

Address by Shri Naveen Verma, Chairman-RERA, State of Bihar in Webinar on “Real Estate CIRP’s – Challenges & Solutions”

Shri Naveen Verma, Chairman-RERA, State of Bihar addressed the Webinar on “Real Estate CIRP’s – Challenges & Solutions” organized by Indian Institute of Insolvency Professionals of ICAI (IIPI) on June 23, 2023. Here we present highlights from his address:

1. The provisions of Real Estate (Regulation and Development) Act, 2016 {RERD Act} are adequate to address the specific needs of home buyers.
2. The Hon'ble Supreme Court has held in a matter of *Newtech vs State of UP* and others that the preamble of the RERD Act implies that the legislation is primarily to protect the interests of home buyers. It has also held that the Act applies with retroactive effect.
3. Under Section 31 of the RERD Act, allottees can file case against a promoter if they are not getting possession or a refund, or if they are facing other problems like deficiency in amenities, etc. In Bihar, the landowner is treated as an allottee under certain conditions. However, in these cases, the promoter may file a complaint against the landowner if there is a “joint development agreement” and landowner is obstructing the construction. If respondents do not appear after issuance of notices, RERA courts pronounce *ex-parte* orders.
4. Moreover, within RERA, we have an Adjudicating Officer (AO), a retired or serving District Judge rank officer, where cases for compensation can also be filed. Earlier there was some confusion among the home buyers as well as the RERA/AO as to which categories of complaints would be addressed by them. The Hon'ble Supreme Court has settled that matters related to delays in possession and refund would be exclusively handled by RERA.
5. A question has arisen whether RERA is entitled to take up cases (projects) which are not registered with it? Our view is yes though some tribunals have held that we should only take up cases concerning registered projects. However, the law has not yet been settled by a High Court or the Supreme Court.
6. The RERA courts have been given the necessary tools to enforce their orders either by recovery of its



- award as arrears of land revenue or being vested with the powers of civil court for execution of decrees. They have the authority to publish a list of defaulting promoters on their website.
7. Project registration is basically self-declaratory. RERA considers the documents filed, but mostly it is the promoter who is responsible for the veracity of the documents. All these information is available on website for public viewing. The intention is to make all relevant information available to buyers and prospective buyers so they can make informed decisions.
8. At the end of every quarter, the promoters are required to upload the status and progress of the project including number of units booked, supported by photographs and reports from CAs, engineers and architects on their web page on the RERA website. The RERD Act ensures that there would be negligible number of cases related to diversion of funds from projects.

9. Section 8 of the RERA Act, provides that in cases where the registration has lapsed or been revoked by RERA under Section 7, the association of allottees has the option to complete the remaining development works in the project. Normally, we ask the allottee association to come forward with a proposal on how they would want to get the flats completed, considering gap in financing, etc.
10. Suppose in a real estate project 100 apartments are to be constructed of which 50 flats are in the share of the landowners, and the promoter has sold 40 flats. Those forty homebuyers have the right to approach RERA, and suggest another builder/contractor to complete the work. In such cases we make the landowner as parties and ask the parties to get the valuation of work done and raise resources and then come to an agreement on the mechanism to complete the project. This effectively means transferring the ownership of the project from the builder to such entities. The remaining 10 unsold flats could be given to the allottee association if the value of work done is less than the amount collected by the allottees or can remain with the promoter or financial creditors if the promoter has done more work in comparison to the amount raised. In a couple of cases, we have passed orders stating that the allottee association gets the rights to the unsold flats, and the builder gets a profit margin on those flats. The RERAs invariably consult the appropriate Government in such matters.
11. I would like to quote an example. In Rajasthan, in a matter a bank took possession of some flats in a project where proceedings under Section 8 were already ongoing. The matter went up to the Supreme Court, and it was held that the home buyers get the first choice in such cases and the provisions of SARFESI Act do not apply.
12. The IBC indeed provides a comprehensive mechanism to resolve distressed companies. No other Act, as of date, offers such a robust resolution process. IBC allows the cleaning up of the company's financials, resolving its issues, and facilitating a transfer to a new owner who can start fresh and take responsibility for completing the project.
13. An aggrieved home buyer can either move the Real Estate Regulatory Authority (RERA) or the National Company Law Tribunal (NCLT) as both have concurrent jurisdiction. However, in case of conflict between the decisions/ judgements of RERA and NCLT, the latter would prevail as the IBC was enacted after the RERA Act.
14. Notwithstanding the above, the provisions of the IBC may be invoked as a last resort by home buyers. I feel that RERA, being focussed on the interest of home buyers, is able to come to speedier decisions. If we can coordinate more with IP/RP, it will be even faster. In case of projects facing insolvency, the matter can be referred to concerned RERA to check if any matter has been taken up by them. If the builder/promoter files a case for insolvency, the insolvency professional can refer the matter to us to determine if any third-party rights have been created and if those parties have filed cases.
15. There is a scope of coordination between RERA and the IP/ RP. Once the project is admitted under CIRP, the insolvency professional can access the RERA website and the webpage of the project for all relevant information. The RP can raise claims on the unsold flats during the Section 8 proceedings.
16. Educating homebuyers, about the IBC provisions as well as the RERA Act is very important. Section 33 of RERA provides for measures for advocacy and awareness about laws and policies relating to the real estate sector. So, we can coordinate with IIIPI, to make people more aware of the various provisions.
17. The lack of clarity on which body to approach has been a problem in the real estate sector, and we need to collectively address and improve this aspect