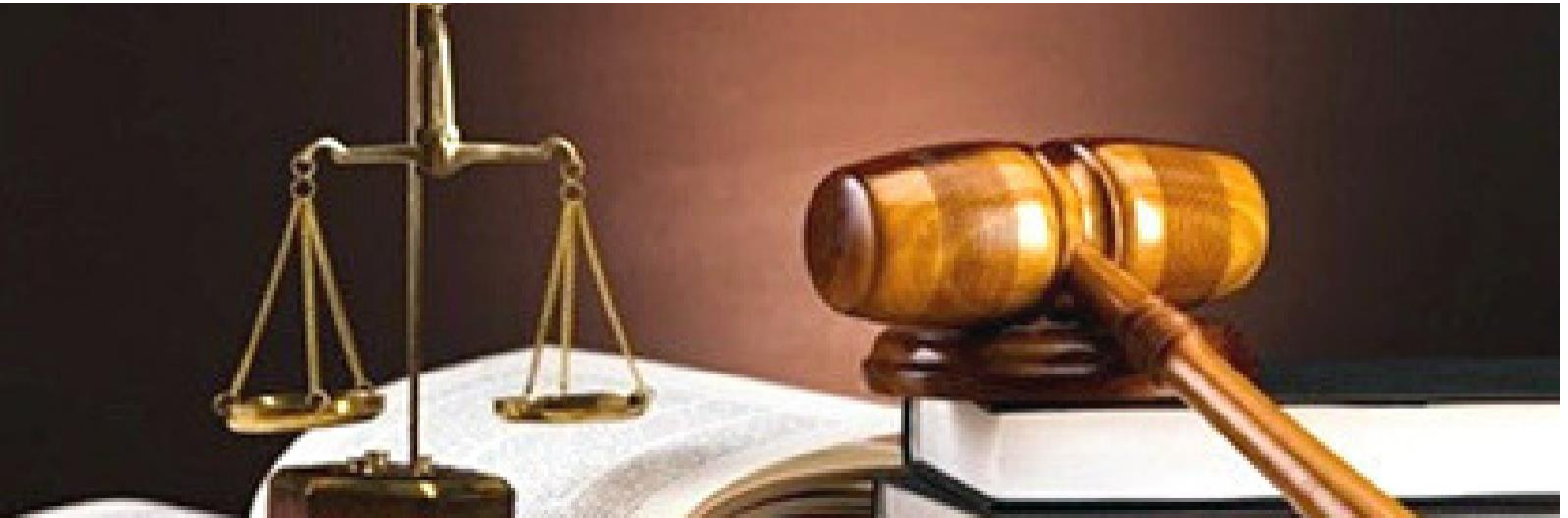


IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Pioneer Urban Land and Infrastructure Limited and Anr. vs. Union of India and Ors.

Brief Facts

The present case culminated out of clubbing of various petitions filed across various adjudicating authorities against the constitutional validity of the Code on the grounds of the Act being violative of Article 14, Article 19(1)(g), Article 300-A i.e violative of right to property.

The Court settled the questions regarding the inclusion of homebuyers/home allottees in the definition of FCs under Section 5(7) and debt owed to homebuyers as financial debt under Section 5(8).

The court also decided on the constitutionality of the Section 5(8)(f), Section 21 (6A) pertaining to the appointment of authorized representative for FCs, and Section 25A pertaining to rights and duties of the authorized representative under the Code.

Decision

The constitutional validity of the Code in its entirety and the amendments made to the Code was upheld.

- a. The amendments made by inserting Explanation to Section 5(8)(f) made deemed allottees of real estate projects to be "FCs" so that they may be covered within the purview of the Code, under Section 7 thereof, against the real estate developer is upheld. [**Para 69**]

- b.** Section 5 (8)(f) as it originally appeared in the Code being a residuary provision, always subsumed within it the allottees of flats/apartments. The explanation together with the deeming fiction added by the Amendment Act is only in further clarification of the provision. **[Para 67]**
- c.** FCs entitled to be represented in the CoC by authorized representatives under Section 21(6A) is constitutionally valid. **[Para 55]**
- d.** Insertion of Section 21(6A) and Section 25A are within legislature's right to experiment in economic matters and shall not be put into question. **[Para 55]**
- e.** The Code is not violative of Article 14 as it lays down an 'intelligible differentia' in different classification of FCs and OCs and such classification is not arbitrary. **[Para 40]**
- f.** The Code is in complete consonance with Article 300-A as it does not deprive anyone of their property without authority of a constitutionally valid law. **[Para 45]**
- g.** The Code does not violate Article 19(1)(g) and put unreasonable restriction on the freedom of business of land developers. **[Para 45]**
- h.** Remedies that are given to allottees of flats/ apartments are therefore concurrent remedies, such homebuyers can avail remedies under the Consumer Protection Act, 1986, RERA as well as the Code, 2016. **[Para 87]**

[Link of the Order](#)

<https://ibbi.gov.in/uploads/order/a3e52298890f87a5e51f3f2431ee08fd.pdf>



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