

Article on “DISPUTE SETTLING MECHANISMS RELATING TO HOUSING AND LAND DEALS”

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INTRODUCTION

Dispute resolution, often synonymous with conflict resolution, encompasses the procedures used to resolve conflicts that arise between two parties. This process is vital in addressing disputes involving various stakeholders, such as individuals, governments, businesses, and corporations. Disputes can be resolved through diverse avenues, including litigation in courts or alternative methods such as arbitration, mediation, or conciliation, which take place outside the traditional legal system. One industry significantly impacted by dispute resolution mechanisms is the real estate sector. Real estate encompasses tangible assets like land, buildings, air rights, and subsurface rights both below and above the land's surface. Additionally, it encompasses the development and construction of various types of structures, including residential, commercial, and industrial buildings. In India, it is a common occurrence for members of the same family, often brothers, to engage in disputes over property ownership. The primary reason for this is the prevalent lack of awareness and knowledge about alternative dispute resolution methods. As a result, the majority of legal battles related to property disputes ultimately find their way into the courts.

Property disputes tend to be protracted affairs in India, mainly due to several contributing factors. One significant factor is the absence of proper title documents, which further complicates matters. Additionally, the lengthy delays within the judicial system contribute to the prolonged nature of these disputes. Such disputes can arise within families, as well as between property sellers and buyers or landlords and tenants. When such disputes involve family members, they typically fall under the purview of inheritance laws. In India, the Transfer of Property Act is the pivotal legislation that governs the resolution of property disputes. This act forms the legal framework for determining and settling property-related conflicts in India and is responsible for regulating property transfers in the country. While property disputes can pertain to both movable and immovable assets, such as land or houses, the majority of property-related conflicts in India revolve around immovable properties, like land and residential buildings.

Vineet Sharma v. Rakesh Sharma was a case that made history since it was the first time that a court acknowledged a daughter's right to share in the ownership of property with her father. This crystal plain laying out of the law became the basis for a number of ongoing disputes in which sisters claimed a right in the property and the brothers did not agree to the same rights for themselves. Similarly, in Poona Ram v. Moti Ram, the Supreme Court was of the view that settled and established possession of land is required for possession to qualify as ownership.

KINDS OF DISPUTE UNDER HOUSING AND LAND DEALS

1. Disputes regarding the title of the property

It is crucial to possess a valid title for your real estate property. Unfortunately, in our country, the absence of properly digitized land records increases the risk of fraudulent activities related

to property titles. This risk is particularly high when acquiring standalone properties. To safeguard against title fraud, it is essential to diligently verify all the documents associated with the property. When necessary, seeking legal assistance from a lawyer can be beneficial. Additionally, one can consider purchasing Title Insurance, which provides protection and immunity in the event of property fraud.

2. Disputes between builders/developers and buyers

It is advisable to exclusively consider properties from well-established and reputable builders. In cases where there is uncertainty about a builder's reputation, potential buyers can turn to the Real Estate Regulatory Authority (RERA) for guidance. Purchasing a property that is not registered and approved under RERA, which operates under the Regulation and Development Act of 2016, should be avoided at all costs. RERA's primary objective is to safeguard the interests of property buyers and stimulate investments in the real estate sector. This is crucial because any property transaction between a builder and a buyer essentially constitutes a contract between the two parties. Unfortunately, there have been instances where builders have failed to fulfill their obligations as per the agreement, leaving buyers in a precarious position. To prevent such situations, it is prudent to choose builders who have received RERA approval for their projects.

3. Disputes regarding the inherited or willed property

Disputes can emerge when an individual inherits property through a will, and others raise doubts about the validity or legitimacy of that will. Similarly, conflicts may arise when a person passes away without leaving a will, which is known as dying intestate. While it's prudent to take all necessary precautions through legally recognized methods, many of these issues can be preemptively resolved by creating a will. In cases of intestate succession, specific laws are in place to address such problems. When purchasing property, it is imperative to ensure that the sellers possess clear and undisputed ownership rights, particularly in situations involving inheritance.

4. Disputes regarding non-provision of occupancy certificate

It's not uncommon to observe completed flats, apartments, or residential projects where buyers are unable to move into their new homes. This is often due to the requirement that builders must obtain an occupancy certificate from the relevant authorities before permitting occupancy. Delays in obtaining this certificate can occur when builders fail to adhere to certain regulations. To prevent such disputes, it is advisable for buyers to regularly inspect the property they have purchased.

CAUSES OF REAL-ESTATE DISPUTES

1. Land Acquisition

Lately, there has been a surge in conflicts and disputes over land acquisition, particularly in cities like Greater Noida. In these cases, farmers often demand greater compensation for their lands. Unfortunately, these disputes result in prolonged litigation, causing significant delays for property buyers and having adverse effects on the real estate sector.

2. Delay in possession

In the current circumstances, delays in obtaining essential approvals and permits, such as building permits, environmental clearances, or non-agriculture permits, can significantly postpone the possession of flats. These delays can even lead to the postponement of crucial projects due to insufficient funds. This situation places a burden on property buyers, particularly those who are renting homes, as they often find themselves having to pay both monthly rents and EMIs. In some cases, construction of a building doesn't commence for an extended period due to these delays in possession.

3. Incomplete information

One of the primary and significant reasons for conflicts in the real estate sector is the absence of comprehensive information or the deliberate withholding of facts by property owners or possessors. Frequently, buyers allege that crucial information was withheld from them during the purchase process. This encompasses outstanding dues related to property taxes and unpaid bills from previous periods.

4. Transparency

The real estate sector often lacks the transparency seen in other industries, leading to mistrust and confusion among buyers. In contrast to sectors where information is readily available, real estate transactions can be more-opaque. In some instances, even buyers have to go through significant efforts to access comprehensive information about project documents and approvals.

5. Fraud

The absence of a robust regulatory system overseeing real estate activities has paved the way for unscrupulous individuals who engage in fraudulent practices, deceiving investors. To combat this, buyers need to heighten their awareness and exercise diligence by meticulously scrutinizing various aspects of a builder. This includes evaluating their track record, reputation in the market, and credibility. Furthermore, buyers should approach discounts and freebies with caution, as there have been cases where unscrupulous builders have sold the same property to multiple buyers. It's vital for buyers to conduct thorough due diligence to safeguard their investments.

6. Brokerage issues

Failure to establish the brokerage fee amount in advance before entering into a contract can potentially give rise to conflicts. In some instances, disputes or disagreements may arise due to the non-payment of brokerage fees to the real estate broker or agent.

7. Long litigation process

The functioning of our country's judicial system is well-known for its prolonged and often protracted resolution of legal matters. In certain cases, disputes can stretch over decades without reaching a definitive resolution. This extended timeline poses considerable inconveniences to the parties involved, as litigation is a costly avenue for dispute resolution.

8. Maintenance related issues

Disputes frequently arise regarding the imposition of high maintenance charges, primarily due to resident or buyer dissatisfaction with the quality of services provided. Residents are typically

required to make regular payments toward maintenance charges, whether on a monthly, quarterly, or annual basis. These charges are managed by the Residential Welfare Association (RWA), even in cases where residents may not be content with the level of services provided.

DISPUTE RESOLVING MECHANISMS

i. Negotiation

It is one of the most commonly employed methods of dispute resolution, where parties engage in a dialogue to reach a mutually acceptable compromise or agreement that benefits both sides. In the real estate sector, when conflicts or disputes arise, parties often hesitate to resort to the courts due to the high costs associated with litigation. Real estate disputes are prevalent in India, spanning from rural to urban areas, often stemming from land-related issues. These disputes are exacerbated by challenges such as inadequate land record maintenance and unclear land title documentation, resulting in various types of land-related conflicts, as previously mentioned.

A PRS India survey shows that on average a land dispute in India takes over 20 years to get resolved. So, negotiation helps them by way of settlement and it is a time-saving process too, where people can save a large amount of time in comparison to normal litigation methods in a cost-effective manner. Negotiation features in some of the most standard arbitration clauses. One clause that indicates this feature is, “Any dispute arising out of this agreement shall be tried to be settled friendly by the Parties. If the Parties are unable to settle the dispute friendly within 30 days, then the disputes shall be resolved by way of arbitration.”¹

Thus, negotiation is typically a prerequisite for parties before embarking on arbitration or litigation in most dispute resolution clauses. This crucial step ensures that both minor and significant issues are resolved without unnecessary escalation to a formal dispute resolution process.

ii. Settlement

In cases involving property disputes among family members, there is the option of resolving the disagreement through land dispute laws in India by reaching a settlement. In this process, all parties involved come together to discuss and agree upon the division of assets and property. This division covers both movable property, such as jewelry, and immovable property, as mentioned earlier. At times, families may enlist the help of a neutral third party to maintain order and facilitate the process. This impartial mediator can assist the parties in reaching a mutually beneficial conclusion.

Once all family members have agreed on the property division, a settlement agreement should be drafted and signed by each member. Settling disputes through this method can help save the costs associated with hiring a lawyer and court expenses. Ideally, it is advisable to attempt a settlement in the first instance. If a settlement is not feasible or if the settlement process fails, then approaching the courts becomes the next course of action.

¹ <https://blog.ipleaders.in/how-disputes-real-estate-industry-resolved/>

iii. Non-adjudicatory third-party intervention

Non-adjudicatory dispute resolution is a method where an impartial third-party aids in settling disputes. This approach includes negotiation, conciliation, and mediation. Interestingly, these non-adjudicatory methods have a longer history than the adversarial legal systems often associated with Anglo-Saxon law. During the rule of the East India Company and even before British colonialism, mediation was a common practice in India, particularly among traders and businessmen. Disputes arising in business associations or among association members were typically resolved through mediation.

Non-adjudicatory dispute resolution techniques are generally less formal and encourage the parties in dispute to communicate with each other to find mutually agreeable solutions. This approach preserves relationships, saves time and money, and differs from judicial or arbitration processes in that it is informal, cooperative, flexible, forward-thinking, and focused on the parties' interests. The result is a modified and multifaceted agreement that benefits both parties, creating a win-win situation. While some may argue that this process aims to replace public adjudication on significant issues, it actually alleviates the burden on the current court system by resolving cases efficiently. In the real estate and construction sector, which sees a high number of cases in India each year, this method proves advantageous as it allows both parties to collaboratively settle disputes based on their interests and preferences.

Mediation and conciliation, however, are still in their early stages in India, as a substantial portion of the population remains unaware of these techniques. Further promotion and education are necessary to expand their usage and benefits. Mediation typically involves a neutral mediator facilitating the negotiation process without making recommendations, while conciliation involves a more active role, with the conciliator offering advice and recommendations to the parties involved in the negotiation.

iv. Adjudicatory Dispute Resolution

Adjudication refers to a process in which an impartial third party possesses the authority to settle a disputed matter by rendering a binding judgment that both parties must adhere to. While the most common form of adjudicatory dispute resolution occurs within court systems, it also occurs through various alternative methods such as arbitration, mini-trials, and private judging, collectively known as Alternative Dispute Resolution (ADR), which takes place outside the traditional court framework.

Compared to ADR processes, court-based procedures are typically more formal. However, the adjudication process can be financially burdensome, making it challenging for some parties to pursue legal action in court. Additionally, the control of the case often shifts from the client to the lawyer, potentially diminishing client involvement.

One drawback of adjudication is that the decision-makers, such as judges, may lack expertise in the specific area of dispute, as they are typically generalists. Adjudication often results in win-lose outcomes, leaving little room for parties to reach a collaborative solution through settlement. Courts often face overcrowding issues, leading to significant delays in case resolution and causing

considerable problems for the parties involved. Nevertheless, adjudication processes have proven advantageous in the real estate sector, as they produce legally binding decisions that both parties must abide by. These judgments are based on legal precedents and carry authoritative weight.

Adjudicatory dispute resolution is, in general, the most common form of dispute resolution in the real estate or construction sector and has developed significantly over the world. Disputes in a construction contract have two very specific characteristics²

(1) they are technical in nature;

(2) unless resolved fast and efficiently, they may have a negative impact on the project.

When addressing these challenges, parties have the flexibility to select from a variety of dispute resolution mechanisms. These options primarily consist of Dispute Boards, Litigation, Arbitration, and Expert Determination. Dispute Boards and Expert Determination are typically employed as interim mechanisms to resolve disputes that may arise during the project's execution. Moreover, the contract will explicitly outline whether litigation or arbitration will be employed to resolve and settle disputes between the parties.

SCOPE OF ALTERNATIVE DISPUTE RESOLUTION (“ADR”)

In the realm of real estate, Alternative Dispute Resolution (ADR) plays a significant role. Every party engaged in real estate, be it in development, management, acquisition, or sale, is well aware of the adverse effects of protracted legal battles and the associated costs. Resolving disputes through litigation can be prohibitively expensive. However, when disputes do arise, ADR offers a swift and cost-effective means of addressing them, serving as an alternative to lengthy court proceedings.

ADR presents various options for resolving disputes and is widely adopted in real estate for its efficiency. Among the most commonly utilized ADR methods are arbitration, negotiation, and mediation. The choice of method depends on the nature of the dispute and the parties' priorities, which often include cost control, obtaining a clear judgment on the matter, and preserving the confidentiality and privacy of the involved parties.

ADVANTAGES

Contracts serve as agreements between two parties, but wherever agreements are made, conflicts may arise. The use and benefits of Alternative Dispute Resolution (ADR) are closely intertwined with contract enforcement and management. In many sectors, ADR is incorporated into contracts, with the involved parties preemptively agreeing to this process to address potential future issues.

The real estate and construction industries are inherently complex and technical, demanding a vigilant approach and the involvement of professionals with deep knowledge and understanding of the field. ADR has become a necessity in the real estate sector due to its evolving nature. ADR service providers must possess a comprehensive understanding of the market. Their expertise should encompass not only the intricacies of the industry but also a profound knowledge of various aspects of real estate, enabling them to offer tailored solutions for disputes.

RECOMMENDATIONS

² <https://blog.ipleaders.in/how-disputes-real-estate-industry-resolved/>

It is crucial to engage the services of an ADR specialist or professional in the real estate sector because they possess in-depth knowledge of the multifaceted aspects of construction and infrastructure development. When parties seek the assistance of specialist dispute resolution services or organizations, such as resolution boards or mediation councils, they should have confidence that the professionals overseeing the dispute fully comprehend the intricacies involved.

According to available data, no previous government has made an effort to streamline the existing land laws or those pertaining to the Real Estate sector. It is imperative that the government, in collaboration with the Law Ministry and the Law Commission, establishes a comprehensive database of these conflicting laws. Furthermore, the government must prioritize enhancing administrative capacity and a commitment to upholding the rule of law. In doing so, it can work towards repealing laws that contribute to conflicts within the Real Estate sector.

Following policies can be implemented to achieve a co-ordination between governments and departments who control data regarding housing and land deals:

- Establishing a dedicated Ministry for Real Estate-related matters can effectively address policy improvements and serve as an accessible agency for all stakeholders.
- Enhanced coordination between ministries is essential for a well-functioning system that expeditiously resolves disputes.
- One crucial area of dispute in the real estate sector stems from land boundary conflicts involving the revenue and forest departments. Ensuring proper collaboration between these departments is imperative.
- Moreover, it is vital for the government to ensure that its officials are highly educated and possess in-depth knowledge of the field to effectively implement and uphold the rule of law.

The real estate sector involves significant financial transactions, and disputes can sometimes arise during these processes. In recent decades, the real estate industry has witnessed substantial fraud cases, where consumers did not receive the promised flats or apartments. Moreover, in the development of large malls and public spaces, major real estate players have been accused of deceiving farmers and locals to acquire their land at prices that do not reflect its true value. As a result, farmers have suffered significant losses.

To address these conflicts, it is crucial for the government to act impartially. There have been instances where government officials and leaders have allegedly favored their own families and associates in land and apartment deals. Implementing stricter laws and procedures to tackle these conflicts and irregularities can help alleviate the problems plaguing the real estate sector. The real estate industry is a significant contributor to the economy and GDP. By promoting fair practices and transparency, we can ensure the sector continues to play a vital role in sustaining our economy.

CONCLUSION

Land disputes are predominantly prevalent in rural areas of India, where issues such as illegal land possession, unclear land titles, corrupt patwaris (revenue officials), and deficient land records frequently give rise to conflicts among citizens. The primary cause of the backlog of land dispute cases in courts is the conflicting nature of laws and the administration's failure to comply with these laws, as highlighted in a study by the Centre for Policy Research's Land Rights Initiative (CPR-LRI).

According to this study, the land sector, a significant component of the real estate sector, affects around 7.7 million people in India who are embroiled in disputes over more than 2.5 million hectares of land. These disputes have jeopardized investments amounting to over 14 lakh crore (1.4 trillion rupees). Notably, land dispute cases in the Supreme Court account for 25 percent of all cases, constituting the largest segment of cases in Indian courts. Within this 25 percent, 30 percent of cases are related to land acquisition. Various surveys indicate that a substantial 66 percent of all civil cases pertain to land disputes or property disputes. Shockingly, the data suggests that on average, a case related to land acquisition takes an astonishing 20 years from inception to resolution. These figures are alarming when compared to countries with well-established legal systems like India.

References

<https://www.mondaq.com/india/Real-Estate-and-Construction/504608/Modes-Of-Dispute-Resolution-In-The-Construction-Sector>

<https://www.legalkart.com/legal-blog/ways-to-resolve-property-disputes-in-india#:~:text=Litigation%20involves%20court%20processes%20and,parties%20to%20settle%20outside%20court.>

<https://blog.ipleaders.in/how-disputes-real-estate-industry-resolved/>