

# Why Arbitration is the Preferred Dispute Resolution Mechanism in Construction Contracts in India

## Introduction

The Society of Construction Law, India (SCL India) recently held its 5th Biennial International Conference on Construction Law and Arbitration in New Delhi.<sup>1</sup> The theme of the Conference, “The Future of Construction Disputes: Navigating Change in India and Beyond”, could not have been more relevant. India is currently seeing major changes in the way construction disputes are being resolved, especially with arbitration continuing to play a central role. At the same time, courts are increasingly required to balance arbitration clauses in contracts with **dispute resolution** mechanisms created under special laws.

## Why Construction Disputes Are Increasing

India’s push towards rapid infrastructure development has resulted in large-scale projects such as highways, metro rail systems, smart cities, and renewable energy parks.<sup>2</sup> With projects of this scale, disputes are almost unavoidable. The most common issues include delays in completion, cost overruns, variation claims, defective design allegations, land acquisition problems, and disputes relating to termination or performance of contracts. These disputes have existed since the beginning of **infrastructure development in India** and have traditionally been resolved through arbitration due to their technical and contractual nature.

## Arbitration and the Role of Statutory Laws

Arbitration has long been preferred in construction contracts because it allows parties to resolve disputes through a private and specialised process. However, Indian courts have clarified that **arbitration** cannot

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<sup>1</sup> Trowers & Hamblins, ‘Insights from SCL India’s 5th Biennial International Conference: Navigating the Future of Construction Disputes’ (17 December 2025) <https://www.trowers.com/insights/2025/december/insights-from-scl-indias-5th-biennial-international-conference> accessed 9 February 2026.

<sup>2</sup> Michael Harris, ‘Construction Disputes: What Causes Them & How to Promote Early Resolution’ (Long International) <https://www.long-intl.com/articles/why-construction-disputes-occur/> accessed 9 February 2026.

override statutory dispute resolution mechanisms where special legislation creates specific rights and remedies.<sup>3</sup> In such cases, arbitration must give way to the forum provided under the statute.

## **RERA and Arbitration Clauses**

The Real Estate (Regulation and Development) Act, 2016 was enacted to regulate the real estate sector and protect the interests of homebuyers.<sup>4</sup> RERA creates its own regulatory authority and adjudicatory framework. Courts have consistently held that disputes covered under RERA cannot be referred to arbitration, even if the agreement between the parties contains an arbitration clause. In *Rashmi Realty Builders (P) Ltd. v. Rahul Rajendrakumar Pagariya*, the Bombay High Court held that disputes falling within the scope of RERA are non-arbitrable and must be decided by the authority established under the Act.<sup>5</sup> As a result, RERA now takes priority in disputes involving delayed possession, refunds, interest, and structural defects.

## **National Highways Act: Arbitration with Boundaries**

A different approach has been taken under the National Highways Act, 1956. Courts have recognised that disputes arising purely from contractual obligations under concession or EPC agreements, such as delays, cost escalation, termination, and performance issues can be resolved through arbitration.<sup>6</sup> In *NHAI v. Bumihway DDB Ltd. (JV)* and *Gayatri Jhansi Roadways Ltd. v. NHAI*, arbitration was upheld as the appropriate forum for such disputes.<sup>7</sup> However, disputes relating to land acquisition and compensation have been excluded from arbitration, as they arise from the exercise of sovereign power by the State. This position was clarified by the Supreme Court in *Union of India v. Tarsem Singh*.<sup>8</sup>

## **Other Laws Limiting Arbitration**

Similar restrictions on arbitration exist under other laws affecting construction projects. Under the Micro, Small and Medium Enterprises Development Act, 2006, disputes relating to delayed payments must be referred to the Facilitation Council, regardless of any arbitration clause in the contract. This

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<sup>3</sup> Vidya Drolia v Durga Trading Corporation (2021) 2 SCC 1.

<sup>4</sup> Siyamalasen G, 'Dispute Resolution Mechanisms in Tenancy Law: A Comparative Analysis of State Practices' (2025) 6(12) Journal of Research Publication and Reviews <https://ijrpr.com/uploads/V6ISSUE12/IJRPR57653.pdf> accessed 10 February 2026.

<sup>5</sup> Rashmi Realty Builders (P) Ltd v Rahul Rajendrakumar Pagariya 2024 SCC OnLine Bom 3871.

<sup>6</sup> National Highways Authority of India v Bumihway DDB Ltd (JV) (2006) 10 SCC 763.

<sup>7</sup> Gayatri Jhansi Roadways Ltd v National Highways Authority of India (2020) 17 SCC 626.

<sup>8</sup> Union of India v Tarsem Singh (2019) 9 SCC 304.

was affirmed in *Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd.*<sup>9</sup> Disputes under land acquisition laws and environmental statutes are also treated as non-arbitrable, as they involve public rights and statutory adjudication.

## Conclusion

Recent judicial decisions show a clear and consistent approach. Arbitration continues to be the preferred method for resolving technical and contractual construction disputes. At the same time, courts have clearly stated that where statutory rights, public interest, or regulatory powers are involved, arbitration must give way to the mechanism provided under the law. Rather than weakening arbitration, special legislations have helped define its proper role. This balanced approach is shaping the future of construction dispute resolution in India.

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<sup>9</sup> Gujarat State Civil Supplies Corporation Ltd v Mahakali Foods (P) Ltd (2023) 2022 SCC OnLine SC 1492.