported the requirements. There is a requirement that the REA needs to have the new updates and regular intervals and then all those updates need to get published on the site of RERA.¹⁶ The agents of the real estate which are also known as the brokers are needed to register themselves under the act of RERA before they can start the sale or purchase of any property.¹⁷ Further, there is a need that they always show their registration numbers before even they do any transactions. There is a need according to the rules of REA that the brokers have proper accounts prepared as well as the documents ready failing which will amount to the unfair trade practices.

REA provides the buyers with a right that they can seek compensation by the builders or they can even withdraw the entire investment and can even ask for interest if they find out that the builder is guilty of misrepresentation concerning the prospectus. The builders cannot even claim for more than 10 percent of the amount of the apartment or any plot or building at the moment they have entered into the contract of sale.

Under the REA there is a legal obligation on the builder for the formation of the project of real estate according to the blueprints set and the specifications which are approved by the concerned authorities. The builder has to execute the sale deed which is in the favour of the buyer within three months from the date of receiving the certificate of occupancy¹⁸.

¹⁴ Ambrish Kumar Shukla v. Ferrous Infrastructure (P) Ltd., 2016 SCC Online NCDRC 1117.

¹⁵ Raheja Vedanta, Invite All Flat Buyers to Join the Case Through Public Notices – Consumer Forum, October 1, 2015, available at <http://www.thelogicalbuyer.com/blog/invite-all-flat-buy-ers-to-join-the-case-through-public-notices-consumer-forum/> (Last visited on February 14, 2017).

¹⁶ The Real Estate (Regulation and Development) Act, 2016, §11(1).

¹⁷ Id., §2(zm) (this provision defines a “real estate agent” as:

“ “real estate agent” means any person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, by way of sale, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services whether as commission or otherwise and includes a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen by whatever name called.”).

¹⁸ Id., §17 (§2(zf) defines an “occupancy certificate” as:

According to the provisions of REA, there will be a return of investment within a particular period¹⁹. The buyer has the full right to claim for the return along with the interest after providing the reason for the withdrawal of the project.²⁰ The buyer even has the right that they can claim for interest every month till the time they have handed over the possession within the forty-five days from the due date of the refund or the interest.²¹

Therefore, REA has added many legal obligations on the builders and has even provided the rights to the buyers which were previously not given statutory recognition and were in turn exploited by the sellers.²²

Redressal:

The main objective of REA is to provide speedy dispute redressal by the formation of a specialized body for the same²³. This is due to the consumer forums which are sensitive about the rights of the consumers but still, they are not able to provide speedy litigation therefore are causing delays in the litigation in India²⁴. The builders take advantage and try to adopt a policy that will tire out the buyer and will thus lead them to have a meager settlement or even such policies sometimes frustrate the customer so much that it can lead to them withdrawing the legal action taken²⁵. The consumers will have to do a lengthy task to get their legal action enforced like first they will have to go to the district forum then they will have to go to the state forum and then finally to the national forum which in turns becomes a lengthy as well as expensive for the buyers²⁶. The builders to avoid the litigation process add the clause of arbitration and then hire a top-class legal counsel so that they can stay safe from the process of the litigation²⁷.

To provide the remedy to the consumers the REA has introduced a body for resolving the disputes in the real estate sector known as the RERA²⁸. The REA also has the same guidelines of providing the period for the disposal of the appeals which is Sixty Days so that the appellate

““occupancy certificate” means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has the provision for civic infrastructure such as water, sanitation and electricity.”)

¹⁹ Chandigarh Real Estate (Regulation and Development) (General) Rules, 2016, Rule 16.

²⁰ The Real Estate (Regulation and Development) Act, 2016, §§12, 18(1).

²¹ Id., §18(1); Chandigarh Real Estate (Regulation and Development) (General) Rules, 2016, Rule 15 (they provide that interest payable by the builder shall be the State Bank of India highest Marginal Cost of Lending Rate plus two percent).

²² Chandigarh Real Estate (Regulation and Development) (General) Rules, 2016, Rule 16

²³ The Real Estate (Regulation and Development) Act, 2016 (as contained in the preamble).

²⁴ Supra note 5

²⁵ India Today, The Long, Expensive Road to Justice, April 27, 2016, available at <http://india-today.intoday.in/story/judicial-system-judiciary-cji-law-cases-the-long-expensive-road-to-justice/1/652784.html> (Last visited on February 14, 2017).

²⁶ Consumer Protection Act, 1986, §§11, 15, 17, 19, 21, 23.

²⁷ The Chambers of Law, Do Not Fall Prey to One-Sided Builder Agreements, May 13, 2013, available at <http://www.tcl-india.net/node/19> (Last visited on January 13, 2017).

²⁸ The Real Estate (Regulation and Development) Act, 2016.

tribunal²⁹ can dispose of the appeals so that the consumers do not have to face any delay for their justice as provided by the consumer forums. The RERA does not only provide adjudication rather they even include the regulation, promotion as well as the monitoring of the real estate sector.³⁰

According to the act of REA under Section 12, 14, 18, and 19³¹ it is providing with the AO for the adjudging of the compensations. Therefore, the Rea is providing two forums which are RERA which can be used for filing a complaint against any violation taking place in the REA and the AO which can help in providing compensation.³²

If a person gives a reading to Section 31(1) of the REA³³ then it will be clear that they provide the independence and the separation of the proceedings of both the forums. This can even be clear from the Chandigarh Real Estate (regulation and development) Rules 2016. It is not clear that what is the reason for the legislature to create two separate forums for the redressal particularly when in Section 72 of the REA explains clearly the factors which are required for the adjudication compensation³⁴. The main objective of the legislation is to provide speedy justice and will be forming various forums so that the rights can be enforced properly and will further defeat the whole purpose of the law³⁵.

Another fundamental aspect of the redressal mechanism as mentioned under REA is that it does not expel the jurisdictions of the consumer forums. Section 71 of the REA states that the buyer will have to right to pull out the litigation which is pending under a consumer forum and will have the right to file a complaint under the AO for seeking compensation³⁶ for the benefit of buyers that they do not have to withdraw their proceedings the complaints can get transferred to the AO so that they get speedy redressal.

²⁹ Id., §44(5).

³⁰ Id., §11.

³¹ Id., §71(1).

³² Id., §31(1)

³³ Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.”).

³⁴ Id., §72 (provides that:

“While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:— (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; (b) the amount of loss caused as a result of the default; (c) the repetitive nature of the default; (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.”).

³⁵ Id., §4(2)(1)(C).

³⁶ Id., Proviso to §71(1) (provides that:

“Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.”).

The multiple forums which are formed for the adjudication do not facilitate in the speedy redressal. The legislature has the right to stop the jurisdictions of other courts which include the consumer forums and can form another forum known as RERA in which only one officer will decide the amount of compensation to be provided to a person as per Section 72 of the REA. This act will facilitate the disposal of the complaints in a speedy manner and more efficiently without a further multiplicity of the claims. Due to this act, there are aforesaid remedies as well as arbitration.

Arbitration of disputes:

The Arbitration Act does not specify the specific terms in which kinds the disputes can be amended to arbitration. The arbitration bar is mentioned under Section 34(2)(b) and Section 48(2) of the arbitration act which states that an award can get easily challenged if the topic on which the dispute is taking place is not arbitrable³⁷. In a general sense any dispute which is arising and is of a nature of either Civil or Commercial and arises due to a contract or anything else then the principle of arbitration will apply.³⁸

The Test of the Nature of Rights:

This is the most essential test which needs to take place which helps in determining that a particular test will fall under the capability of being adjudicated or can be resolved by the help of a tribunal. In the Case of **Booz Allen**, the supreme court had explained about the differentiation between the rights in rem as well as the rights in personam. The court had further added that the rights in personam could be considered as the arbitrable rights and the rights in rem are not arbitrable rights. The rights in rem are available against the world and the rights to personnam are only available to the person³⁹. The court further added that this differentiation is not rigid rather it can get changed according to the situation but the subordinate rights of personnam which are arising out of the rights in rem are arbitrable⁴⁰.

The court had expressed their view⁴¹ that some categories about the proceedings which are kept aside for the public forums for the public policy and the parts which are not kept aside can get excluded from the purview of the private forums. For instance, if there is a suit related to the mortgage and is decided by the court as a provision of the transfer of property act 1882 and the order 34 of the code of civil procedure 1908 can be barred from adjudication by the tribunals.⁴²

³⁷ Booz Allen and Hamilton, Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532, ¶35

³⁸ Id., ¶29.

³⁹ P.J. Fitzgerald, *Salmond on Jurisprudence* 235 (12th ed., 2009) (states:

“My right to the peaceable occupation of my farm is in rem, for all the world is a under a duty towards me not to interfere with it. But if I grant a lease of the farm to a tenant, my right to receive the rent from him is in personam.”).

⁴⁰ Id., ¶21

⁴¹ Booz Allen and Hamilton, Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532, ¶41

⁴² Id., ¶48

In the Case of **Haryana telecom ltd vs Sterlite industries ltd**⁴³ the supreme court had decided that the winding up of the petition is not done for the money and the power of the ordering of the winding up of the company can be emanated by the companies act. Therefore, it can be inferred that the winding up of the company cannot be related to the arbitration⁴⁴. And further, the granting of the probaton is the judgment of in rem which is not within the jurisdiction of the tribunal.

On the other hand, the supreme court had said that the matters which are related to the particular performance of the sale is within the contractual rights and the order which is related to the litigation in the courts then the performance of the contractor which is related to the immovable property cannot be considered under the test of the arbitrability under the arbitration act⁴⁵.

The Test of the Relief Sought:

Under the case of Bombay high court, **Rakesh Malhotra vs Rajinder Kumar Malhotra**⁴⁶, the court had held that the arbitration is not capable of granting the relief of the affairs of the company therefore it cannot be considered as the subject of arbitration. In the same way in the case of **the Eros, international media ltd vs Telemax links India ltd**⁴⁷ the Bombay high court had said that the rights of the contract which is related to the copyrights fall within the subject matter of the arbitration. Therefore, it can be inferred that the Bombay high court has formed the test of arbitration on the sole basis of the relief by the parties and not by the distinction caused in the parties' legal rights⁴⁸.

But if the Booz Allen test is applied to the arbitrability of the disputes related to the affairs of the company then it will fall within the subject matter of the rights in personam and therefore it will be considered to be arbitrable. But if the test of relief is applied then the dispute would be considered to be unarbitrable⁴⁹. Therefore, we can say that no test is capable of being conclusive in determining the arbitrability of the disputes.

The Test of Social objectives and Public policy:

The most Landmark Judgment on the disputes relating to arbitration is **the Natraj studios ltd vs Navrang studios**⁵⁰. In this case, it was held that if the statutory remedy is present and the law has established a particular body then the parties should be provided with the permission to form a contract that is out of the statute. The Supreme court of the three-judge bench had decided that the dispute which had taken place between the landlord and the tenant was controlled by the

⁴³ Haryana Telecom Ltd. v. Sterlite Industries (India) Ltd., (1999) 5 SCC 688.

⁴⁴ Id.

⁴⁵ Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan, (1999) 5 SCC 651; Keventer Agro Ltd. v. Seegram Co. Ltd., APO No. 499 of 1997 and CS No. 592 of 1997, decided on 27-1-1998 (Cal) (Unreported).

⁴⁶ Rakesh Malhotra v. Rajinder Kumar Malhotra, 2014 SCC Online Bom 1146

⁴⁷ Eros International Media Ltd. v. Telemax Links India (P) Ltd., 2016 SCC Online Bom 2179

⁴⁸ Arthad Kurlekar, A False Start – Uncertainty in the Determination of Arbitrability in India, June 16, 2016, available at http://kluwerarbitrationblog.com/2016/06/16/a-false-start-uncertainty-in-the-determination-of-arbitrability-in-india/?_ga=1.183326437.2138946090.1480056927 (Last visited on January 13, 2017).

⁴⁹ Id

⁵⁰ Natraj Studios (P) Ltd. v. Navrang Studios, (1981) 1 SCC 523; (1981) 2 SCR 466.

Bombay rent act therefore it would not be considered to be arbitrable rather it will fall within the ambit of the small clauses court at Mumbai. The legislature had further conferred the jurisdictions on the certain courts for the achieving of various small objectives⁵¹. Further, the court had held that there is a need for the parties to be disallowed to enter into a contract that is formed out of a statute or is mandatory for the specific legislature. Thus, it can be inferred that if the civil court jurisdiction is not taken into consideration and the exclusive jurisdictions are provided with specific courts or the tribunals on the topic about public policy then such dispute would not be considered to be the topic of arbitration⁵².

The Supreme court has viewed the clause of arbitration which will further not bar the jurisdiction of the COPRA⁵³. This is true because the remedy is provided in addition to any other law and is considered to be optional.

In the case of **HDFC bank Ltd vs Satpal Singh Bakshi**⁵⁴, it was held by the full bench of the Delhi high court that the parties should be provided with the chance to freely select the forums they want as per the situations for the dispute resolution despite the formation of the specialized tribunals. It can be said that such reasons were not provided to form a conclusion that is favouring arbitration rather it was given so that an alternative type of dispute resolution could be taken into consideration. The court had further added that the matters which are still not decided in the civil courts can even be referred to the Lok Adalats, Mediation, Conciliation, etc. Therefore, even after the formation of the specialized tribunals, the parties have the chance to choose their disputes to arbitration⁵⁵.

The Application of the Tests to the Disputes under the REA:

If the judgment provided by the supreme court in the case of Booz Allen is taken into consideration then it would be inferred that the violations of the provisions as provided in the REA then the rights of the rem will be seen as the violation of the builder is affecting all the buyers and not only an individual. Furthermore, the violation will be considered to be within the realm of the regulation and the real estate sector therefore it will be affecting the entire public. On the contrary, Sections 12, 14, 18, 19 which can be read with section 71 of the REA is related to the claim of compensation will fall within the ambit of the rights in personnam. Therefore, it can be inferred that if there is a violation in the REA then there will be no arbitration and if there is a compensation claim then there will be arbitration.

⁵¹ Id., ¶21

⁵² A. Ayyasamy v. A. Paramasivam, (2016) 10 SCC 386; (2016) 5 Arb LR 326 (SC), ¶32.

⁵³ Consumer Protection Act, 1986, §3 (provides that “The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.”).

⁵⁴ Skypak Couriers Ltd. v. Tata Chemicals Ltd., (2000) 5 SCC 294; National Seeds Corpn. Ltd. v. M. Madhusudhan Reddy, (2012) 2 SCC 506

⁵⁵ Id. (the Court held, “While courts are State machinery discharging sovereign function of judicial decision making, various alternate methods for resolving the disputes have also been evolved over a period of time. One of the oldest among these is the arbitration.”).

If the case of Bombay High court is taken into consideration then it will be inferred that the outcome will be almost the same as the relief which was claimed for the violations of the REA therefore it cannot be arbitrable. On the contrary, the claim for the compensation would be arbitrable because it is a private dispute among the buyer and the constructor.

It can be said that there are various dangers in this view because in the case of the Booz Allen test there is always been a confusion that according to the nature of rights it involves the right in rem or right in personam. Just like there is a delay in possession then there is a Violation of Sections 61, 18, and 19 of the REA. Just in the same way, some people try to seek reliefs which do not fall within the scope of the arbitration.

Thus, the test of the nature of rights the relief gained cannot be conclusive because it is difficult to determine that the disputes which are arising under REA can be referred to in arbitration. The main aim of the formation of REA was to enact the addressing of the delay in the litigation process and so that speedy redressal could be provided. And providing the jurisdiction of the RERA and AO in the favour of the tribunal which will in turn dismiss the sole purpose of REA.

The purpose of this is that the process of arbitration is really expensive for the buyers and they would not even be provided with the protection under the REA related to the refund of money, interest, and any other kinds of protection as specified under the act. The main objective of the regulation and monitoring of the real estate sector will also get weak because the complaints and the grievances are not even reaching or registering under the RERA but are in turn just transferred to the tribunals.

The Results of the Arbitration and Conciliation Act 2015:

The Establishment of the Validity of the arbitration clauses concerning REA is one of the essential considerations because there is a need to take consent from the parties before taking their dispute to the tribunal⁵⁶. After all, for the arbitration, there is a need for consent. There are situations where the contract formed between the builder and buyer contains the terms which are mostly formed for the favouring of the builder⁵⁷. These agreements are formed in a way that only the buyer will have to sign the document without giving them the chance to properly read the agreement or take the papers to a lawyer for legal advice⁵⁸.

The decisions related to the arbitrability was passed before the act of arbitration⁵⁹ was enacted. After the amendment took place the section 8(1) states that “ despite any decision, decree or any order of the supreme court or any other court” the judicial body has to take the parties for arbitration unless a situation arises which is Prima Facie that there is no agreement which is valid for arbitration⁶⁰. But under Section 8 of the Act, it clearly states that the court must refer the

⁵⁶ Alan redfern and martin J.Hunter law and Practice of international commercial arbitration (4th ed. 2004).

⁵⁷ LIC v. Consumer Education and Research Centre, (1995) 5 SCC 482.

⁵⁸ Superintendence Co. of India (P) Ltd. v. Krishan Murgai, (1981) 2 SCC 246: (1980) 3 SCR 1278.

⁵⁹ The Arbitration and Conciliation Act, 1996.

⁶⁰ Id., §8(1) (provides that:

parties for arbitration⁶¹. Therefore, it can be said that the law after the amendment should be considered to be final and the parties should be referred to arbitration⁶².

In the case of **Ayyasamy vs A Paramasivam**⁶³, the supreme court had held that the section 8 of the UNCITRAL model law facilitates that court to cancel the reference of arbitration and had said that the section of the act uses the word judicial authorities rather than using the word court. Therefore, the presence of the clause of arbitration in the agreement would make it necessary for Section 8 of the arbitration act for the parties to go to the tribunals⁶⁴. But there is no clear indication that what all can be referred to as arbitrable and there is a need to form new laws which will turn make it clear that what all matters are arbitrable and what matters are not.

The ouster of the arbitration and tribunals:

Section 88 of the REA states that REA should always be a supplement to and should not be a derogate for any other law. If this provision is read by someone the conclusion which is mostly drawn is that arbitration is an alternative and is an option for the parties⁶⁵. But the section 89 of the REA act states that, the provisions of this act should be properly enforced despite anything inconsistent in any law for the time when it is in force, accordingly, it can be presumed that Section 89 of the REA has an additional impact and not detract. Therefore, if there is a proper reading of both the sections then it can be clear that the provisions of REA will prevail in the arbitration act. But if the interpretation is done then Section 8(1) of the arbitration act makes it necessary for the reference of every case or dispute to the tribunal even when there is an arbitration clause. Therefore, there is a conflict between the two acts of REA and the Arbitration act that will be prevalent in the real estate sector. When any such dilemma arises then the only way to solve the problem is by using the principles of statutory interpretation.

- The REA is considered to be a social welfare law and will in turn help in the protection of the consumers. Therefore, according to the case of **Natraj studios**⁶⁶, the jurisdiction is provided to the RERA and AO and because of which the jurisdiction of the tribunals is excluded because they are the matter of the public policy⁶⁷. Even after applying the

“A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exist.”)

⁶¹ P. Anand Gajapathi Raju v. P.V.G. Raju, (2000) 4 SCC 539.

⁶² Sundaram Finance Ltd. v. T. Thankam, (2015) 14 SCC 444; AIR 2015 SC 1303; Magma Leasing & Finance Ltd. v. Potluri Madhvilata, (2009) 10 SCC 103.

⁶³ A. Ayyasamy v. A. Paramasivam, (2016) 10 SCC 386; (2016) 5 Arb LR 326 (SC).

⁶⁴ Id

⁶⁵ Skypak Couriers Ltd. v. Tata Chemicals Ltd., (2000) 5 SCC 294; National Seeds Corpn. Ltd. v. M. Madhusudhan Reddy, (2012) 2 SCC 506.

⁶⁶ Natraj Studios (P) Ltd. v. Navrang Studios, (1981) 1 SCC 523; (1981) 2 SCR 466.

⁶⁷ Hindustan Lever Ltd. v. Ashok Vishnu Kate, (1995) 6 SCC 326.

principles of literal interpretation the Section 89 of the REA shows that the REA act will supplement all other legislations and the arbitration act will be applied⁶⁸.

- It has been said from a very long time that the conflict which is arising between the two statutes that the specific legislation will be overriding the general legislations. This phrase is derived from the Latin Maxim i.e. *Generalia Specialibus Non-Derogant* which is perceived as the common law yields to a specific law, as they should excise in the same domain and on the general subject⁶⁹. REA has been introduced for the regulation of the real estate sector and so that the consumers receive speedy justice therefore the clauses which are related to the arbitration should be considered to be invalid.
- The cost of having arbitration is very expensive and the process is quite confusing because of which various consumers do not understand the concept. The REA has the main objective of providing speedy redressal and enabling the consumers to use any redressal mechanism they wish too as stated in the case of HDFC bank⁷⁰. According to the REA,⁷¹ the cost of seeking redressal is low and the buyers will be able to appear before the authorities.⁷²
- The REA enables for providing of the strict timelines for the refund of money like it provides only forty-five days⁷³ and even seeks an interest which is more than the rate of the bank⁷⁴. The relief which the REA provides to the consumers cannot be received through tribunals because a standard will apply to all consumers and will always depend upon the facts of the case and the choice of the tribunals that they want to provide those reliefs or not.

Conclusion:

There is an immense need for the Enactment of REA and will help in the Protection of the interest of the buyers. This act will protect the buyers from the loop sided agreements and the long process of litigations just for seeking the enforcement of their rights. Through REA transparency can be introduced which will help in cutting down the number of frauds which are taking place in the real estate sector and will help in providing of the statutory recognition to the rights of the buyers which were not provided before as the buyers didn't receive the rights of negotiating freely with the builders for the agreements.

It is necessary to do the registration by the builders and the brokers because it will help in the addition of the credibility of the builders and the consumers will be capable to purchase the property with certainty. Through the introduction of RERA and AO, the buyers who used to invest so much in the real estate sector will be able to receive a huge relief because before they

⁶⁸ Govt. of A.P. v. Road Rollers Owners Welfare Assn., (2004) 6 SCC 210

⁶⁹ CTO v. Binani Cement Ltd., (2014) 8 SCC 319; (2014) 3 SCR 1.

⁷⁰ HDFC Bank Ltd. v. Satpal Singh Bakshi, 2012 SCC OnLine Del 4815.

⁷¹ Fair Air Engineers (P) Ltd. v. N.K. Modi, (1996) 6 SCC 385; AIR 1997 SC 533.

⁷² Chandigarh Real Estate (Regulation and Development) (General) Rules, 2016, Rules 34, 35 (provide that INR 1,000/- is required for complaints to be filed).

⁷³ Chandigarh Real Estate (Regulation and Development) (General) Rules, 2016, Rule 16.

⁷⁴ Id., Rule 15.

had to run so much for gaining possession or taking a refund of their money. Through the verification of the titles, blocking of the seventy-five percent of the money has helped the buyers because now there is timely completion of the projects. Through this act the builders will not start the projects without the required capital and if they cannot even complete those projects. There is a conflict taking place between the REA and the arbitration clause because the REA even applies to the projects which still not have received the certificate of occupancy. Therefore, the arbitration clause which exists in the builder- buyer agreement creates a conflict among the redressal mechanism of the two acts.

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