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# JUDICIAL INTERPLAY BETWEEN INSOLVENCY AND BANKRUPTCY CODE ('IBC') AND REAL ESTATE (REGULATION AND DEVELOPMENT) ACT ('RERA')

The recognition of allottees as financial creditors under Section 5(8)(f) of the IBC vide the 2018 Amendment enables homebuyers to initiate corporate insolvency resolution proceedings ("CIRP") against defaulting promoters. While this strengthens their position, it creates an overlap with the remedies available under the RERA, as both legislations protect allottees through parallel mechanisms.

A key conflict arises from Section 14 of the IBC, which imposes a moratorium upon commencement of CIRP, suspending all on-going proceedings or any future proceedings against the developer on any forum (including but not limited to RERA). This simultaneously renders the seventy percent escrow mandate under Section 4(2)(l)(D) of RERA ineffective, as the moratorium freezes all developer assets, leaving homebuyers unable to access funds specifically set aside for their protection.

Further, while RERA grants each allottee an individual right to file a complaint under Section 31, the IBC requires a minimum of one hundred allottees or ten percent of total allottees of the same project to jointly initiate CIRP, a threshold that can disenfranchise buyers in smaller projects.

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A clear inconsistency also exists between Section 89 of RERA and Section 238 of the IBC, both of which contain non-obstante clauses granting overriding effect over other laws. In Pioneer Urban and Infrastructure Limited v. Union of India(2019), the Supreme Court applied the principle of harmonious construction and held that RERA and IBC operate concurrently and must be interpreted harmoniously. However, the Court clarified that in the event of any inconsistency, the provisions of the IBC would prevail over RERA.

Recent developments like the IBC Amendment Act, 2026 codifying project-wise resolution, and the Supreme Court's "speculative investor" test in Mansi Brar Fernandes v. Shubha Sharma (2025) have recalibrated the relationship between the two statutes, reaffirming RERA as the primary forum for homebuyer grievances and confining IBC to cases of genuine insolvency. However, the fundamental tension between the two statutes persists.

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