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REAL ESTATE

RERA’s Iron Grip Strengthened: Courts Redefine Allottee Rights in Mortgages, Leases & Insolvency

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Introduction: The Legal Battlegrounds of RERA

The Real Estate (Regulation and Development) Act, 2016 (RERA), was enacted as a broad safeguard for India's purchasers, a group of consumers that has historically been exposed to the opaque and unaccountable practices prevalent in the real estate industry. The framework was established by the Act itself, which gave allottees an outline of rights and required quick possession, disclosure, and explicit procedures for compensation and refunds.

These new rights, however, did not take effect on their own. They instantly developed two significant legal arenas where RERA's "iron grip" would be subjected to the test. Developers filed the first challenge, claiming that innovative contractual structures such as 999-year "leases" were not "sales" and were therefore immune from RERA's authority. India's robust financial institutions posed the second, and more important, issue in which banks contended that individual allottees' interests were subordinate to their "secured creditor" rights under the SARFAESI Act, which permitted them to seize a project upon a developer's default.

A convergence of conflicting laws and interests made judicial intervention unavoidable. To resolve these disputes, several rulings?were crucial. The courts have consistently eliminated contractual ambiguities and upheld the allottee's priority. This article?examines the legal justification for these rulings, showing how the judiciary has upheld the fundamental tenets of RERA and gradually broadened its applicability, securing the homebuyer's improved legal standing.

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The "Lease" Loophole and Courts stand for Homebuyers

A defect in RERA's own language posed the first significant barrier to its authority. A property that has been "sold (whether as freehold or leasehold)" is covered by RERA's highly detailed definition of "allottee" in Section 2(d), although it expressly "does not include a person to whom such property is given on rent."

Large-scale township developers rapidly took advantage of this ambiguity. They asserted that because their agreements were structured as 99-year or even 999-year "leases" rather than "sales," their customers were only "lessees" paying "rent" and were not "allottees" eligible for RERA's protections. If this claim had been successful, it would have opened up a huge loophole that would have allowed developers to avoid the accountability, transparency, and registration requirements of RERA.

In the verdict of ***Lavasa Corporation Ltd. vs. Jitendra Jagdish Tulsiani***[1]addressed this dispute. The court applied the straightforward but effective legal maxim "substance over form." It examined the transaction's economic reality rather than just the document's title ("Agreement of Lease").

The court determined that such long-term leases only required a small annual "rent" (e.g., 1 Re) after a substantial, one-time upfront payment that was legally referred to as a "premium." The court determined that this "premium" was practically the same as the sale price. When someone paid their entire life savings up front, they were taking on a risk and making an investment, which is exactly what RERA was intended to protect. The buyers are unquestionably "allottees" under RERA, the court decided, and the transaction is essentially a sale. This ruling was the first significant setback to legal formalism, indicating that the judiciary would prioritize the spirit of RERA (protecting consumer investments) over the specifics of a developer's contract.

The Allottee vs. The Bank: RERA's Role in Mortgages & Insolvency

The confrontation between banks and homebuyers has been a significantly more severe dispute. Tragically, this situation frequently occurs: a developer starts a project, mortgages the project land to a bank to obtain a construction loan, and then collects payments from allottees at the same time. Following the developer's loan failure, the bank, acting as a "secured creditor," seizes the project under the potent SARFAESI Act with the intention of auctioning it off to recover its debt. After paying for their units, the homebuyers are left with nothing.

Over the years, this led to a legal void that pitted homebuyer's interests against those of secured lenders. Some recent significant rulings have?provided definitive?and clear solutions.

The Bank "Steps into the Shoes" of the Promoter

The Supreme Court upheld a decision by the Rajasthan High Court in the significant?case of ***Union Bank of India vs. Rajasthan RERA***[2]. The court resolved an obvious problem: what obligation does a bank have to the current allottees when it seizes a project registered under RERA?

The bank claimed that since it was only a lender and not the project's "promoter," it was exempt from RERA. The court disagreed by using RERA's definition of "promoter," which includes an "assignee." The court decided that a bank is essentially "stepping into the shoes" of the developer and becomes a "statutory assignee" of the project's rights and, most importantly, its liabilities when it uses Section 13(4) of the SARFAESI Act to take control of a property.

The bank is now legally regarded as the "promoter" and is completely liable under RERA, which has had a significant impact. It must satisfy the responsibilities owed to the allottees by the original developer. This ruling raised the RERA-secured rights of homebuyers above the SARFAESI-secured lenders' recovery rights. This decision significantly changed how project finance calculated risk. Lenders are now required to become de facto monitors of project compliance to safeguard their own investment, as they may no longer simply foreclose and auction an asset. Instead, they must assume the developer's RERA obligations.

RERA Rights in Insolvency

The Insolvency and Bankruptcy Code (IBC) was the next front in the conflict. In the event of a developer's bankruptcy, buyers are acknowledged as "financial creditors." However, what about buyers who had already obtained **RERA refund/recovery orders** could be placed in a separate, inferior class of creditors in an insolvency proceeding.

The administrator in a bankruptcy procedure in the 2023 case of ***Vishal Chelani v. Debashis Nanda***[3] contended that allottees having sought refunds under RERA rather than possession, had effectively "given up" their status as homebuyers and should therefore be treated differently under the Insolvency and Bankruptcy Code (IBC). The Supreme Court held this to be an impermissible and unconstitutional **"hyper-classification"**.

Key findings of the Court:

- All homebuyers, including those holding RERA decrees, are "financial creditors" under the IBC.
- Seeking a statutory RERA refund **does not strip** an allottee of their status or rights under the IBC.
- A homebuyer cannot be punished for exercising a lawful remedy under RERA.
- Discriminating between (a) possession-seeking allottees and (b) refund-seeking allottees violates **Article 14 of the Constitution**.
- A resolution plan cannot downgrade or exclude RERA decree-holders simply because they already have a money decree against the developer.

This decision harmonises RERA and IBC by ensuring that the use of one statutory remedy does not weaken rights available under another. It also prevents developers or resolution professionals from exploiting procedural differences to dilute homebuyer claims. Practically, it restores bargaining power to allottees by guaranteeing equal priority and voting rights in the Committee of Creditors (CoC), irrespective of the remedy they chose under RERA.

Housing as a Fundamental Right

In Mansi Brar Fernandes v. Shubha Sharma[4], Supreme Court ruling in September 2025, was the culmination of the judiciary's directive. The court was compelled by this decision to clarify what a "genuine homebuyer" is. It used the case to separate legitimate allottees seeking refuge from "speculative investors" who used "assured return" or "buy-back" schemes with no intention of gaining possession. The Court ruled that the IBC's protections are for shelter, not speculation, thereby protecting the integrity of the insolvency system from misuse by financial investors.

Most significantly, the Court ruled that the right to housing is a basic right derived from Article 21 of the Constitution, rather than merely a contractual or statutory right. The constitutional foundation for all previous rulings is provided by this elevation of housing to a fundamental right. A shift toward “project-by-project” insolvency, which would shield homebuyers in a developer’s healthy projects from being dragged down by a single unsuccessful venture, was one of the crucial systemic improvements that the court imposed in this case.

Legal Significance

The judiciary’s active expansion of RERA’s provisions, which significantly improved the homebuyer’s legal standing, is highlighted as a significant legal development. It demonstrates how courts have often sided with allottees, holding that their rights can supersede a bank’s strong mortgage claims under the SARFAESI Act, thereby compelling lenders to assume the promoter’s RERA obligations. Additionally, attempts to treat homebuyers with RERA return orders as a lesser class of creditor have been stopped by the Supreme Court, demonstrating that this protection endures in bankruptcy. The main legal conclusion is that housing is now regarded as a “fundamental right,” providing homebuyers with a strong, constitutionally supported defense against financial institutions and developers.

Conclusion: The Redefined Status of the Homebuyer

The judicial trend since the introduction of RERA shows a distinct and recurring pattern, the allottee’s legal standing has been progressively strengthened. The courts have frequently stepped in when there were statutory uncertainties, such as the meaning of a “lease” or the conflict between RERA and the SARFAESI Act. These decisions have upheld RERA’s supremacy, demonstrating that its consumer protection mission takes precedence over established contractual gaps and guaranteed financial institutions’ recovery rights. By going beyond the Act’s original language to provide a stronger protective shield, this constitutes a substantial shift in jurisprudence.

The homebuyer’s status has been fundamentally redefined because of this judicial reinforcement. The allottee is now regarded as the principal beneficiary of a “fundamental right” to housing and as a “financial creditor” in bankruptcy proceedings rather than as a mere contractual party. Developers and the financial institutions that support them are subject to a new and substantial responsibility of accountability because of this elevation. A new level of de facto monitoring is created when lenders, who may now be held accountable as “promoters,” are motivated to guarantee project compliance. The entire real estate ecosystem is moving strongly toward transparency and allottee-centric accountability because of this structural restructuring, which is being driven by the judiciary.

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