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Shri Anand Kumar

Chairman, Real Estate Regulatory Authority (RERA)
Delhi and Chandigarh

Shri Anand Kumar has been a career civil servant. He took over the charge of Chairman-RERA, Delhi and Chandigarh on November 05, 2021. Besides, he is also an active member of Compassionate Community.

Shri Kumar joined Indian Administrative Service (IAS) in the year 1984. He holds M. Phil. from the University of Delhi and MBA with honours from the University of Queensland, Australia. During his career, he has held many important positions in Tourism, Infrastructure, Industry, Biotechnology, Finance, Revenue, Elections and Governance sectors under the Central and State Governments. His major overseas assignments include managing relief campus for Indians on Iraq – Amman border during Kuwait-Iraq war (1990) and Chief Technical Adviser for Nigerian General Elections 2007 by UNDP. He designed international campaign 'Find What You Seek' that received First Golden Gate Award in Berlin and domestic campaign 'Go Beyond' while working as Joint Secretary, Ministry of Tourism, Government of India.

*In an Exclusive Interview with IIPI for the Resolution Professional, Shri Anand Kumar shared his views on various issues, lying at interface between IBC and RERA related to resolution of distressed Real Estate projects/companies. **Read on to know more....***

IIPI: What would be your key thoughts on measures that may be taken to improve the quality of outcomes for resolving real-estate projects, under IBC?

Shri Kumar: Currently resolution–success ratio of housing projects under IBC, is low as compared to other sectors. Though 21% of cases so far admitted in IBC pertain to real-estate sector, the proportion of real-estate cases in resolved cases is only 13%. Although the laws related to homebuyers have been tweaked a number of times, there are still certain lacunae which should be addressed. For instance, while homebuyers are considered financial creditors, the law does not state whether they are secured or unsecured creditors. They are still uncertain about the priority in which they would be repaid their dues. The law needs further strengthening in order to safeguard the rights of the homebuyers.

Several innovative judicial pronouncements have been made, to protect the interests of house allottees, given the unique nature of the real-estate sector. Recently in June 2022, Hon'ble NCLAT in the case of *M/s Supertech*, affirmed the concept of and allowed 'project-specific resolution' as against the company as a whole. This was necessitated because the default in one project, the entire company, comprising many projects including healthy ones, should not be subjected to insolvency process. Thus, the Code may be amended to provide for a specialised framework to deal with real-estate projects. I understand, efforts are already being made in this direction.

In any real-estate project and as provided in RERA, funds originally invested cannot be taken out towards other uses/projects, except to the extent of surplus generated in the project. During CIRP as going concern, RPs should be mindful of this requirement for compliance, while looking for past such transactions which should not have been made.

Constant capacity building of insolvency professionals is the key, to ensure quality of their services and optimum

outcomes of the IBC processes in a timebound manner. For instance, it has been observed in a few cases that valuation of real-estate projects/assets has been accepted at quite lower levels, without proper rationale. Ranking of professionals may be introduced based on their experience and exposure. Sectoral experience, for instance, to real-estate sector, can be critical for the purpose. This would allow the stakeholders to draw confidence while engaging the professional services.

While insolvency professionals should be adequately empowered, they need to be warned and quick action to be taken against them if they are found to be lacking in discharging their responsibilities. Such action should be sufficient enough to be a credible deterrent. Any adverse comment made in the context of judgements by adjudicating authorities like NCLT and RERA, may also trigger such action.

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It is worth examining whether insolvency professionals should be treated as public servants, given the nature of their duties and public interest involved. Such dispensation may require certain checks and balances in order to balance the rights and responsibilities.

IIPI: *What are the incentives and disincentives for different stakeholders, which may impact the outcome of any resolution effort of real-estate projects?*

Shri Kumar: Builders or developers of distressed real-estate projects, in hindsight, being interested in generating returns may have indulged in siphoning off funds for other projects, leading to shortage of funds for completing the first project. On the other hand, house allottees look for cheaper investments and at times are lured by weak projects or enter into cash-based transactions, adding to the complexities on ground.

Though the law has clarified the status of the house allottees in a real estate project as FCs, making them a part of the CoC, the house allottees are interested in getting possession of their houses, unlike other financial creditors who are looking for recovery of their dues. Hence, there is an inherent misalignment between the interests of such allottees and that of other FCs (like banks) who would

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accept repayments, with or without haircuts, or go in for liquidation of the CD. This distinction is important and should prompt a policy response accordingly in a predictable and consistent manner. Upon initiation of IBC process and approval of Resolution Plan, smaller creditors including house allottees may get haircuts without much control in their hand. House allottees, particularly, suffer a lot.

The complexities arising due to incentives and disincentives as above, need to be kept in mind while taking or calibrating any policy action on this front. The other expectations of house-allottees, where more needs to be done, includes fair representation of house-allottees during decision-making process of CoC, and two-way communication with them on important matters.

IIPI: *Though RERA Act provides a sector specific regulatory framework including resolving delays, IBC on the other hand works as a comprehensive code for resolving insolvency in a sector-agonistic manner. How do you see the need and scope for mutual coordination among these two frameworks for quicker turnaround of stressed corporate debtors in Real-Estate sector?*

Shri Kumar: Given the overarching public interest, mutual recognition of IBC and RERA dispensations within respective laws identifying clear rights and responsibilities of stakeholders (viz. House-allottees, Lenders, and Corporate Debtor represented by IRP/RP) is the need of the hour for ensuring effective and efficient delivery. There should be deliberation and debate on this subject, among stakeholders for generating well-rounded feedback.

Currently there appears to be weak coordination/harmony between RERA and IBC frameworks. At the time of admission of insolvency application initiated by any lender or OC, there is no provision for hearing the pleas (by NCLT) of house allottees. Therefore, such process is often misused by existing management to avoid liabilities. If under IBC, the ownership/control of the housing-project changes hand to new owner, the registration (of project)

under RERA does not automatically move along with this change and has to be reapplied.

House allottees should be encouraged to use alternative remedies, for instance, RERA first rather IBC first. IBC should be only a last resort.

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The diversion of funds by the CD/promoters is probably the most common phenomenon across real-estate CIRPs. House allottees remain oblivious and end up losing control of their rights in such projects. RERA as a sectoral regulator may be aware of any such trend in advance. In some of such cases, RERA may possibly be allowed to initiate insolvency, on behalf of house allottees.

Rights of house allottees should be strengthened to be able to steer the CIRP process including, by allowing them to take control of distressed CD themselves, as an association for developing and completing construction, etc.

