



January 2025

Jurisdiction of the Real Estate Regulatory Authority will not be ousted inspite of an arbitration clause in an agreement for sale

Recently the Hon'ble Bombay High Court ("**Bombay HC**"), while deciding a second appeal in the case of *M/s. Rashmi Realty Builders Pvt. Ltd. vs. Mr. Rahul Rajendrakumar Pagariya and Ors.*¹ *inter alia* held that the jurisdiction of the Real Estate Regulatory Authority established under section 20 of the Real Estate (Regulation and Development) Act, 2016 ("**RERA**") will not be ousted notwithstanding an arbitration clause in the agreement entered into between the promoter and the allottees.

Brief facts

1. The Appellant ("**Promoter**") and the Respondents ("**Allottees**") executed a Memorandum of Understanding ("**MOU**") recording that the Promoter had agreed to allot a residential unit/ flat to the Allottees for consideration and in case of any dispute the same be referred to a sole arbitrator to be appointed by the Promoter and the award passed will be binding on both parties.
2. Subsequently, disputes arose as despite having made substantial payment, the Promoter failed to finish the construction work within the stipulated time.
3. The Allottees filed a complaint for refund alongwith compensation before the Maharashtra Real Estate Regulatory Authority ("**MahaRERA**") under Section 31(1) r/w Section 18 of the RERA. MahaRERA ruled that since the parties are yet to enter into a registered agreement for sale, the provisions of Section 18 of the RERA are not applicable and dismissed the complaint.
4. The order of MahaRERA was challenged by the Respondents before the Maharashtra Real Estate Appellate Tribunal ("**Tribunal**"). The Tribunal allowed the appeal and set aside the order passed by MahaRERA and directed the Appellant to refund the amount along with interest from the date of payment till realisation at the rate of highest marginal cost of lending rate of State Bank of India plus 2%. This order of the Tribunal came to be challenged by way of a second appeal before the Bombay HC.

Issue

The Bombay HC in the second appeal framed the following substantial question of law:

"Whether the jurisdiction of Real Estate Regulatory Authority established under Section 20 of the Real Estate (Regulation and Development) Act 2016 is ousted, if the agreement between the promoter and the allottee contains arbitration clause"

¹ 2024: BHC-AS:50612

Findings and analysis

1. All disputes relating to rights in *personam* are considered to be amenable to arbitration and all disputes relating to right in *rem* are required to be adjudicated by courts and public tribunals, being unsuited for arbitration.
2. The doctrine of election to select arbitration as a dispute resolution mechanism is available only if the law accepts existence of arbitration as an alternate remedy. There should not be any inconsistency or repugnancy between the provisions of the mandatory law and arbitration as an alternative.
3. A dispute covered by RERA cannot be termed as a right in *personam* as a decision will affect the rights of other allottees as well as the rights of association of allottees (*erga omnes* effect). Upon examining the provisions of RERA, it is clear that special rights are created and for enforcement of the same special forums are established for ensuring enforcement and execution of these rights. Moreover, RERA being a special statute, the disputes under RERA would override the general statute being the Arbitration and Conciliation Act 1996.

Conclusion

A dispute covered under RERA is non-arbitrable in nature and the jurisdiction of RERA is not ousted even if an agreement between the parties contains an arbitration clause.

Disputes Practice

With domain experts and strong team of dedicated litigators across the country, JSA has perhaps the widest and deepest commercial and regulatory disputes capacity in the field of complex multi-jurisdictional, multi-disciplinary dispute resolution. Availing of the wide network of JSA offices, affiliates and associates in major cities across the country and abroad, the team is uniquely placed to handle work seamlessly both nationally and worldwide.

The Firm has a wide domestic and international client base with a mix of companies, international and national development agencies, governments and individuals, and acts and appears in diverse forums including regulatory authorities, tribunals, the High Courts, and the Supreme Court of India. The Firm has immense experience in international as well as domestic arbitration. The Firm acts in numerous arbitration proceedings in diverse areas of infrastructure development, corporate disputes, and contracts in the area of construction and engineering, information technology, and domestic and cross-border investments.

The Firm has significant experience in national and international institutional arbitrations under numerous rules such as UNCITRAL, ICC, LCIA, SIAC and other specialist institutions. The Firm regularly advises and acts in international law disputes concerning, amongst others, Bilateral Investor Treaty (BIT) issues and proceedings.

The other areas and categories of dispute resolution expertise includes; banking litigation, white collar criminal investigations, constitutional and administrative, construction and engineering, corporate commercial, healthcare, international trade defense, etc.

This Prism is prepared by:



Farid Karachiwala
Partner



Krutika Mehta
Associate



18 Practices and
41 Ranked Lawyers



7 Ranked Practices,
16 Ranked Lawyers



12 Practices and
50 Ranked Lawyers



14 Practices and
38 Ranked Lawyers

Elite – Band 1 -
Corporate/ M&A Practice

3 Band 1 Practices

4 Band 1 Lawyers, 1 Eminent
Practitioner



20 Practices and
22 Ranked Lawyers



Ranked Among Top 5 Law Firms in
India for ESG Practice



Recognised in World's 100 best
competition practices of 2025



Among Top 7 Best Overall
Law Firms in India and
11 Ranked Practices

11 winning Deals in
IBLJ Deals of the Year

11 A List Lawyers in
IBLJ A-List - 2024



Asia M&A Ranking 2024 – Tier 1

Employer of Choice 2024

Energy and Resources Law Firm of the
Year 2024

Litigation Law Firm
of the Year 2024

Innovative Technologies Law Firm of
the Year 2023

Banking & Financial Services
Law Firm of the Year 2022



Ranked #1
The Vahura Best Law Firms to Work
Report, 2022

Top 10 Best Law Firms for Women in
2022



7 Practices and
3 Ranked Lawyers

For more details, please contact km@jsalaw.com

www.jsalaw.com



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi



This prism is not an advertisement or any form of solicitation and should not be construed as such. This prism has been prepared for general information purposes only. Nothing in this prism constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this prism disclaim all and any liability to any person who takes any decision based on this publication.