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Dispute Resolution and Spirit of RERA vis-à-vis Real Estate Industry

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ABSTRACT

Real Estate sector is one of the most important sectors in Indian context with respect to the demand and supply of the same, it is certain that disputes are bound to disrupt and overhaul the said industry in various facets of the basic institutionalisation of Real Estate business as a whole. To combat such disputes which range from being trifling to being that of much more incidental approach, it is the devoir of utmost importance for legal fraternity to embark upon the certain mechanism to combat such Disputes.

In commonplace, dispute can be defined with utmost brevity as a Disagreement over the existence of a legal duty or right, or over the extent and kind of compensation that may be claimed by the injured party for a breach of such duty or right. One of the most ardent and paramount facet of law as a subject is to ensure social justice and civility amongst the society as a whole, to maintain a peaceful and merrier society it is supremely important for all the 3 pillars of Justice i.e. legislature, executive and judiciary and to ensure a staunch and effective mechanism for combating against Disputes and related conundrums which can be resolved by Dispute Resolution rather than the archaic method of litigation.

Dispute resolution primarily refers to one of several different processes used to resolve disputes between parties, including negotiation, mediation, arbitration, collaborative law, and litigation.

Furthermore being a part of legal fraternity, and being a pupil of law which is a transcendental discourse of Day-to-Day life, it is my utmost and prime duty to divulge my thoughts and to research in various aspects of the Legal picturesque .

Henceforth in this paper, I would be dealing with one particular field ,i.e. Dispute Resolution Vis-à-Vis Real Estate Industry from the vast arena of Dispute Resolution as a contemporary trend in the legal fraternity. My paper will include certain key elements, through which I will try to shed some light on the emerging trends and issues with relevance to my topic of research paper. These pointers being:- (1) Evolution of Dispute Resolution as a subject of Law. (2) Contemporary aspects of Dispute Resolution as an alternative to litigation in case of Real Estate Disputes and the significance of RERA.

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(3) Effectiveness of this alternative as to the archaic and age old method of litigation as a means for settling Disputes. (4) Certain case studies and landmark case laws in the evolution of Dispute Resolution with reference to Real Estate issues. (6) Pros and cons of RERA with respect to Dispute Resolution as an definitive mechanism for combating Issues regarding Real Estate sector. (6) Why Dispute Resolution is need of the hour in the pandemonium of legal transcendence. (7) Other relevant research subjects in furtherance to the topic of my paper.

Lastly through this piece of research work I would further like to add certain quintessential aspects of nuanced jurisprudence in the realm of ever-growing demand for Dispute Resolution as a beacon of new hope in the current legal pandemonium.

Keyword:- RERA, Alternative Dispute Resolution, Unregulated Sector, Centralized Grievance Redressal

I. INTRODUCTION

In the current riveting and contemporary era of hyper boom in the Real Estate sector, it is obligatory to enlist that disputes are bound to disrupt and overhaul the said industry in various facets of the basic institutionalization of Real Estate business as a whole. To combat such disputes which range from being trifling to being that of much more incidental approach, it is the devoir of utmost importance for legal fraternity to embark upon the certain mechanism to combat such Disputes.

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Furthermore, through this paper the Author seeks to analyze the nature or real estate disputes; different laws in the picturesque of their intermingling with the Arbitration. The paper would also analyze certain judgments judged upon and their ramification in the coming age.

II. IMPORTANCE OF ALTERNATIVE DISPUTE RESOLUTION AS AN ALTERNATIVE TO LEGAL INDICTMENTS

In the general ethos of legislations and legal conundrums, members of the legal fraternity have long signaled alternative dispute resolution (“ADR”) as a method superior and much more practical than to the dated concept of litigation for resolving contractual disputes. Advocates aptly argue that Arbitration is a much more expedient and overall a pragmatic process than litigation. Arbitration has simpler procedural and evidentiary rules than litigation, and arguably provides conflicting parties with a less hostile method of resolving their differences and to attain mutual disentanglement of their said problems.²

Factually, the Praxis of Arbitration can be a very effective and a rational method of resolving disputes, especially between the estranged parties withholding equal bargaining power, such as businesses.³ India has also considered the overall potential and outreach of ADR mechanism in solving the disputes long ago and thus had inculcated the Arbitration and other relevant methods way back. The laws on the same have developed a lot after inculcation in the legal regime of the country. In this day and age, what meets the eye is the fact that the Arbitration clauses have made a way into the consumer contracts also, i.e. the contracts which are between a consumer and a business entity for the sale or lease of goods and services or other relevant things.⁴

However, despite all other factors pertaining to ease of establishing Arbitration clauses in consumer contracts, it is undeniable that the consumers while entering into a contract with a

² Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 31 (1991)

³ Scarpino

⁴ Frederick L. Miller, Arbitration Clauses in Consumer Contracts; Building Barriers to Consumer Protection, 78 Mich. B. J. 302, 302 (1999)

business entity are often ignorant that their contracts contain an arbitration clause.⁵

A consumer of ordinary prudence and frugality who is not well versed with the legalese may even have problem in understanding the language and meaning of the arbitration clause, let alone understand what it means and implication it carries in clear and simple terms.⁶

III. SIGNIFICANCE OF ADR IN REAL ESTATE SECTOR

The Real Estate sector is a booming sector and plays an integral role in fulfilling the need and demand for housing and infrastructure and other residential requirements especially pertaining to the urban areas of the nation. The sector has a vast outreach and is possessed with a beaming potential to overhaul the current statistics and burgeon into even more enormous version of itself in the years to come. But, it has faced a fair share of blemishes and the mar of being a chiefly unregulated sector with absence of professionalism, standardization, regulation and also has earned opprobrium for being the sector which undoubtedly lacks adequate and favourable consumer protection mechanisms.⁷

The real estate is indeed an integral and significant sector and is closely linked to economy of India, it provides for the employment and contributes significantly in the realm of GDP, and has a prodigious potential to grow with reports supplementing that it may amount to \$853 billion by 2028.⁸

Brimming some light on all these essential factorums and intricacies of this industry, the Real Estate (Regulation and Development) Act, 2016 (“REA”) was passed.

As it is commonplace with all the other forms of consumer contracts, the arbitration clauses had also made their way in the Buyer Contracts for the transactions pertaining to the real estate. The basic conundrum in this scenario arises from the fact that most of the contracts which are entered into are standardized form of contracts which provides for almost little or no power to the other party to argue on the terms and conditions of the said contract and it is on basis of choice that whether they want to enter into contact with those clauses or leave the contract itself, such contracts are also referred to as 'Take it or leave it contracts'.

Recently the N.C.D.R.C.⁹ in an order¹⁰ held that the consumer disputes, even if with a valid

⁵ Mary Flood, Arbitration Not Always Fair, Cheap for Parties in Dispute, *Hous. Chron.*, Apr. 11, 2001, at 21

⁶ Joseph T. McLaughlin, Arbitrability: Current Trends in the United States, 59 *Alb. L. Rev.* 905, 922 (1996)

⁷ Dr. Raj K. Agarwal, Dr. Rakesh Gupta, *Taxation of Real Estate Developers & Joint Development Arrangements*, 541 (Taxmann 2nd ed., 2016)

⁸ Mohd. Khalid Parwez, *Real Estate (Regulation and Development) Act 2016*, Vol. 8 Issue 12 *Lex Witness* 8, 9 (2017).

⁹ The National Consumer Disputes Redressal Commission (NCDRC), 1988

Arbitration Agreement cannot be forced to have arbitration, the appeal against which was dismissed by the Supreme Court.¹¹

IV. ARBITRABILITY OF DISPUTES PERTAINING TO REAL ESTATE SECTOR

One of the classic lacuna of the Arbitration Act is that it fails to define with brevity, clarify or state in specific terms the kind of disputes that are amenable to Arbitration. The bar to arbitrability of a suit is contained in section 34(2) (b) and section 48(2) of the Arbitration Act¹² which provide, inter alia, that an award can surely be challenged if the subject matter of the dispute is not deemed fit to be arbitrable¹³

Predominantly the arbitrability of a certain dispute is subject to a valid arbitration agreement, which provides for non-exclusion of the jurisdiction of the arbitration tribunal.¹⁴ In principle every dispute which is civil and commercial in nature, is generally arbitrable, the genesis of such dispute may be a contract or otherwise.

The Supreme Court of India provides for an outline of following test for the 'arbitrability' of a dispute in the judgement of *Booz Allen & Hamilton, Inc. v. SBI Home Finance Ltd.*¹⁵, the aforementioned guidelines were as follows

- “Whether the disputes are capable of adjudication and settlement by arbitration? That is, whether the disputes, having regard to their nature, could be resolved by a private forum chosen by the parties (the arbitral tribunal) or whether they would exclusively fall within the domain of public fora (courts)?
- Whether the disputes are covered by the arbitration agreement? That is, whether the disputes are enumerated or described in the arbitration agreement as matters to be decided by arbitration or whether the disputes fall under the ‘excepted matters’ excluded from the purview of the arbitration agreement.
- Whether the parties have referred the disputes to arbitration? That is, whether the disputes fall under the scope of the submission to the arbitral tribunal, or whether they do not arise out of the statement of claim and the counter claim filed before the arbitral tribunal.”

However it is quite evident that the Supreme Court, earlier in a gamut of cases has been of

¹⁰ Aftab Singh v. Emaar M.G.F. Land Ltd. Consumer Case 715 of 2015.

¹¹ Emaar M.G.F. Land Limited v. Aftab Singh, Civil Appeal No. 23512-23513 of 2017

¹² Arbitration and Conciliation Act, 1996

¹³ Ajar Rab, Redressal Mechanism under the Real Estate (Regulation and Development) Act, 2016: Ouster of the Arbitration Tribunal, 10 N.U.J.S. L. Rev. 1, 9 (2017)

¹⁴ *Booz Allen & Hamilton, Inc. v. S.B.I. Home Finance Ltd.*, (2011) 5 S.C.C. 532, 29.

¹⁵ *Booz Allen & Hamilton, Inc. v. S.B.I. Home Finance Ltd.*, (2011) 5 S.C.C. 532

the opinion that the jurisdiction of the ordinary civil court is excluded by conferring exclusive jurisdiction on a special court or tribunal as a matter involving public policy, then the dispute would not to be held arbitrable.¹⁶ This was quite similar to the technicalities involving the Consumer Act.

V. JUDICIAL INSIGHTS

Case Concerning; AFTAB SINGH V. EMAAR M.G.F. LAND LTD. & ANR.:-

The Petioners in this case were the allottees who had booked residential villas/flats/plots in Projects of the Builder (respondent). The said properties were to be developed in Gurgaon/Mohali and in reference to the same booking the complainants had executed Buyers' Agreements.

The Petioners alleged that the Builder had failed in delivering the possession of aforementioned villas/flats/plots by the date committed in the Buyers Agreement and hence, they were seeking directions to the Builder for delivery and possession of the villas, etc. and/or, in the alternative, refund of the amounts deposited by them, along with compensation.¹⁷

The Respondent on the other side argued that due to the amendment done in Section 8 of the Arbitration Act, 1996 the tribunal grossly lacked jurisdiction in the said matter. This was based on the ground that Section 8 mandated that if primarily a valid arbitration agreement existed then the courts have to refer the parties to the arbitration, which, according to him, in present case was surely a mandate.

It was contended by him that the amendment in 2016 was brought in to specifically to get rid of the jurisdiction of the courts and tribunals in such matters and limit the resolution of dispute only through arbitration and hence making it more mainstream.

It is also very significant to mention here that the Arbitration Agreement in the present case was a standard form of agreement, which provided that there shall be a sole arbitrator who can be employee or the lawyer of the builder, and the allottee would have to trust into his impartiality and cannot raise doubts about the same.

The N.C.D.R.C. held that

- The Consumer Act is a special social legislation enacted to protect consumer rights, which establishes a level-playing field between unequal players, i.e. consumers and

¹⁶ Natraj Studios (P.) Ltd. v. Navrang Studios, (1981) 1 S.C.C. 523; A. Ayyasamy v. A. Paramasivam, (2016) 10 S.C.C. 386; Vimal Kishore Shah v. Jayesh Dinesh Shah, (2016) 8 S.C.C. 788

¹⁷ Aftab Singh v. Emaar M.G.F. Land Ltd. Consumer Case 715 of 2015

large Corporations, and is quite unlike other legislations that create dispute resolution mechanisms between level players.

- By virtue of Section 2(3) thereof, the Arbitration Act itself excludes from its purview certain disputes, which fall within the public law regime and with respect to which statutory remedies are put into place to sub serve a public policy. Since consumer disputes would fall within the umbrella of the said provision, they were not intended to be covered by the amendment to Section 8 of the Arbitration Act.
- The jurisdiction of the Consumer Forums to adjudicate upon consumer disputes is not affected by either Section 8 (as amended) of the Arbitration Act or by any other provision thereof.
- To accept the plea of the Builder would be to set at naught the entire purpose and object of the Consumer Act, viz. to ensure speedy, just and expeditious resolution and disposal of consumer disputes.¹⁸

It was also held by the court that the amendment of Section 8 was intended only to curtail the scope of enquiry by courts into issues of existence of arbitration agreement in applications filed under Section 11 and Section 8 of the Arbitration & Conciliation Act.

The judgment was further challenged by the respondents in the Supreme Court, where the honourable SC dismissed the appeal of Respondents.¹⁹

Thus as of now, the judgment given by the N.C.D.R.C. stands strong and continues to govern and regulate the matter, in terms of Arbitration, arising out of the consumer contracts.

Analysis of the case

Whereas the Judgement of the NCDRC is limited to consumer disputes under the COPRA, the reasoning may well be extended to special legislations. The aforementioned judgment will certainly benefit consumers and help establishment of a settled position of law with respect to non-arbitrability of disputes in the presence of specific dispute resolution mechanisms under various legislations.

The said judgment given seems to follow the views and inspirations taken by the Hon'ble Supreme Court in the *Natraj Studios (P.) Ltd. v. Navrang Studios*²⁰, wherein it was held that in the presence of specific statutes enacted for social welfare and with an intent of public policy objective was of the more practical viewpoint. The underlying hypothesis was that one

¹⁸ Ajit Warriar, Consumer Rights and Arbitration Agreements – A Balancing Act, Mondaq, February 6, 2018

¹⁹ *Emaar M.G.F. Land Limited v. Aftab Singh*, Civil Appeal No. (s). 23512-23513 of 2017

²⁰ *Natraj Studios (P.) Ltd. v. Navrang Studios*, (1981) 1 S.C.C. 523

should not be permitted to contract out of a statute, especially when the legislation has been enacted to curtail certain social objectives.

Also the NCDRC is a special forum constituted under the Consumer Protection Act for adjudication of consumer disputes. It is therefore, crystal clear that the NCDRC will be the proper adjudicatory forum for such cases

VI. THE RERA AND ARBITRATION

The Real Estate (Regulation and Development) Act 2016, came into being on 1 May 2016 with 69 out of 90 sections notified by the Ministry of Housing and Urban Poverty Alleviation. The Act was enacted under Entry 6 and Entry 7 of the concurrent list of the Constitution of India.

The genesis of REA was to solve the issues faced by the homebuyers in the past. The REA was formulated to regulate the gargantuan unregulated sector, i.e. the real estate industry. It provided for certain provision to safeguard the interest of the consumers. The Act provides for the creation of a Real Estate Authority and an Appellate Tribunal for each state. Under the said authority, the home buyer can register his complaint in case of any malpractices carried by the builders/developers. There was surely a need for a control mechanism in the Real Estate Sector which is often unregulated in nature, contributing a good percent in India's GDP. The accountability and responsibility measures that were taken to come up with RERA were the demand of this industry. Under the said Act, the Central and the State governments have been made liable to notify the Rules, within a statutory period of six months. In furtherance to this, Section 84 of the Act contemplates that within 6 months of the RERA being enforced, State Governments shall make rules for carrying out the provisions of the Act. The said rules shall be notified to the Government of the State concerned.

Prior to the introduction of the Real Estate (Regulation and Development) Act, 2016, Indian real estate consumers had little legal recourse and they were offered consumer protection under various acts such as the Indian Contract Act, 1872; the Consumer Protection Act, 1986. Indian consumers had to approach various authorities, such as the Consumer Courts and the Civil Courts, to deal with their said grievances. In furtherance to this, prior to the introduction of the above Act, there was no single regulatory authority for the regulation of the real estate sector and the situation of real estate industry was like that of a double edged sword, the buyers had to face problems such as timely delivery of projects, delay in handing over the possession by the developer, high-interest rates charged on late payments, multiple bookings for the same property, project failures, etc. On the other hand, developers had to overcome

the issues such as delays in building permits, late payments by homeowners, and non-transparent operations. With the advent of the Real Estate (Regulation and Development) Act, 2016 (RERA), we have a central piece of legislation governing the rights and obligations of all key players in the real estate sector, which was previously largely governed by the local laws of each State.

One of the ardent aspect of REA which is of significant relevance is to note that section 88 of the REA affirms that, the REA shall be in addition to, and not in derogation of, any other law. Primarily mere reading of the provision provides for favouring the riddance of Arbitration, or Arbitration being a mere alternative remedy which is to be held optional to the estranged parties involved in the suit. Also section 89 of the REA also reinstates that : “The provision of this Act shall have effect, notwithstanding anything inconsistent contained in any other law for the time being in force.” Henceforth, section 89 of the REA clearly provides for an overriding effect. Thus, both the sections, on a mere unadorned reading, suggests that the implications of the REA would prevail over the Arbitration Act.

However, this literal interpretation incidentally conflicts with section 8(1) of the Arbitration Act, which mandates the reference of every dispute to the Tribunal, when there is an arbitration clause. Therefore, it is certainly evident that a direct conflict between two statutes, i.e., the REA and the Arbitration Act exists, as to which will prevail in case of real estate disputes.

Furthermore, if the judgment given by the NCDRC clubbed with the judgments of the Supreme Court in Nataraj Studios is to be taken into consideration then it is a confirmed principle in law that if there is a special legislation in place, then as a matter of public policy, its jurisdiction cannot be excluded, rather it would be the Tribunal whose jurisdiction shall be excluded.²¹ Also it is always the general law which has to make the way for existence of the special legislation.

VII. KEY OBJECTIVES OF RERA

RERA primary aims are focused upon regulation and promotion of the real estate sector, ensuring transparency in the real estate project transactions in an efficient manner, safeguarding consumer interests and creating a customer-friendly environment along with a promising creation of a system, which provides for adjudicating the timely resolution of conflicts by distinguishing those brought within the authority of the Appellate Tribunal. Despite being at the incipient stage, it is reassuring to note that the decline in some of the

²¹ Hindustan Lever Ltd. v. Ashok Vishnu Kate, (1995) 6 S.C.C. 326

typical grievances, such as delays in delivery, false advertising, and incorrect charges for excess areas etc, can surely be witnessed. Some of the key objectives of RERA are as follows

1. RERA establishes a centralized Real Estate regulatory authority, a specific adjudicatory authority, and a Central Advisory Council. Furthermore it also directs the States to create guidelines for controlling the real estate industry in compliance with the Act.
2. With the current act, the risk-bearing is transferred from Customers to Developers by including liability of promoters, builders, developers, real estate agents, etc.
3. The Act sets out a process for real-estate transactions in which the maintenance of a separate bank account for each project is compulsory, of which only 30% of the total may be appropriated. The remaining 70% will only be used for the same project.
4. Prior registration with the concerned authority is a must for any sale or advertisement of any real estate project, the same is permitted without Provision of mandatory disclosure of all project details, e.g. from all accounts, audits, and reports, etc., to details of the promoters, developers, agents, engineers, architects and approval authorities, etc., and published on a single website for real estate projects.
5. There is much clarity in reference to the rights, responsibilities and functions of all parties to the project.
6. Considerable decrease of malpractices, penalty provisions and penalties for offenses committed by promoters, real estate agents allotted persons and companies.
7. The Act supersedes all State legislation which is incompatible with the Central Act and also delegates the power to the Member States to draw up their own legislation on real estate in accordance with the Central Act.
8. RERA developed a timely grievance redressal medium. The commission's regulator/adjudication officer has been empowered to investigate consumer or **suo moto** concerns regarding infringement of the Act. In addition to this, Real Estate Appellate Tribunal (REAT) is to be formed to deal with appeals more quickly. A period of 60 days is specified for redressals. Instead of consumer forums/courts, where they are clubbed with several other consumer disputes, this would create a concentrated platform for real estate dispute redressal.

VIII. CERTAIN LACUNAS OF RERA

Perfection is a utopia indeed! With this being laid out, it is an indivisible factor that every

legal setup is a dual concept indeed, wherein on one hand any law is blessed with reforms, new ideas, and a general perception of justice, on the other hand, the same law is marred by plethora of Lacunas and inefficiencies. RERA is not immune from such lacunas and following are some of the basic Lacunas which are associated with rera.

1. The description of carpet area is well mentioned in RERA but, in order to better grasp the net functional area, it should also include the area sold to the allottees for their individual use, such as the living room, the bedroom, the kitchen area, and the lavatory. This area is not to include the area enclosed by walls of partition. Such undefined crucial elements are a Pandora's box of unscrupulous practices in the practical usage of this act.
2. Also Section 3 of the RERA mandates for every potential project to be registered under the Act. RERA also bars pre-launches in the absence of authorization by the agency concerned. This leads to the inevitable occurrence of challenges during several phases include the construction of a real estate project and then approval is to be obtained for each project. This ultimately hinder the efficiency of project as the project's progress will face hindrance due to the lack of a single-window clearance and hence will be delayed. For example, if a project is made in Delhi then it needs the developer to obtain 41 permits or clearance within 60 days.
3. In most states, full implementation of the **RERA Act 2016**, began in May 2017. However, as in 2020, there are still several states and Union Territories that are not equipped with their respective Real Estate Authority's websites. States such as Assam, Arunachal Pradesh, Tripura, Lakshadweep, Kerala, and so on are a perfect example of this graph.
4. Insufficiency with respect to recovery powers associated with RERA are hard to miss, these often tend to be a big lacunas that fails to comply with all the orders issued in favour of homebuyers by the RERA authorities of their respective states.
5. The challenge occurs as several phases include the construction of the real estate project then the approval is to be obtained for each project. The project's progress will face hindrance due to the lack of a single-window clearance and be delayed. For example, if a project is made in Delhi then it needs the developer to obtain 41 permits or clearance within 60 days. Whereas Section 32 of the Act states that it is the duty of the RERA to make a recommendation on the development of a single-window system

to the appropriate government of the competent authority to see if the project is completed in due time.

6. The conflicting reading of certain sections is surely a lacuna with respect RERA act. Section 89 of the REA clearly provides for an overriding effect. Thus, both the sections, on a mere unadorned reading, suggests that the implications of the REA would prevail over the Arbitration Act.

However, this literal interpretation incidentally conflicts with section 8(1) of the Arbitration Act, which mandates the reference of every dispute to the Tribunal, when there is an arbitration clause. Therefore, it is certainly evident that a direct conflict between two statutes, i.e., the REA and the Arbitration Act exists, as to which will prevail in case of real estate disputes. Such undefined and conflicting provisions cause grounds for confusion and mismanagement in the Real Estate Sector.

IX. SUGGESTED REFORMS

The current scenario of Alternative Dispute Resolution as a wholesome alternative to the traditional discourse of legal proceedings is somewhat competent in its current state, yet the same is not immune from inefficiencies, lacunas and many more hurdles which must be overcome with. Following are certain key suggestions with reference to Alternative Dispute Resolution mechanism in Real estate industry along with the provisions of RERA act;

1. Section 3 of RERA which calls for preliminary registration of each and every step with respect to the dealings in Real Estate Business must be revamped, as the same causes unnecessary delay in the said business and reduces its efficiency to a permit raj system.
2. The conflicting approach of certain sections in the RERA act must be clarified such as section 89 and section 8 of the act. This should be resolved as the same leads to unnecessary confusion and over complications to an otherwise simple mechanism of Dispute Resolution.
3. The practicality of RERA must be focused upon too and the same should have a practical and a more universal implementation. The interface of the said act should be more friendly than its current form.
4. Their should be more weightage provided to the dispute resolution under the RERA act. Though the same controls grievances pertaining to Real Estate Industry on a centralized level, yet its supremacy is still undermined as the parties are not bound to

follow Alternative Dispute Resolution mechanism as a means to redressal of their grievances.

X. CONCLUSION

One of the ardent complaint regarding arbitration of consumer disputes is that arbitration consists of certain lacunas many of the crucial due process protections of the justice system. It is a well- established and acknowledged fact that the Arbitration and Conciliation Act, 1996 is not provided for the matters which are arbitrable, it merely provides under what circumstance an agreement would not be arbitrable.

The Real Estate Sector's consumers in particular, and the consumers in general tend to be at the suffering end due to the unscrupulous and vicious builders, who would then further use the Arbitration Clauses to harass and victimise them further.

But it was a settled principle in legal pandenmonium that in case there is a special legislation, the jurisdiction under that special legislation cannot be taken away. The conflict arose due to the amendment of 2015, which made it compulsory to refer parties to arbitration. The judgment of Aftab Singh makes certain bold, crisp and appreciable steps in preserving the rights of consumers against the unscrupulous builders and their one sided contracts. The REA also makes provision for settlement of disputes, which are also time bound in nature.

The judgment is sound in its logic and follows the precedents in the correct manner, that the Consumer Protection Act, being a social legislation, its jurisdiction cannot be taken away by an arbitration agreement, and hence the parties cannot be compulsorily be mandated to enter into arbitration for resolution of disputes.

Parties are free to choose the remedy, which they want to seek. At the same time if a consumer does not wants to further a consumer complaint then he/she shall be free to opt for arbitration, which however is an astronomical scenario considering the time and money related to it. Also consumer courts can tend to be more sympathetic and touched to the aggrieved consumers than a sole arbitrator who may end up being the agent or the lawyer of the party causing the problems prima facie.

Also, since the appeal is dismissed against the Aftab Singh case it is most likely probable that the consumer disputes, especially real estate ones would come under Arbitration at first place for redressal.
