INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 8 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

CROSS-BORDER REAL ESTATE INVESTMENTS AND ARBITRATION: A COMPARATIVE STUDY

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BEST CITATION – ABHINIT PANDEY, CROSS-BORDER REAL ESTATE INVESTMENTS AND ARBITRATION: A COMPARATIVE STUDY, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (8) OF 2026, PG. 43-49, APIS – 3920 – 0001 & ISSN - 2583-2344.

Abstract:

Over the last twenty years, cross-border real estate transactions have expanded both in volume and complexity. The main factors that have contributed to this trend are globalisation, the movement of institutional capital and cross-jurisdictional development projects. One of the most common issues in disputes that result from these transactions is that the contracts can be interpreted in different ways. Besides that, other issues which are often areas of arbitration when a dispute resolution mechanism is needed, come up such as regulatory compliance, insolvency, public policy, and enforcement.

This article through a comparative legal analysis of various jurisdictions (India, Singapore, the United Kingdom, and the United States) explores the appropriateness, benefits, and problems of arbitration in international real estate disputes. The work also assesses the cooperation between the models of the institutional framework (the UNCITRAL Model Law and the New York Convention), the realities of enforcement, and the interface of domestic regulatory systems (especially the ones related to the protection of consumers, like RERA in India) with arbitration agreements.

This research determines that arbitration is capable of guaranteeing party autonomy, procedural adaptability, and cross-border enforceability, though it is affected by jurisdictional restrictions in situations where the divide between public law and private law is quite distinct (for example, certain consumer or regulatory disputes). As a result, Singapore is considered to be a very favorable seat for arbitration with great enforcement and judicial support, the New York Convention is still the main international enforcement instrument, and India is a location that sends different signals due to the development of case law on arbitrability (especially if statutory regimes like RERA apply).

The article ends with practical recommendations to the drafting of dispute resolution clauses, selection of seats and institutions, and risk mitigation of cross-border real estate contract enforcement.

Keywords: cross-border real estate, arbitration, enforcement, New York Convention, RERA, seat of arbitration, UNCITRAL Model Law

1. Introduction

Cross-border real estate investment is a combination of property law, commercial contracting, and public regulation. Investors and developers make deals that cross jurisdictional boundaries — they buy land, develop projects, enter joint ventures, or buy portfolios — this creates the potential for disputes that are often multi-jurisdictional. Arbitration is commonly chosen as a method for solving such disputes because it offers neutrality, specialized tribunals, enforceable

awards, and confidentiality. Unfortunately, the real estate environment creates unique difficulties: public regulation-related disputes (concern planning, consumer protection), third-party right amendments (tenants, mortgagees), and local formality issues (registration, transfer restrictions) may be involved in the disputes.

This article through a comparative legal analysis of various jurisdictions (India, Singapore, the United Kingdom, and the United States) examines whether arbitration is suitable for handling the multiplicity of cross-border real estate conflicts and how the outcomes are shaped by differing national approaches. The reasons behind the choice of jurisdictions are their different arbitration ecosystems and their relevance to global capital flows. The research is conducted on the basis of legal comparison, institutional data, and recent jurisprudence and commentary.

The main questions here are: (1) When are cross-border real estate disputes coherent enough to be arbitrated? (2) What practical enforcement issues arise for Cross-border real estate arbitral awards? (3) How precisely should parties draft dispute resolution clauses in order to effectively handle jurisdictional and enforcement risks?

2. Literature Review and International Frameworks

2.1 International Arbitration Instruments

The New York Convention (Convention on the Recognition and Enforcement of Foreign Arbitral Awards) is the main instrument of cross-border enforcement which allows awards issued in one contracting state to be enforced in the others with certain exceptions. The almost universal ratification of the Convention is still the basis for the use of arbitration in cross-border real estate transactions.[59]

UNCITRAL's Model Law on International Commercial Arbitration (originally adopted and modified by several countries) is the domestic law example that illustrates the way the arbitration process works, among other things, it entails the acknowledgment of the parties' freedom of action in the arbitral sphere and the exercise of a limited judicial intervention. The Model Law is the basis of the legislative frameworks that favor arbitration and that have an almost seamless treatment of many procedural issues in different states that have adopted this kind of law.[60]

2.2 Scholarship & Practice Observations

Previous works identify arbitration as a beneficial solution (neutral forum, expertise, enforceability) but at the same time, they caution against its use in property conflicts, where issues of third-party rights, registration requirements, or public interest involvement are raised. The description of the advantages of arbitration by scholars is met by practitioners who highlight the importance of detailed drafting (choice of seat, governing law, clear arbitration clauses comprising of scope and exclusions) and having a fallback plan when it comes to enforcement (asset tracing, anti-dissipation injunctions). Reported by institutional centers (e.g., SIAC, LCIA, ICC) is their increasing international commercial disputes caseload which is one of the reasons why the recourse to arbitration is still being made. Taking, for instance, the situation at SIAC, it was found that the international caseload there kept on growing steadily, thus confirming the centre's wide international reach.[61]

3. Methodology

This research is both doctrinal and comparative in nature. It covers (a) primary instruments (New York Convention, UNCITRAL Model Law), (b) case law, and judicial decisions from various jurisdictions, (c) institutional data, and (d) practitioner commentary, and (d) statutory regulations that have an impact on real estate disputes (e.g., Indiaâ€™s RERA). The mode of operation is to locate the legal rules pertaining

[59] newyorkconvention.org

[60] uncitral.un.org

[61] pinsetmasons.com

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to arbitrability and enforcement for every jurisdiction, to study the representative cases and arguments, and to compare the resulting practical consequences for cross-border real estate investors. The research work has been able to indicate the doctrinal tensions (public law vs private remedies), the enforcement mechanics, and the suggested contractual drafting strategies.

4. Jurisdictional Analyses & Findings

4.1 Singapore -Pro-Arbitration Seat with Strong Enforcement Tools

Singapore has been very proactive in establishing itself as the hub of choice for international arbitrations. The framework of its legislation is in line with the UNCITRAL Model Law and also provides a strong judicial support for the enforcement and for the provision of interim relief in aid of arbitration. The Singaporean courts have acknowledged and offered powerful auxiliary remedies more specifically, e.g., Mareva (freezing) injunctions in aid of arbitration and global freezing powers in suitable cases, that enable the practical aspect of putting awards into effect against those parties who might otherwise break up the assets. A number of the decided cases demonstrate conspicuously the readiness of Singapore courts to protect the arbitral process and the enforcement phase.[62]

Practical implication: *For cross-border investors worried about enforcement (asset dissipation, complex corporate structures), the decision to take Singapore as a venue and to use SIAC or institutional rules in conjunction with Singapore law can significantly improve the enforcement outlook.*[63]

4.2 United Kingdom & England — Mature Case Law, Public Policy Exceptions

England has over the years been a jurisdiction that has always had arbitration and has been very successful in the implementation of the New York Convention as well as having a very sophisticated Commercial Court as a back-up. Nevertheless, English courts will refuse enforcement only on very limited public policy grounds or if the awards are found to be in conflict with mandatory local rules. The United Kingdom is able to give very reliable results due to the many case law decisions interpreting arbitrability issues and the defenses to enforcement. Besides this, interim relief in aid of arbitration is also supported by English courts and there are strong mechanisms for the recognition and enforcement of foreign awards.

Practical implication: *The UK is still a good seat of arbitration for getting court assistance as in the common-law environment, it is highly unlikely that the enforcement of the award will not be orderly and rather will be robust. However, a party should always check on mandatory local laws of the jurisdiction in the law of the place where the property is located.*

4.3 United States — Fragmented Federal/State Landscape, Enforcement Tools Variable

The US has federal legislation to implement the New York Convention, is party to the New York Convention, and has good recognition and enforcement routes. Nevertheless, the US framework is decentralized; property relates mainly to state laws. There could be local procedures (e.g., recording, registration) and possibly a problem caused by the award trying to set aside municipal regulations or the rights of third parties that are already protected by law in the case of real estate, and awards that mandate the transfer of real property located in a certain area are facing these problems. The courts in the US have gone a long way in the enforcement of the awards and at the same time, in some instances, they considered the public policy and state property formalities aspects when it was suitable.

Practical implication: *To execute a judgement, which changes the ownership of property or affects the operation of local land registry in the US, some great care and preparation (e.g., getting declaratory relief, obtaining local court recognition, or transforming monetary awards*

[62] globalarbitrationreview.com
[63] dailyjus.com

into enforcement mechanisms in compliance with state property law) are needed.

4.4 **India — Evolving; RERA and Consumer Protection v. Arbitration**

Firstly, in the real estate sector, India has undergone a boom in the volume of disputes; Secondly, such statutory regimes as RERA (Real Estate (Regulation and Development) Act, 2016) not only empower the homebuyers but also impose on the promoters time-bound obligations. Thirdly, the Indian judiciary is debating whether… Moreover, the courts' decisions are also affected by the content of scholarly comments: while some legal writings consider RERA as supplementary in nature, conversely, there are opinions holding that RERA-based conflict is non-arbitrable due to the fact that it involves.[64]

Practical implication: *Only Indian cross-border transactions involving Indian real estate or Indian buyers would the parties be wise enough to use caution — depending on a dispute being contractual or statutory/regulatory in nature under RERA, the challenge of arbitration clauses possibly arising would be the correct assumption.*[65]

5. Enforcement of Awards Affecting Real Property — Common Practical Problems

1. **Nature of Relief Sought (Specific Performance; Title Transfer):** Most of the time, the humanitarian measure of specific performance is absent in arbitral awards. However, those awards which become the cause and the basis of the property to be transferred or rest the performance of some work, may appear to be contradictory to the local registration standards or, at least, third-party rights gained from the law; courts, therefore, might not be willing to take effect of those through mere compliance of local conveyancing formalities. They should be prepared to order a declaratory judgment or a domestic court to take over the title change.[66]

2. **Third-Party & Public Law Interests**: Sometimes real estate is a mix of tenants, mortgagees, planning authorities, or consumer protection programs. In the situation where the award is related to the third party's accessories that are deeply-rooted rights, enforcement of it may need the accompanying steps of the judiciary. These days, regulatory purposes (e.g., consumer protection under RERA) may categorize a good number of disputes as non-arbitrable and limit the kind of relief the courts can provide.[67]

3. **Insolvency & Cross-Border Restructuring**: In such a case where the party is insolvent or is going through cross-border insolvency, the courts may decide to give priority to the insolvency proceedings over the arbitration. Courts of Singapore have, however, established a changing approach which takes into consideration both the liberty of the parties and the protection of the creditors in the arbitration-insolvency interaction.[68]

4. **Anti-Dissipation Measures & Interim Relief:** The efficient implementation sometimes relies on the safeguarding of the assets. Countries like Singapore and the UK have solid interim relief provisions (freezing orders, worldwide injunctions) to stop dissipation before award or enforcement - a handy situation when you are working with the cross-border corporate groups.[69]

6. Comparative Discussion — Strengths & Weaknesses

6.1 **Arbitration: What Makes It So Attractive in Cross-Border Real Estate?**

Arbitration comes with a great deal of advantages that can help put a lid on the disputes, especially those related to construction and property. Primarily one of the main factors is the parties' freedom to pick a

[64] iiprd.wordpress.com
[65] timesofindia.indiatimes.com
[66] newyorkconvention.org
[67] nortonrosefulbright.com
[68] iiprdwordpress.com
[69] globalarbitrationreview.com

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neutral jurisdiction and select arbitrators who are well versed with construction, property evaluation and contractual issues so that the case is managed by those who have a relevant background. Besides that, arbitration is very strong in award enforceability, the New York Convention being a facilitator in over 170 contracting states is responsible for the recognition and enforcement of monetary awards, therefore, a very reliable and foreseeable mechanism for cross-border dispute resolution is provided. In addition to that, arbitration offers privacy which is particularly beneficial in cases of business secrets while it also supports party autonomy by giving the disputants even more control over procedural management, among such the arbitrators' and the conduct of proceedings.[70]

6.2 **Reasons for Arbitration to Become Unfavorable or Limited**

On the contrary to the presented advantages, the use of arbitration in construction and property disputes is still debated due to the significant limitations it has. The first and major point to be considered is non-arbitrability and conflicts with the statutory, as the Real Estate (Regulation and Development) Act (RERA) and consumer protection laws put severe limitations in the kinds of disputes which can go to arbitration. [71]Indian courts have taken different positions on how RERA and arbitration interrelate and thus, there is a lack of clarity in this area. Problems in the execution of awards concerning land and titles registered also followed, for instance, such awards frequently call for local supplementary processes that must be followed to comply with local conveyancing and registration laws, thus limiting finality and efficiency of the arbitration. Besides that, arbitration is not allowed in third-party rights issues or in the broader public interest. Arbitral awards cannot bind non-parties, so disputes that involve tenants, mortgagees, or statutory authorities may require adjudication by courts, thereby, in such instances, there is a loss of autonomy for arbitration and it becomes less effective.

6.3 **Seat Selection & Institutional Choices**

The determination of the seat in international arbitration often has a more profound impact than the choice of the institution, as the seat identifies the supervisory court and the range of enforcement possibilities for interim relief. For example, a seat like Singapore gained popularity mainly because of its strong judicial support, sound legal framework, and efficient enforcement mechanisms. [72]In terms of foreseeability, doctrinal depth, and the presence of well-established jurisprudence in commercial disputes, the UK is still attractive. The US can provide strong solutions but at the same time, it is quite complicated due to the differences in state laws which can affect the uniformity of the solutions. In the meantime, Besides SIAC and other Asian centres, the institutions have also had considerable development in their international reach and the number of cases, which is making them more and more attractive for Asia-Pacific projects. Basically, institutions might be considered as one element of the administration of the arbitration while the seat defines the legal framework of the arbitration.[73]

7. Drafting and Transactional Recommendations

1. **Careful Scope Definition**: Clearly mention/include/exclude the nature of the disputes (for instance, claims under regulatory statutes). In the case of India, determine whether statutory RERA claims should be included within the scope of arbitration and think about multi-level methods of dispute resolution for some categories.

2. **Choice of Seat & Governing Law**: If you have a plan to carry out assets abroad then choose a seat where the law is well interpreted with a lot of cases of precedent and there are many ways

[70] newyorkconvention.org
[71] timesofindia.indiatimes.com
[72] globalarbitrationreview.org
[73] iiprdwordpress.org

for you to get a temporary injunction, like Singapore. Put together the laws that support the transaction and put in the provision as to the arbitrability and a clause that consented to declaratory relief.

3. **Interim Relief & Anti-Dissipation**: Emergency arbitrator provisions, express consent to interim measures by courts in the seat, and clear waivers where lawful (e.g., waiver of sovereign immunity if relevant) should be part of the agreements complaining of interim relief and anti-dissipation.

4. **Award Type & Remedies**: Always be ready to face the problems that are associated with the awards that require the transfer of the title. Try to come up with hybrid remedies: (a) an arbitral declaration of entitlement along with (b) an express commitment and court recognition procedure to effect registry changes.

5. **Insolvency Safeguards**: Insert clauses on forum/choice of law that deal with the possibilities of insolvency and make clear the parties' intentions with respect to arbitration in insolvency situations.[74]

6. **Third-Party Protections**: If deemed necessary, get the approval of the mortgage providers, tenants, or regulatory bodies and/or give an assurance by clearly stating that you will indemnify the third party in the event of interference.

8. Conclusion

Through the use of the New York Convention, procedural autonomy, and institutional capacity (e.g., SIAC's global caseload), arbitration is still a preferred means of settling international real estate disputes. Nevertheless, real estate arbitration has a noticeable downside in that the environment is different because of the statutory regulatory protections, transferral of title, third-party rights, and insolvency issues that altogether pose a risk of restraining arbitration if not foreseen contractually. Looking at it from another perspective, Singapore type seats offer practically enforceable advantages (including powerful interim remedies) on the one hand while countries with strong consumer/regulatory frameworks (e.g., India with RERA) on the other hand may have restrictions on arbitrability in certain factual matrices. Hence the design of dispute resolution in cross-border real estate transactions should be based on a consideration of the benefits of arbitration complemented with an understanding of jurisdictional and enforcement realities.

9. Limitations & Areas for Further Research

The present paper is restricted to a doctrinal comparative method, selective jurisprudence, and limited institutional data up to 2025. Future empirical research might include a large dataset of arbitral awards and enforcement outcomes in real estate cases and also look into the impacts of newly introduced ODR and digital registry technologies on enforcement. The conduct of an empirical study of the success rates of enforcement for monetary and non-monetary awards affecting real property across various jurisdictions would be an extremely valuable contribution.

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[74] nortonrosefullbright.com

- RERA vs Arbitration commentary (IIPRD blog and recent high-court reporting indicating mixed approaches in India).
- Singapore arbitration-insolvency developments (analysis).

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