

News

Are residential JDA lawsuits considered commercial disputes? There were differing opinions on whether residential Joint Development Agreements came under the definition of "construction and infrastructure contracts" as stated in the Commercial Courts Act, according to the Karnataka High Court's bigger bench.



High Court of Karnataka

The question of whether disagreements resulting from Joint Development Agreements (JDAs) for residential projects between individuals can be handled as commercial disputes under the Commercial Courts Act, 2015 has been referred to a larger bench by a single judge bench of the Karnataka High Court [D Arun Reddy v Muni Reddy].

According to **Justice Tara Vitasta Ganju, the 2015 Act's Section 2(1)(c)(vi)** has conflicting rulings from coordinate benches over whether or not these JDAs qualify as "construction and infrastructure contracts."

Tara Vitasta Ganju, Justice

The Commercial Court's refusal to return a **Section 34 petition (plea to set aside an arbitral verdict)** filed under the Arbitration and Conciliation Act was the subject of a writ petition filed by developer D Arun Reddy and another individual.

A 2011 JDA between a few landowners and the developer for the building of residential complexes in **Devarabisanahalli** in Bengaluru gave rise to the conflict.

The agreement called for the landowners to receive 40% of the super built-up area and the developer to **receive 60%. Additionally**, a power of attorney was granted to the developer to carry out actions required for **the property's development**.

Later, disagreements emerged about purported delays, the developer's alleged appropriation of excess built-up area, and the non-delivery of a penthouse.

Arbitration was used in this case. In July 2019, the arbitral tribunal rejected the landowners' claims. In a commercial court, the landowners then contested the award under Section 34.

The developer objected, arguing that the commercial court lacked the authority to make the decision. According to him, the disagreement did not qualify as a commercial dispute under the 2015 Act.

The commercial court dismissed the objection, ruling that the building contract that gave rise to the issue was covered by the **Commercial Courts Act of 2015**.

Before the High Court, the developer contested this decision.

According to **Justice Ganju's June 1** opinion, the disagreement could not be covered by **Section 2(1)(c)(vii) of the 2015 Act**, which addresses contracts pertaining to real estate utilized solely for trade or commerce.

The disagreement concerns the construction and distribution of residential flats. The property was not used for trade or commerce, according to the Court's ruling.

Additionally, the Court determined that the JDA in question was not a legitimate joint venture. The Court stated, "The material on record does not disclose joint control, shared management, or active participation by both parties in the development activity; nor is there a provision in the agreement rendering one party liable for the acts or omissions of the other." However, the Court determined that a bigger Bench was necessary to address the remaining question of whether the JDA would be classified as a construction contract under **Section 2(1)(c)(vi) of the 2015 Act**. The Court observed that there seem to be two opposing opinions regarding how the word "construction and infrastructure contracts" should be interpreted.

The issue was submitted to a larger Bench in order to settle the dispute.

One of the two concerns posed by the single judge to the wider Bench is whether JDAs for the building of residential apartments in which one or more parties are people can be classified as "construction and infrastructure contracts."

The second point concerned whether the term should be interpreted as two distinct categories—"construction" and "infrastructure" contracts—or as a single, unified expression. In order to send the case to a larger Bench, the Registry was instructed to bring it before the Chief Justice.

The petitioners were represented by attorney Chintan Chinnappa M.

The respondents were represented by attorneys CV Manjunath and V Shivakumar.