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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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# **ANALYSIS OF OVERLAPPING PROVISIONS IN RERA AND IBC**

AUTHORED BY - SHREYAS KULKARNI & RAJVARDHAN PATHAK

## ***Abstract***

People consider owning a home as a dream that brings both financial stability and personal satisfaction. In India, the real estate sector has experienced expansion providing numerous prospects for potential homebuyers. Along with this growth comes challenges, including project delays concerns, about quality and deceptive marketing practices that have affected the industry negatively. The Real Estate (Regulation and Development) Act, 2016 was enacted by the Indian Parliament in response to the challenges faced by the industry. In the same year, one more piece of legislation came into force that largely affected the real estate sector i.e. The Insolvency Bankruptcy Code, of 2016. RERA provides mechanisms to resolve disputes, appeals, and severe penalties that contribute to increased transparency and compliance in the property sector. In parallel, the IBC provides a means for homebuyers to seek redress for financial delays and service deficiencies. Its provisions shall apply to a wide range of assets and provide rapid decision-making. This research article examines the interlinked aspects of both acts in the context of India's property sector. The role of these legislative frameworks in protecting homebuyers' interests is carefully analyzed. It also analyzes the application of these laws with reference to recent judicial precedents to emphasize their shared objective of homebuyer protection. This study highlights the rights of allottees with regard to timely possession, along with recourse to a refund, interest, and compensation in case of delay or standstill of delivery of possession of the property.

***Keywords*** – RERA, IBC, Homebuyer Rights, Financial Creditors, Legal Implications

# CHAPTER 1 – SYNOPSIS

## *Introduction*

India's real estate market, despite its promise, has historically struggled with issues like project delays, inconsistent quality, and financial risks for homebuyers. Recognizing these challenges, the government implemented the Real Estate (Regulation and Development) Act (RERA) in 2016. This act aimed to foster accountability within the sector by regulating developers, mandating project registration, and establishing state-level authorities to manage disputes.

Concurrently, the Insolvency and Bankruptcy Code (IBC) was introduced in 2016, focusing on resolving financial distress for various entities, including real estate developers. However, when a developer encounters financial difficulties and fails to fulfill commitments, the intersection of RERA and IBC creates complexities for homebuyers' rights and remedies.

This study delves into the overlapping provisions of these laws. While their potential conflict presents challenges, it also offers opportunities to align the interests of homebuyers with the objectives of insolvency resolution. Understanding the interplay between RERA and IBC is crucial for policymakers, legal professionals, and all relevant stakeholders to build a robust and comprehensive regulatory framework, ultimately facilitating informed decision-making.

## *The objectives of the Paper*

1. To analyze the legal implications arising from the overlapping provisions in RERA and IBC, with a specific focus on the protection of homebuyers' rights. By examining relevant case laws, statutory provisions, and legal commentaries
2. To elucidate the challenges, developments, and potential solutions concerning the differences between RERA and IBC by examining relevant case laws, statutory provisions, and legal commentaries.
3. To emphasize the importance of the harmonized application of RERA and IBC. This approach is crucial to ensure fair treatment of homebuyers and efficient resolution of insolvency proceedings within the real estate sector.



## *Review of Literature*

The Real Estate (Regulation and Development) Act, 2016 (RERA) and the Insolvency and Bankruptcy Code, 2016 (IBC) intersect in real estate and homebuyers' rights. RERA promotes transparency by mandating project registration, adherence to timelines, and depositing project earnings into a separate account. It also allows homebuyers to seek redressal for project deficiencies. In contrast, IBC provides a framework for resolving insolvency, recognizing homebuyers as financial creditors, and empowering them to participate in decision-making processes. IBC amendments also enable homebuyers to initiate insolvency proceedings against problematic developers under specific conditions.

### *1. Analyzing overlapping provisions –*

The *Chitra Sharma vs Union of India*<sup>1</sup> case brought attention to the unequal treatment of homebuyers and banks under the prevailing legal framework. The Supreme Court's intervention safeguarded the interests of homebuyers by providing interim directions for their representation in the Committee of Creditors (COC). Subsequently, the legislature introduced the Insolvency and Bankruptcy (Amendment) Ordinance, 2018, and the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, recognizing homebuyers as financial creditors. This legal significance emphasizes the importance of aligning the provisions of RERA and IBC to ensure equitable treatment for homebuyers, catalyzing legislative amendments, and empowering homebuyers to participate in insolvency proceedings.

The case of *Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors.*<sup>2</sup> upheld the constitutional validity of the Insolvency and Bankruptcy Code (Amendment) Act, 2018, granting "real estate allottees" the status of "financial creditors" under Section 5(8)(f) of the IBC. The Supreme Court's decision rested on the commercial effect of the money raised by developers from homebuyers, acknowledging it as similar to borrowing.<sup>3</sup> This landmark decision significantly empowered homebuyers to actively participate in the resolution process, improving their bargaining power, access

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<sup>1</sup> W.P. (C) 744 of 2017.

<sup>2</sup> [2019 SCC OnLine SC 1005]

<sup>3</sup> L. Viswanathan, Srideepa Bhattacharyya, Aditya Marwah & CAM Disputes Team, Resetting the Clock: Supreme Court Sends Jaypee Infratech Limited Back to NCLT for CIRP (August 27, 2018). <https://corporate.cyrilamarchandblogs.com/2018/08/resetting-clock-supreme-court-sends-jaypee-infratech-limited-back-nclt-cirp/>.

to information, and claims resolution. However, challenges remain in practical implementation, potential conflicts between RERA and the IBC, and threshold requirements for legal processes against builders.

In the case of *Manish Kumar v. Union of India*<sup>4</sup>, the Supreme Court upheld the constitutional validity of the threshold for homebuyers to initiate Corporate Insolvency Resolution Process (CIRP) proceedings under Section 7 of the Insolvency and Bankruptcy Code (IBC). The Amendment stipulated that CIRP proceedings could be initiated jointly by not less than 100 allottees or not less than 10% of the total allottees under the same real estate project, whichever is less. This decision established a balanced and structured approach, ensuring equitable treatment and protection of the interests of homebuyers while streamlining the resolution process for real estate projects.

The comparative analysis of the RERA and IBC reveals overlapping provisions impacting homebuyers and real estate developers. Both laws aim to address challenges in the real estate sector, necessitating a balanced approach to harmonize their coexistence. Courts have emphasized the need for a cohesive legal framework by interpreting these laws in a complementary manner.

## *2. Identification of overlapping provisions*

- a) Treatment of homebuyers as financial creditors under certain circumstances.
- b) Resolution and liquidation processes impacting the rights and interests of homebuyers and real estate developers.
- c) Appointment of authorities for supervision and resolution of disputes.

## *3. Harmonious Interpretation and Legal Implications*

The Real Estate RERA and the IBC, both play critical roles in the Indian real estate sector. However, ensuring a smooth and effective approach requires a harmonious interpretation of these laws. This means finding a way for them to work together seamlessly. By achieving harmony, a consistent and unified legal framework can be established. This framework should prioritize protecting the rights and investments of homebuyers while also considering the long-term health and sustainability of real estate projects. To achieve this harmony, the provisions of RERA and IBC need to be aligned. Any

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<sup>4</sup> 2021(5) SCC 1.

potential conflicts or contradictions should be addressed to create a balanced legal environment. This balance ensures protection for all stakeholders involved in real estate transactions, from homebuyers to developers. Ultimately, a clear and predictable regulatory environment is essential for attracting investors and fostering the overall stability and growth of the real estate sector.

### ***Statement of problem***

The intersection of the RERA and IBC has given rise to legal implications, concerning the protection of homebuyers' rights in the real estate sector. The coexistence of these two legislations has introduced challenges and discrepancies that require in-depth analysis to understand their impact on homebuyers and the insolvency resolution process. The lack of harmonized application of RERA and IBC poses a problem in ensuring fair treatment of homebuyers and in effectively addressing insolvency issues within the real estate sector. Therefore, there is a critical need to examine and address these issues to enhance the legal framework governing the real estate sector and to safeguard the interests of all relevant stakeholders. After the analysis of the provisions of the two legislations and relevant case laws in the context of the real estate sector, suggestions for the improvement of the dynamic application of these laws are necessary.

### ***Research Questions***

1. What provisions of RERA and IBC overlap and how does this affect the legal rights of homebuyers in the real estate sector?
2. What are the challenges that have occurred through the collision of RERA and IBC?
3. How does the IBC's precedence over other statutes affect debt resolution and stakeholder protection, especially in the real estate sector, and what are the potential effects of proposed government interventions for addressing challenges in the industry?
4. What recommendation or suggestion can be made for improving the effectiveness of the regulatory framework, particularly in the context of the real estate sector?

### ***Hypothesis***

The combined use of the RERA and the IBC is expected to create a more effective set of rules, ensuring better protection for homebuyers and faster resolution of financial troubles in the real estate industry. This belief is based on the idea that aligning the rules of RERA and IBC will reduce legal

complications, make it easier to solve disagreements and strengthen the rights of homebuyers, ultimately improving the fairness and efficiency of the real estate market. By examining where the rules of RERA and IBC overlap, we expect that using these laws together will make the legal framework stronger, addressing important problems faced by homebuyers and others involved. Comparing past legal cases, official rules, and expert opinions are likely to show how RERA and IBC can work together better, leading to a more coordinated and thorough approach to solving financial problems while ensuring that homebuyers are protected. Furthermore, by identifying and studying where the rules of RERA and IBC overlap, it is easier to find where they need to be better coordinated. This will help to make suggestions to improve the rules. These suggestions are expected to highlight the importance of using RERA and IBC together, emphasizing the need for clear and consistent laws to protect the rights of homebuyers and make it easier to solve financial problems in the real estate industry.

### ***Conclusion***

This research proposes several strategies to strengthen the legal framework for real estate in India. These strategies focus on improving dispute resolution by facilitating collaboration between RERA authorities and the National Company Law Tribunal. Additionally, clarifying the areas where the two laws, RERA and IBC, overlap can help eliminate confusion. Public awareness campaigns are also recommended to educate homebuyers about their rights under both laws. Furthermore, strengthening enforcement mechanisms through stricter regulations and penalties can deter unfair practices by developers. The research emphasizes the importance of consistently interpreting RERA and IBC, continually improving the legal framework, and conducting further research in specific areas. These areas include comparing international approaches, analyzing the impact of technological advancements, and evaluating the effectiveness of existing enforcement mechanisms. Ultimately, aligning RERA and IBC remains crucial for protecting homebuyers effectively and fostering a secure and equitable real estate sector in India.<sup>5</sup> This can be achieved through a robust and unified legal framework that prioritizes and safeguards the rights of homebuyers.

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<sup>5</sup> DR. Anup P. Shah, IBC OR RERA? AND THE WINNER IS...! (November 27, 2023). <https://bcajonline.org/journal/ibc-or-rera-and-the-winner-is/>

### ***Methodology***

This research adopts a doctrinal approach to analyze the legal implications of overlapping provisions in the Real Estate (Regulation and Development) Act, 2016 (RERA) and the Insolvency and Bankruptcy Code, 2016 (IBC), particularly concerning homebuyer rights in the real estate sector. The methodology involves formulating a research question, gathering legal sources, conducting meticulous legal analysis, interpreting and synthesizing information, and ensuring proper citation. By maintaining a neutral tone and logical structure, the research aims to comprehensively examine the interplay between RERA and IBC, focusing on their impact on homebuyer rights in the Indian real estate sector.

## **CHAPTER 2 – INTRODUCTION**

The Indian real estate sector always presents an opportunity of great scale and potential but it also goes through several risk factors such as project delay, material discrepancies, and financial instability of homebuyers. Since such inconveniences were found, the government of India implemented a technology-leading law in the field of real estate passed in 2016 called the Real Estate (Regulation and Development) Act, acronymized as RERA. The purpose of the bill has been to keep a check on the real estate realm. To resolve the problems of the company insolvency framework, a new law called the Insolvency and Bankruptcy Code (IBC) was enacted in 2016 as well. RERA came into being in response to the long-lasting need for rules and regulations in the real estate sector. It requires developers to go through registration, to give all the necessary info, and to comply with certain timelines for projects as well as quality standards. Moreover, the law also mandates RERAs at the state level to solve the problems of both homebuyers and developers. While the IBC makes the process of restructuring insolvency for companies, partnerships, and individuals more precise, the other path is aimed at making insolvency resolution a smoother process for all kinds: companies, partnerships, and individuals. It delegates a timely plan for asset preservation or relaxation in case of insolvency, creditors are treated equally, and the financial recovery process is smoothened. In the case of cash flow problems of a real estate development company, the inability to fulfill the promises of the customers, the RERA and IBC laws merge, and the legal situation turns out to be more complicated. This leads to several existential questions touching on issues of consumers' rights and the redress mechanisms. The study's significance mainly reveals the hypothesis of the similarities and identification of the provisions that are common between RERA and IBC. At the same time, the

conflict between these two laws might be viewed as the source of difficulties and the rallying point that creates chances to reconcile the interests of the home-buyers with the objectives of the insolvency resolution. The significance of the RERA-IBC rule-making dynamics applied in the real estate sector necessitates the attention of the policymakers, legal practitioners, and all parties affected therein. This type of knowledge leads to informed decisions, which further contributes to the successful strengthening of an effective regulation that can envision and address the wide spectrum of challenges.

## **CHAPTER 3 – UNDERSTANDING THE OVERLAPPING PROVISIONS**

The constitution of the RERA Act, 2016, and the IBC, 2016, two distinctive laws, get together when it comes to real estate projects and the rights of the homebuyers. Realization of the basic provisions outlined in the RERA act for real estate projects and the rights of the buyers, as well as the provisions described in the IBC act for the insolvency resolution process and the condition of homebuyers, is critical to go beyond the complications that emerged from their interventions. RERA is a transparent act that safeguards the interests of property buyers. It provides enforceable guidelines stipulating that projects must be registered with the RERA authority, thus guaranteeing that developers meet the set deadlines, quality standards, and commitments to home buyers. In addition to this, the act imposes a mandatory approval such that a certain part of the project's funds received by the homebuyers must be deposited into a separate account to prevent project delays and financial mismanagement. The RERA also ensures the provision of the homebuyer to enforce the remedy for any structural or financial defects in any real estate project. This can bring at least partial relief for the homebuyers. While the IBC in many ways sets out a course for relief, the particular place of resolution of insolvency proceedings is provided within its structural framework. The Code gives homebuyers the status of financial creditors for debt purposes, and thereby not only includes them in the Committee of Creditors (COC) architecture for financial creditors, instead of unsecured creditors but also allows them judicial remedy till settlement of their disputes. This status sets the homebuyers in a practical situation as they can take part in resolving disputes through playing a role in decision-making processes and, therefore, their voices are heard. Furthermore, the IBC has brought in subsequent amendments to help put homebuyers' strong department against tricky real estate developers. In some

instances, IBC gives homebuyers authority to trigger insolvency proceedings against delinquent builders.

The delicate combination of RERA and IBC offers special challenges that entail both compensation and opportunities. The resolution of this complaint should be the primary concern to promote fairness in the situation, while at the same time, guaranteeing that the restructuring procedure does not violate insolvency proceedings. The matching of the provisions has got to be well understood for the betterment of the law and practice which involves all the stakeholders, homebuyers, real estate developers, financial institutions, and regulatory bodies.

The case of *Chitra Sharma v. Union of India* was a turning point on the subject of the rights of homebuyers when it comes to the processes of insolvency, especially the matters relating to the contradictory provisions in the RERA and IBC. In the first instance, a group of unfortunate homebuyers of Jaypee Infratech Limited turned to the Supreme Court to put forward their claim that, in comparison to the banks, they were owed a higher amount of debt concerning their returns. The Supreme Court recognizes the disparity in the treatment of mortgage holders and financial institutions under this existing legal framework where banks are the only types of financial creditors resulting in their stronger creditworthiness position. The Supreme Court's decision in *Chitra Sharma*, not only did strengthen the rights of homebuyers but also made it clear that the courts will make sure the interests of homebuyers are safeguarded. The Court gave the order to appoint the authorized representatives of the homebuyers to attend the meetings of the Committee of Creditors (COC) held under Section 21 of IBC, on an interim basis. This step was aimed at presenting the tough position of the home buyers and also to protecting their rights using the Code, thus correcting the injustice that these plaintiffs had previously encountered. Similarly, because the Supreme Court intervened in response to the inequity faced by homebuyers, the state assembly administrated the Insolvency and Bankruptcy (Amendment) Ordinance of 2018. With the presence of this clause, the home buyers too come within the preview of being debtors under the code. Another crucial text of this legislation received reinforcement by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, which, for the first time, granted allottees the status of financial creditors. The 2018 Amendment included an explanation in the definition of 'financial debt' under Section 5(8)(f) of the Code, deeming any amount raised from an allottee under a real estate project as having the commercial effect of borrowing.

Consequently, the outstanding debt owed to the allottees in real estate projects was statutorily recognized as 'financial debt', thereby bringing the allottees within the purview of 'financial creditors'. Hence, the Chitra Sharma case holds immense legal significance as it underscores the importance of aligning the provisions of RERA and IBC to ensure equitable treatment for homebuyers. The case catalyzes legislative amendments, leading to the recognition of homebuyers as financial creditors, thereby empowering them to participate in insolvency proceedings and protecting their rights.

In the case of *Pioneer Urban Land and Infrastructure Limited and Another Enterprises v. Union of India and Others*, the main issue was whether the IBC's second amendment was constitutional or not. Such corporations, usually named under the "2018 Amendment", are added to the definition of "clients of real estate" under section 5(8)(f) which describes financial creditors in the IBC. This effectually provided homebuyers the same credibility as other lenders, the banks, when real estate developers underwent insolvency. The Supreme Court, by a 2:1 majority, held the 2018 amendment valid. The reasons for the court to conclude such a decision rested on two key pillars:

- I) **Commercial Effect of Borrowing:** Developers raising money by selling plots or homes does not fundamentally differ from commercial borrowing, since both transactions attract interest payments. Such a stand thus provides a strong legal basis for acknowledging house buyers as creditors facilitated by IBC.
- II) **Safeguarding Homebuyer Interests:** According to the court, the interests of homebuyers during the corporate insolvency resolution process (CIRP) of a real estate developer should be protected primarily. Granting them the status of financial creditors was seen as crucial to ensure their voices were heard and their claims were considered alongside other creditors during the resolution process.

The implication of this landmark decision for homebuyers was significant. Before the amendment, homebuyers were classified as unsecured creditors, placing them in a weaker position compared to secured creditors like banks. This often resulted in meager recoveries in cases of insolvency. By recognizing them as financial creditors, the Court empowered homebuyers to participate actively in the CIRP, negotiate settlements, and potentially recover a larger portion of their investments. The Pioneer Urban Land and Infrastructure case stands for a significant step in the process of enhancing the homebuyer's protection in India.



The key implications of this case are:

- I) **Enhanced Bargaining Power:** Homebuyers' classification as financial creditors grants them voting rights in the Committee of Creditors (CoC), enabling them to influence decisions regarding the resolution plan and potentially negotiate better terms for themselves.
- II) **Improved Access to Information:** At the CIRP process, homebuyers have a right to obtain information on the developer's financial situation and the proposed revision plan, thus enabling them to consider their course of action more accurately.
- III) **Fairer Claims Resolution:** The Court intended to give homebuyers financial creditors status, to make sure they are among creditors' consideration and possibly take the availability of limited resources into proper consideration.

However, it is crucial to acknowledge that the 2018 Amendment and subsequent judicial interpretations do not offer a complete solution to the challenges faced by homebuyers. Concerns remain regarding:

- I) **Practical Implementation:** The Supreme Court's ruling in the case of *Innovative Industries Ltd. v. ICICI Bank & Ors.*,<sup>6</sup> underscores the need for expeditious resolution under the Insolvency and Bankruptcy Code (IBC) to prevent delays and ensure the effective functioning of the insolvency process. The Court recognized that delays could hamper the objectives of the IBC and negatively impact stakeholders, including homebuyers. This emphasis on expeditious resolution aligns with the concern that the effectiveness of the provisions still largely depends on the smooth functioning of the Corporate Insolvency Resolution Process (CIRP), which can be complex and time-consuming.
- II) **Multiple Jurisdictions:** There is a need for dealing with conflict situations evolving between RERA and IBC on dispute resolution mechanisms that still demand more interpretation.
- III) **Threshold Requirements:** The present law that demands at least a certain percentage of home buyers to be present initiating a legal process (CIRP) against the builder may be quite subjective for small housing projects. So far, there have been no court cases that solely concern this situation, but general legal principles from similar ones could be used

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<sup>6</sup> 2017 SCC OnLine SC 1025

to find a solution to this problem.

Despite these limitations, the Pioneer Urban Land and Infrastructure case represents a significant milestone in recognizing and protecting the rights of homebuyers in India. It paves the way for a more balanced and robust framework for addressing developer insolvency, ensuring that homebuyers are not left at the mercy of unforeseen circumstances.

In the case of *Manish Kumar v. Union of India*, the court sets the directive for home buyers' rights under Section 7 of the Insolvency and Bankruptcy Code (IBC) and the legitimacy of the lower threshold for the homebuyers to begin the Corporate Insolvency Resolution Process (CIRP). In the context of the 2020 Amendment, the Supreme Court upheld the constitutional validity of the threshold to apply to Section 7 of the Code by the homebuyers. The Amendment stipulated that CIRP proceedings could be initiated jointly by not less than 100 of such allottees under the same real estate project or not less than 10% of the total number of such allottees under the same real estate project, whichever is less.

The 2020 Amendment brought about crucial changes in the initiation of CIRP proceedings by homebuyers, introducing a threshold to safeguard the interests of both the homebuyers and the real estate developers. The Amendment aimed to address the concerns of multiple individual applications by creditors, thereby ensuring a more structured and cost-effective process. Moreover, it sought to protect financially viable real estate companies from unwarranted resolutions under the Code, emphasizing the importance of the threshold for filing applications by homebuyers. The Supreme Court's upholding of the constitutional validity of this in the case of *Manish Kumar v. Union of India* underscores the intention to create a balance between the rights of homebuyers and the interests of real estate developers. This decision has had a far-reaching impact on the rights and obligations of homebuyers, providing a structured approach for initiating CIRP proceedings, thereby streamlining the resolution process for real estate projects. The constitutional validity of the threshold for homebuyers to initiate CIRP proceedings under Section 7 of the IBC was challenged, raising concerns regarding its compatibility with fundamental rights, including the right to equality, right to trade, occupation, and business, and the right to life and personal liberty. The Supreme Court observed that “The law must present a clear departure from constitutional limits and the wider latitude given to the

lawgiver in economic reforms”.

By recognizing the need for a structured and safeguarded approach in initiating CIRP proceedings, the Court has set a precedent that ensures equitable treatment and protection of the interests of homebuyers while also facilitating the resolution process for real estate projects.

## **CHAPTER 4 – COMPARATIVE ANALYSIS BETWEEN RERA AND IBC**

The comparative analysis of the RERA and IBC provides valuable insights into the interplay of these legislations and their implications for homebuyers and real estate developers. RERA and IBC, though enacted for distinct purposes, exhibit certain overlapping provisions, especially concerning the interests of homebuyers and real estate developers. Both legislations aim to address the challenges prevalent in the real estate sector, albeit through different mechanisms. The identification of overlapping provisions is crucial in understanding the potential conflicts and harmonious interpretation of these laws.

Common areas of overlap include:

- I) Treatment of homebuyers as financial creditors under certain circumstances.
- II) Resolution and liquidation processes impacting the rights and interests of homebuyers and real estate developers.
- III) Appointment of authorities for supervision and resolution of disputes.

The harmonious interpretation of RERA and IBC is essential to ensure coherence and effectiveness in addressing the complexities of the real estate sector. While RERA primarily focuses on regulating the real estate sector and protecting the interests of homebuyers, IBC deals with the insolvency and resolution processes across industries, including real estate. Harmonizing these legislations requires a balanced approach that upholds the rights of homebuyers and the interests of real estate developers while avoiding conflicts that could impede the resolution of real estate projects. The judicial approach towards harmonizing RERA and IBC has been pivotal in ensuring a cohesive legal framework for the real estate sector. Courts have emphasized the need to interpret these legislations in a manner that

complements each other, thereby avoiding any contradictions or dilution of the objectives envisaged under both laws.

One case where IBC's provisions override RERA is *Vishal Chelani and Ors v. Debashis Nanda*,<sup>7</sup> in this case, the court set aside the impugned order, declaring that the appellants are financial creditors within the meaning of Section 5(8)(f) of the IBC and entitled to be treated as such along with other home buyers/financial creditors for the purposes of the resolution plan. The court emphasized the non-obstante clause in Section 238 of the IBC, which gives overriding effect to its provisions, and concluded that the decision of the Resolution Professional is void and acknowledged the appellants as financial creditors under the IBC. The coexistence of RERA and IBC has significant legal implications for homebuyers and real estate developers. The interplay between these legislations impacts the rights, remedies, and obligations of the stakeholders involved in real estate projects. It is imperative to assess the legal implications to ensure that the interests of homebuyers are protected, while also considering the viability and sustainability of real estate projects.

The assessment of legal implications covers the following:

- I) Clarity on the rights of homebuyers in the event of insolvency or default by real estate developers.
- II) Streamlined resolution mechanisms that safeguard the investments of homebuyers and the interests of real estate developers.
- III) The impact of concurrent proceedings under RERA and IBC on the rights and obligations of the parties involved.

In conclusion, the comparative analysis of RERA and IBC underscores the need for a harmonious interpretation of these legislations to address the intricacies of the real estate sector.

## **CHAPTER 5 – CONCLUSION AND RECOMMENDATION**

While the framework established by RERA and IBC has made significant strides in protecting homebuyers and promoting a more robust real estate sector, there remains room for improvement.

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<sup>7</sup> SCC OnLine SC 1324

Here are some key recommendations:

- I) Streamlining Dispute Resolution – Exploring rights and remedies to streamline dispute resolution processes, potentially through coordinated efforts between RERA authorities and the National Company Law Tribunal (NCLT), could help in finding solutions for homebuyers facing issues with developers.
- II) Clarification of Overlap Areas – Further judicial pronouncements or legislative amendments could provide greater clarity on specific areas of overlap between RERA and IBC, particularly regarding the hierarchy of claims and the overlap of remedies available to homebuyers under both acts.
- III) Enhanced Public Awareness – Increasing public awareness about the provisions of RERA and IBC, especially among homebuyers, is crucial to ensure they understand their rights and can navigate the avenues for redressal effectively. This can be achieved through educational campaigns, legal aid initiatives, and readily accessible information portals.
- IV) Strengthening Regulatory Enforcement – Effective enforcement of provisions, including stricter penalties for non-compliance with RERA regulations and streamlining insolvency proceedings under the IBC, is essential to prohibit developers from engaging in unfair practices and ensure timely resolution of disputes.

This analysis has highlighted the overlapping provisions between RERA and IBC present both opportunities and challenges for homebuyers and real estate developers, harmonious interpretation of these acts, combined with clear communication and legal guidance, is crucial for a well-functioning real estate ecosystem. While significant progress has been made, further improvements are needed to enhance the effectiveness of the regulatory framework and provide a more comprehensive and streamlined approach to protecting homebuyer rights. The current legal landscape necessitates continual efforts to ensure that RERA and IBC operate in tandem to effectively protect homebuyers in the event of developer insolvency. By exploring the recommendations outlined above and encouraging further research in this area, stakeholders can work towards a more robust and aligned regulatory framework that prioritizes the rights and interests of homebuyers, promoting a more secure and equitable real estate sector in India.