



Statutory Exclusivity vs. Party Autonomy: Reconciling RERA's Non-Arbitrability Doctrine with the Insolvency and Bankruptcy Code in Developer Defaults

Damaraju Pradeep Kumar^{1*} & Dr. Rajbir Kumar²

¹ Research Scholar in Law, Shri Venkateshwara Universtiy, Gajraula, Uttar Pradesh. India.

² Associate Professor in Law, Shri Venkateshwara Universtiy, Gajraula, Uttar Pradesh. India.

Abstract

The doctrinal confrontation between RERA's (Real Estate (Regulation and Development) Act of 2016) non-arbitrability mandate and contractual party autonomy assumes foundational importance when developer defaults activate the Insolvency and Bankruptcy Code, placing specialised consumer safeguards against collective, time-bound resolution in a sector marked by chronic delays and fragile finances. Despite *Pioneer Urban Land and Infrastructure Ltd. Vs. Union of India*, (2019), recognising allottees as financial creditors and holding that RERA and the IBC coexist with the latter prevailing in conflict, and the four-fold non-arbitrability test in *Vidya Drolia Vs. Durga Trading Corporation*, (2021), scholarship has largely examined the regimes in isolation. The residual status of arbitration clauses under the Section 14 moratorium, survival of pending RERA proceedings, and post-resolution enforceability of awards remain underexplored. This study undertakes a systematic doctrinal reconstruction of the statutory texts, Supreme Court and NCLT/NCLAT decisions—including the Bombay High Court's affirmation of RERA's erga omnes character in *Rashmi Realty Builders Pvt. Ltd. Vs. Rahul Rajendrakumar Pagariya*—and comparative common-law approaches, aiming to delineate the outer limits of party autonomy and construct a coherent reconciliation principle preserving RERA's protective core without fragmenting the IBC's collective mechanism. Analysis shows RERA exclusivity ordinarily displaces arbitration pre-insolvency, yet CIRP commencement subordinates bilateral arbitral rights; residual uncertainty persists regarding pre-existing awards and residual RERA jurisdiction after plan approval. These insights compel refined judicial or legislative guidance to eliminate forum-shopping, restore predictability, and reinforce institutional coherence amid developer distress.

Keywords: Non-Arbitrability Doctrine; Statutory Exclusivity; Party Autonomy; RERA–IBC Interface; Developer Defaults; Collective Resolution Primacy

*Corresponding Author Email: iplcpradeepkumar@gmail.com

Published: 15 April 2026

DOI: <https://doi.org/10.70558/IJLBS.2026.v1.i2.261009>

Copyright © 2026 The Author(s). This work is licensed under a Creative Commons Attribution 4.0 International License (CC BY 4.0).

I. Navigating the Fault Lines: Statutory Exclusivity, Party Autonomy and the Real-Estate Insolvency Trilemma

The protective, public-interest architecture of the Real Estate (Regulation and Development) Act, 2016 (RERA) clashes with the contractual freedom defended by the Arbitration and Conciliation Act, 1996 and the collective-resolution primacy of the Insolvency and Bankruptcy Code, 2016 (IBC) in India's complicated real estate regulatory landscape. This conflict is particularly severe in the particular scenario of developer defaults, where purchasers simultaneously seek to enforce or oppose arbitration terms, initiate or defend corporate bankruptcy actions, and exercise specialized legislative remedies. The consequent doctrinal conflict between the fundamental concept of party autonomy and the developing non-arbitrability theory of RERA necessitates a strict, moral reconciliation that also takes into account the IBC's overriding non-obstante provision.

a. The Public-Interest Character of RERA and the Non-Arbitrability Imperative

At the core of the non-arbitrability debate stands the Supreme Court's four-fold test in *Vidya Drolia Vs. Durga Trading Corporation* (2021), which holds a dispute non-arbitrable when the cause of action relates to actions *in rem* that do not merely generate subordinate rights *in personam*, when it affects third-party rights with *erga omnes* effect, when it implicates sovereign or public-interest functions, or when a mandatory statute expressly or by necessary implication excludes arbitration. High Courts have increasingly categorized RERA cases as non-arbitrable, building on the prior acknowledgment in *Booz Allen & Hamilton Inc. Vs. SBI Home Finance Ltd.* (2011) that rights *in rem* fall outside the purview of private adjudication. In *Rashmi Realty Builders Pvt. Ltd. Vs. Rahul Rajendrakumar Pagariya* (2024), the Bombay High Court noted that even a single allottee's complaint under RERA has an *erga omnes* character: any order on delay, structural flaws, or project registration affects the entire project, the association of allottees, and third-party rights, making private arbitration inappropriate.

Statutory exclusivity is further reinforced by Section 79 of RERA, the welfare design of the Act, and the specialized enforcement mechanisms it establishes. Parties cannot contract out of the forum and remedies specifically designed to safeguard a vulnerable class of homebuyers by private agreement. Parallel jurisprudence in *Imperia Structures Ltd. Vs. Anil Patni* (2020) and *Emaar MGF Land Ltd. Vs. Aftab Singh* (2019) has confirmed that special statutory remedies are still available at the allottee's option despite an arbitration clause, highlighting that party autonomy yields when mandatory protective legislation is engaged.

b. The IBC Overlay and the Hierarchy of Remedies in Developer Defaults

A second level of complication emerges when developer defaults turn into bankruptcy. The Supreme Court upheld the 2018 amendment that treats homebuyer advances as financial debt under Section 5(8)(f) of the IBC in *Pioneer Urban Land and Infrastructure Ltd. Vs. Union of India* (2019). It also held that RERA and the Code must be read harmoniously; in the event of an irreconcilable conflict, the later non-obstante clause of Section 238 of the IBC takes precedence. This relationship has been recalibrated by later rulings, such as *Mansi Brar Fernandes Vs. Shubha Sharma* (2025), which established the IBC as a last-resort remedy for legitimate corporate insolvency rather than individual debt recovery or speculative claims, and

RERA as the main forum for legitimate homebuyer complaints. Project-wise resolution procedures, which were supported in *IndiaBulls Asset Reconstruction Co. Ltd. Vs. Ram Kishore Arora* (2023) and further improved in subsequent Supreme Court rulings, demonstrate the judiciary's attempt to protect allottees' collective interests while avoiding the complete disruption of feasible projects.

c. Toward a Coherent Doctrinal Framework

According to the cumulative jurisprudence, the collective and public-interest aspects of real estate disputes are protected by RERA's non-arbitrability doctrine, residual party autonomy only endures when statutory rights under RERA are not invoked, and the IBC asserts primacy in actual insolvency scenarios. A careful application of the election concept, a specific differentiation between rights in personam and rights in rem, and adherence to the constitutional guaranty of shelter under Article 21 are all necessary to reconcile both regimes. In order to propose a logical and constitutionally sound doctrinal framework for future adjudication, this article undertakes that investigation by analysing the specific boundaries of statutory exclusivity under RERA, the boundaries of contractual freedom in arbitration clauses, and the operational interface with the IBC in developer-default cases.

II. Literature Review: Mapping the Doctrinal Contours of Statutory Exclusivity, Party Autonomy and Insolvency Primacy

a. Foundational Jurisprudence on Non-Arbitrability and Rights in Rem

The dichotomy between rights in personam and rights in rem forms the conceptual basis of non-arbitrability in Indian arbitration law. The Supreme Court ruled in *Booz Allen & Hamilton Inc. Vs. SBI Home Finance Ltd.* (2011) that private arbitration is not appropriate for issues involving rights in rem, which are those that bind the whole globe and necessitate centralized public adjudication. This principle was refined and systematized in *Vidya Drolia Vs. Durga Trading Corporation* (2021), where the Court articulated a four-fold test: (i) when the cause of action relates to actions *in rem* that do not merely generate subordinate rights *in personam*; (ii) when the dispute affects third-party rights with *erga omnes* effect and requires centralized adjudication; (iii) when it implicates inalienable sovereign or public-interest functions; and (iv) when a mandatory statute expressly or by necessary implication excludes arbitration. These decisions established that party autonomy, though foundational to arbitration, is not absolute and must yield to statutory schemes designed to protect collective or public interests.

b. RERA's Statutory Architecture and the Emergence of Non-Arbitrability Doctrine

A specific regulatory framework was established by the Real Estate (Regulation and Development) Act, 2016 with the goal of safeguarding homebuyers through disclosure requirements, registration requirements, and specialized adjudicatory procedures. The Supreme Court upheld the retroactive application of RERA to ongoing projects without completion certificates in *Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P.* (2021), highlighting the welfare orientation of the statute and the unqualified right of allottees to seek refund with interest under Sections 18 and 19. High Courts have increasingly seen RERA issues as non-arbitrable, building on this protective mind set. In *M/s. Rashmi Realty*

Builders Pvt. Ltd. Vs. Rahul Rajendrakumar Pagariya (2023), the Bombay High Court ruled that disputes covered by RERA have an erga omnes character, meaning that even a single allottee's complaint impacts the project as a whole, the association of allottees, and third-party rights. Therefore, the Real Estate Regulatory Authority's authority under Section 20 cannot be superseded by an arbitration clause in the sale agreement. The Supreme Court's parallel rulings in *Imperia Structures Ltd. Vs. Anil Patni (2020)* and *Emaar MGF Land Ltd. Vs. Aftab Singh (2019)* reinforced that party autonomy is subservient to mandatory protective legislation by confirming that special statutory remedies remain available at the allottee's option despite an arbitration agreement.

c. The IBC Overlay and Harmonious Construction with RERA

When homebuyer advances were categorized as financial debt under the Insolvency and Bankruptcy Code, 2016, a parallel and possibly contradictory remedy was provided. The Supreme Court affirmed the constitutionality of the 2018 amendment to Section 5(8)(f) in *Pioneer Urban Land and Infrastructure Ltd. Vs. Union of India (2019)*. It also held that RERA and the IBC must be read in harmony, with the later non-obstante clause of Section 238 of the IBC taking precedence in cases of irreconcilable conflict. The Court made it clear that while remedies under the IBC, RERA, and the Consumer Protection Act are concurrent, in actual insolvency situations, the Code's collective-resolution mechanism takes primacy. This hierarchy has been improved by later jurisprudence. The Supreme Court supported project-wise bankruptcy resolution in *Indiabulls Asset Reconstruction Co. Ltd. Vs. Ram Kishore Arora (2023)*, acknowledging that treating a corporate debtor as a single entity might cause homebuyers of feasible projects unnecessary hardship. Most importantly, *Mansi Brar Fernandes Vs. Shubha Sharma (2025)* recalibrated the relationship by designating the IBC as a remedy of last resort, reserved for legitimate corporate insolvency rather than individual debt recovery or speculative claims, and RERA as the main forum for legitimate homebuyer grievances. The Court further connected the basic right to shelter under Article 21 with the right to timely and safe ownership of a house.

d. Doctrinal Gaps and the Imperative for Coherent Reconciliation

There are still large theological gaps in spite of these advancements. High Courts continue to disagree over the exact distinction between arbitrable rights in personam and non-arbitrable rights in rem under RERA. There is still conflict in the practical interface between RERA orders and the IBC moratorium under Section 14, especially when a homebuyer receives a reimbursement decree prior to insolvency. The non-arbitrability analysis and the theory of election of remedies have not been completely integrated, despite their application in consumer-RERA situations. A fragmented picture where party autonomy, statutory exclusivity, and insolvency priority pull in various directions is revealed by literature and court rulings. Therefore, the four-fold test of Vidya Drolia, the welfare nature of RERA confirmed in Newtech and Rashmi Realty, the harmonic construction required by Pioneer Urban, and the calibrated hierarchy stated in Mansi Brar Fernandes all have to be incorporated into a cohesive framework. Only such a combination can stay true to legislative purpose and constitutional principles while offering stability to developers, homebuyers, and insolvency experts.

III. Methodology

a. Doctrinal Cartography of Competing Statutes

The study begins with a rigorous doctrinal mapping of the Real Estate (Regulation and Development) Act, 2016 and the Insolvency and Bankruptcy Code, 2016. Primary legislative texts, rules, and authoritative judicial pronouncements are subjected to close textual analysis to isolate the precise contours of RERA's non-arbitrability doctrine and the IBC's overriding insolvency regime. Special attention is paid to the statutory exclusivity claims under Sections 79 and 88 of RERA vis-à-vis the party-autonomy and moratorium provisions of the IBC.

b. Jurisprudential Archaeology and Precedential Synthesis

A systematic excavation of Supreme Court and High Court decisions is undertaken to reconstruct the evolving judicial attitude toward arbitrability of real-estate disputes and the treatment of home-buyer claims in developer insolvency. Landmark rulings are dissected through the twin lenses of legislative intent and commercial pragmatism, revealing points of friction and latent convergence.

c. Comparative Institutional Analysis

Drawing on select Commonwealth and civil-law jurisdictions that confront analogous tensions between sector-specific regulatory exclusivity and general insolvency frameworks, the research extracts transferable design principles. This comparative exercise sharpens the normative evaluation of India's current reconciliation deficit.

d. Normative Reconstruction and Reform Design

The final stage employs a principles-based evaluative framework that privileges both consumer protection and systemic commercial certainty. Competing policy goals, statutory exclusivity versus contractual autonomy, are weighed through a structured balancing test. The outcome is a calibrated set of doctrinal and legislative recommendations aimed at coherent co-existence of RERA and IBC in cases of developer default.

This multi-layered methodology ensures that the inquiry remains both deeply grounded in positive law and sufficiently ambitious to generate actionable, future-oriented solutions.

IV. The Theoretical Bedrock of Non-Arbitrability

Under the Arbitration and Conciliation Act of 1996, party autonomy is a fundamental component of arbitration; but, in cases where the subject matter involves rights in rem, third-party interests with erga omnes effect, or mandated public forums established by special law, party autonomy gives way to statutory exclusivity. In *Booz Allen & Hamilton Inc. Vs. SBI Home Finance Ltd.*, (2011), and in *Vidya Drolia Vs. Durga Trading Corporation*, (2021), the Supreme Court established a four-part test: disputes involving pure actions in rem, those affecting third-party rights requiring centralized adjudication, sovereign or public-interest functions, and those expressly or implicitly prohibited by mandatory statutes are not subject to arbitration. These requirements are met by conflicts under the Real Estate (Regulation and Development) Act, 2016 (RERA) since rulings pertaining to project registration, delays,

structural flaws, or refunds exceed bilateral contractual rights and bind the whole project, association of allottees, and prospective purchasers.

a. RERA's Statutory Exclusivity and the Erga Omnes Imperative

Under Sections 20, 31, and 71 of RERA, a specialized regulatory and adjudicatory system is established, establishing rights and remedies that, by necessary inference, supersede private agreements. In *Rashmi Realty Builders Pvt. Ltd. Vs. Rahul Rajendrakumar Pagariya*, the Bombay High Court ruled that even individual allottee complaints under RERA have erga omnes effects, making such disputes non-arbitrable and maintaining the Real Estate Regulatory Authority's exclusive jurisdiction despite an arbitration clause. This is consistent with the Vidya Drolia doctrinal framework's reaffirmation that specific legislation establishing public forums for consumer protection in real estate cannot be bargained out of. When a disagreement comes under its regulatory purview, Section 89 of RERA further affirms its supremacy over conflicting sections of other laws, such as the Arbitration Act.

b. Party Autonomy's Limits in Developer-Allottee Relations

Although parties may consent to arbitration for purely contractual disputes in personam, if statutory rights are exercised, this autonomy cannot take the place of RERA's mandated program. A signatory to an arbitration agreement cannot be forced to abandon the statutory remedy, as the Supreme Court has made clear that consumer protection and real estate regulatory issues belong in public forums as a matter of legislative policy. Parallel or subsequent arbitration for the same cause of action is prohibited after an allottee elects the RERA forum, as demonstrated by the recent application of the theory of election in *M/s Kabra and Associates Vs. Rekha Rajkumar Hemdev* (2023). Therefore, party autonomy does not supersede RERA's exclusive adjudicatory authority; rather, it simply functions within the residual space allowed by the legislation.

c. Intersecting Regimes: RERA and the Insolvency and Bankruptcy Code

Concurrent procedures under RERA and the Insolvency and Bankruptcy Code, 2016 (IBC) are often triggered by developer defaults. The Supreme Court maintained the designation of allottees as financial creditors under Section 5(8)(f) of the IBC in *Pioneer Urban Land and Infrastructure Ltd. Vs. Union of India*, (2019), confirming that the IBC's non-obstante provision in Section 238 takes precedence in situations of direct conflict. At the same time, *Vishal Chelani Vs. Debashis Nanda* (2023) made it clear that homeowners who receive RERA rulings are still considered financial creditors and cannot be placed in a lower class only because they first sought the RERA remedy. The understanding that RERA continues to be the principal venue for possession and reimbursement claims, with IBC acting as a collective resolution mechanism of last resort, further calibrates the cohabitation.

d. Project-Centric Resolution and Limits on Moratorium

In order to safeguard legitimate homebuyers and avoid speculative abuse, recent jurisprudence has improved the interface by supporting project-wise CIRP in real estate insolvencies. The Supreme Court ruled in *Mansi Brar Fernandes Vs. Shubha Sharma* (2025) that insolvency resolution in real estate should typically proceed on a project-specific basis, distinguishing

legitimate allottees seeking possession from speculative investors with assured-return or buy-back conditions. Additionally, in *A A Estates Private Limited Vs. Kher Nagar Sukhsadan Co-Operative Housing Society Ltd.*, (2025), the Court determined that a development agreement that was legally terminated before CIRP does not qualify as a "Asset" covered by the Section 14 moratorium, prohibiting defaulting developers from utilizing insolvency as a defense against societies' and allottees' legitimate redevelopment rights.

e. Towards Doctrinal Reconciliation

The new synthesis maintains IBC's collective insolvency framework for systemic defaults while giving legislative exclusivity under RERA for individual and regulatory remedy. Party autonomy cannot weaken public-interest safeguards thanks to the non-arbitrability of RERA conflicts, which is based on the *Vidya Drolia* criteria and upheld by High Court authority. At the same time, multiplicity is kept from impeding resolution by the IBC's overarching impact and project-centric methodology. In developer-default situations, this dual architecture promotes both consumer protection and orderly insolvency resolution by balancing individual statutory rights with collective creditor interests.

V. The Structural Tension in Real Estate Dispute Resolution

When developers fail, the Real Estate (Regulation and Development) Act, 2016 (RERA) and the Insolvency and Bankruptcy Code, 2016 (IBC) function in similar but with different domains. RERA gives the Real Estate Regulatory Authority and Appellate Tribunal sole adjudicatory authority and establishes specialized statutory rights for allottees, including refund with interest, possession, and compensation. Sale agreements often contain arbitration clauses, which represent party sovereignty under the Arbitration and Conciliation Act, 1996. The implementation of corporate insolvency resolution procedures (CIRP) is made possible by the IBC's simultaneous treatment of allottees as financial creditors under Section 5(8)(f). The ensuing dispute balances contractual freedom and collaborative insolvency resolution against legislative exclusivity and public-interest adjudication. While IBC processes continue to be concurrent but hierarchically superior in circumstances of irreconcilable conflict, courts have gradually recognized that RERA disputes have features that make them non-arbitrable, with RERA serving as the principal remedial venue for legitimate homebuyers.

a. The Fourfold Test and the Non-Arbitrability of RERA Disputes

The Supreme Court established a four-part test for non-arbitrability in *Vidya Drolia v. Durga Trading Corporation*, (2021): (1) when the cause of action and subject matter relate to actions in rem that do not pertain to subordinate rights in personam arising from rights in rem; (2) when the dispute affects third-party rights, produces an erga omnes effect, and requires centralized adjudication; (3) when it involves the State's inalienable sovereign or public-interest functions. In *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, (2011), the distinction between rights in personam, which are often arbitrable, and rights in rem, which are typically non-arbitrable, was established.

Using this paradigm, the Bombay High Court determined that issues covered by RERA are not arbitrable in *M/s. Rashmi Realty Builders Pvt. Ltd. v. Mr. Rahul Rajendrakumar Pagariya &*

Ors. (2023). Orders regarding project delays, structural flaws, registration revocation, or reimbursement duties impact other allottees, the association of allottees, and third-party rights in the project; even a single allottee's complaint has an erga omnes effect. Due to the unique rights created by RERA, particular forums under Sections 20, 31, and 71, and the overwhelming influence of Sections 88 and 89, mutual private adjudication is inappropriate. The RERA legislative framework cannot be enforced through arbitration. Therefore, the RERA Authority's authority is not superseded by an arbitration clause in a sale agreement. In an industry characterized by knowledge asymmetry and systemic risk, party autonomy concedes to the mandated legislative regime intended to safeguard a vulnerable class of customers.

b. Concurrent Remedies and the Primacy of Statutory Forums

Not every alternative remedy is eliminated by RERA. The Supreme Court affirmed the constitutionality of the 2018 IBC amendment designating allottees as financial creditors in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*, (2019). It found that remedies are contemporaneous and that RERA and the IBC must be interpreted in harmony since they operate in separate domains. According to Section 88 of RERA, its requirements complement existing laws rather than contradict them. However, as the Code is a more recent and comprehensive piece of law that focuses on collective settlement in rem, the non-obstante provision of the IBC (Section 238) takes precedence in the event of dispute. The Court emphasized that whereas RERA protects individual investors by implementing project-specific requirements, IBC procedures seek to revive the corporate debtor as a going concern for the benefit of all stakeholders.

This concurrency has been improved by later jurisprudence. The Court upheld the retroactive application of RERA to ongoing projects without completion certificates in *M/s. Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh*, (2021). It also outlined the separate functions of the Regulatory Authority (refund and interest under Sections 18 and 19) and the Adjudicating Officer (compensation). These rulings highlight the fact that private agreements cannot circumvent RERA's specialized machinery.

c. IBC as Forum of Last Resort and the Protection of Genuine Homebuyers

In order to avoid abuse, recent authorities have adjusted the connection. The Supreme Court reaffirmed in *Mansi Brar Fernandes v. Shubha Sharma*, (2025), that the IBC is a forum of last resort meant for actual corporate insolvency and project revival, not individual debt recovery or speculative investment, and that RERA continues to be the primary forum for resolving homebuyers' complaints. Buy-back provisions, guaranty returns, and set appreciation guaranties are frequently indicative of speculative rather than true allottee status. Section 7 prohibits speculative investors from initiating CIRP. The Court acknowledged the right to shelter as an event of Article 21 and gave systematic directives for bolstering NCLT/NCLAT infrastructure and RERA authority.

The fundamental nature of the debt is still that of a financial debt due to an allottee in situations where an RERA decision for reimbursement has been issued; the decree-holder maintains financial-creditor status under CIRP (Vishal Chelani line of cases after Pioneer Urban). A moratorium under Section 14 of the IBC safeguards the corporate debtor's current assets, but it

does not protect defaulting developers from legitimate project-specific remedies or redevelopment by societies where development rights have expired, nor does it revive contracts that were lawfully terminated prior to the start of insolvency.

d. Towards Principled Reconciliation

Party autonomy is not completely eliminated under RERA's non-arbitrability concept. As long as no RERA actions have been started, parties may still choose arbitration for purely contractual disputes that do not include the statutory rights and collective interests protected by RERA (doctrine of election). Parallel arbitration or consumer procedures for the same cause of action are prohibited when RERA is triggered. Individual RERA claims in insolvency are subordinated to the resolution plan after it is authorized due to the collective in-rem nature of CIRP; nonetheless, the plan itself must satisfy the reasonable expectations of true allottees.

This reconciliation is based on functional differentiation: the IBC provides a communal rescue mechanism, while RERA provides specialized, project-centric, public-interest adjudication with erga omnes implications. Since the subject topic does not pass the *Vidya Drolia* criteria, statutory exclusivity under RERA takes precedence over arbitration provisions. Subject to the Code's overriding impact and the court's desire that insolvency remain a last alternative for legitimate purchasers, concurrent remedies with IBC are maintained. Without undermining contractual freedom in relevant sectors or the larger bankruptcy framework required for systemic stability in the real estate industry, the resultant equilibrium safeguards vulnerable allottees.

VI. Statutory Exclusivity versus Party Autonomy: Core Doctrinal Tensions in Developer Defaults

A fundamental tension between the legislative exclusivity of specialized forums and the arbitration concept of party autonomy is crystallized at the junction of the Real Estate (Regulation and Development) Act, 2016 (RERA) and the Insolvency and Bankruptcy Code, 2016 (IBC). The public interest, consumer protection, and project-level regulation are given top priority in RERA's architecture. Allottees as a class, associations, and third-party rights are sometimes affected by erga omnes consequences resulting from disputes regarding delays, refunds, possession, or construction faults. According to the non-arbitrability standards developed in *Vidya Drolia v. Durga Trading Corporation* and *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.*, these conflicts are rights in rem rather than only in personam claims. In *Rashmi Realty Builders Pvt. Ltd. v. Rahul Rajendra Kumar Pagariya*, the Bombay High Court properly determined that conflicts covered by RERA are not arbitrable since mutual private adjudication cannot bind the larger stakeholder community or sufficiently address centralized public effects.

a. Primacy of IBC and Concurrent yet Hierarchical Remedies

The hierarchical relationship was resolved in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India (2019)*: homebuyers are eligible as financial creditors under the expanded Section 5(8)(f) of the IBC, and in any conflict, the later and more comprehensive insolvency framework takes precedence due to Section 238 of the IBC read with Section 88 of RERA. In

theory, remedies are still concurrent (*Imperia Structures Ltd. v. Anil Patni and Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. (2021)* affirm that RERA does not oust other forums). However, once CIRP is admitted, parallel private arbitration or purely individual RERA claims are subordinate due to the in rem nature of insolvency proceedings. This balance is further adjusted by the 2025 ruling in *Mansi Brar Fernandes v. Shubha Sharma*, which establishes RERA as the principal grievance venue, treats IBC as a remedy of last resort, and adds a "speculative investor" filter to stop Section 7 petitions from being abused¹².

b. Shield of Moratorium and Project-Specific Resolution

The Section 14 moratorium has been used more frequently by defaulting developers to delay redevelopment or valid claims. In *A A Estates Pvt. Ltd. v. Kher Nagar Sukhsadan Cooperative Housing Society Ltd. (2025)*, the Supreme Court firmly rejected this tactic, holding that contracts that were lawfully terminated before the start of insolvency do not constitute "Assets" or "Property" of the corporate debtor and cannot be revived by the moratorium. The practical approach that safeguards legitimate homeowners without exposing viable projects to company-wide liquidation risk is project-wise CIRP, which has been supported in the Supertech line of cases and reaffirmed in *Mansi Brar*.

c. Recommendations for Coherent Reconciliation

To formalize the narrow scope of party autonomy, legislative clarification is necessary: First, while arbitration clauses in builder-buyer agreements are still enforceable for purely bilateral monetary claims, they should be specifically subordinated to RERA for issues pertaining to project registration, shared spaces, or collective rights. Second, IBBI–RERA coordination mechanisms for information exchange and claim verification should be included in statutory guidelines that require project-specific CIRP as the default mode in real estate insolvencies. Third, a modified theory of election should only take effect upon a deliberate selection of a statutory venue, avoiding duplicate or sequential processes for the same remedy while maintaining interim safeguards under Section 9 of the Arbitration Act when applicable. Fourth, specialized benches or cooperative procedures between NCLT and RERA authorities would prevent forum-shopping and guaranty that real defaults, not strategic insolvency filings, result in resolution. These actions would protect the constitutional right to housing under Article 21, harmonize legislative exclusivity with residual party autonomy, and bring certainty back for both allottees and legitimate developers.

Conclusion

The doctrinal conflict between the party-autonomy paradigm of arbitration and RERA's non-arbitrability requirement is a systemic struggle over the structure of remedial justice in the real estate industry rather than just a jurisdictional dispute. The statutory exclusivity of RERA conflicts with the communal, value-maximizing logic of the Code when developer default concurrently initiates home-buyer claims under RERA and insolvency processes under the IBC. Courts have come to understand that non-arbitrability under RERA is a calibrated reservation of public-interest adjudication rather than an absolute rejection of private dispute resolution. However, this reservation cannot be allowed to split the insolvency continuum or give individual arbitral awards precedence over the pari-passu distribution required by the IBC.

Therefore, a dual-track framework is necessary for a coherent reconciliation: claims that crystallize as financial or operational debt are directed exclusively into the IBC process, while RERA retains exclusive jurisdiction over regulatory and consumer-protection issues that do not affect the corporate debtor's estate. Party autonomy only endures in the space that this legislative hierarchy leaves behind. By guaranteeing that individual agreements do not jeopardize the systemic goals of prompt resolution, creditor equity, and the resuscitation of feasible enterprises, such a hierarchy does not decrease arbitration but rather disciplines it.

Eventually, the task is not to choose between party autonomy and statutory exclusivity, but to design their cohabitation such that the restructuring mandate of the IBC and the protection objective of RERA complement rather than contradict each other. When developers default, the legal system can only provide both communal economic recovery and individual restitution through this regulated cohabitation.

References:

1. *Pioneer Urban Land and Infrastructure Ltd. Vs. Union of India*, (2019) 8 SCC 416
2. *Vidya Drolia Vs. Durga Trading Corporation*, (2021) 2 SCC 1
3. *Rashmi Realty Builders Pvt. Ltd. Vs. Rahul Rajendrakumar Pagariya*
4. *Booz Allen & Hamilton Inc. Vs. SBI Home Finance Ltd.* (2011) 5 SCC 532
5. *Imperia Structures Ltd. Vs. Anil Patni* (2020) 10 SCC 783
6. *Emaar MGF Land Ltd. Vs. Aftab Singh* (2019) 12 SCC 751
7. *Mansi Brar Fernandes Vs. Shubha Sharma* (2025 INSC 1110)
8. *IndiaBulls Asset Reconstruction Co. Ltd. Vs. Ram Kishore Arora* (Civil Appeal No. 1925 of 2023)
9. *Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P.* (Civil Appeal Nos. 6745–6749 of 2021)
10. *A A Estates Private Limited Vs. Kher Nagar Sukhsadan Co-Operative Housing Society Ltd.*, 2025 SCC OnLine SC 2579
11. *Vishal Chelani Vs. Debashis Nanda* (2023)
12. Dighey, D., & Pandey, A., (2025), “RERA over IBC: The Supreme Court’s course-correction in real estate Insolvency”, Bar and Bench