



**Indian Institute of Insolvency Professionals  
of ICAI (IIPI)**

**Gap Identification and Conflict Resolution between Insolvency and Bankruptcy Code,  
2016 and Real Estate Regulation and Development Act, 2016: A Remedial Approach  
for Home Buyers.**

**A Research Report sponsored by IIPI**

**Dr. Neha Kapur Chawla**

**Rajiv Gandhi National University of Law, Punjab**

## FOREWORD

The Research Committee of the Indian Institute of Insolvency Professionals of ICAI (IIPI) is pleased to present its Research Report on “Gap Identification and Conflict Resolution between Insolvency and Bankruptcy Code, 2016 and Real Estate Regulation and Development Act, 2016: A Remedial Approach for Home Buyers” developed by Dr. Neha Kapur Chawla and sponsored by IIPI. This report was released on the occasion of the 1<sup>st</sup> Research Web conference conducted by IIPI on 19<sup>th</sup> September 2025.

Dr. Neha Kapur is currently working as an Assistant Professor of Law at the Rajiv Gandhi National University of Law, Punjab. She completed her Doctor of Philosophy (Ph. D) from National Law University, Delhi.

Despite significant reforms across the Insolvency and Bankruptcy Code (IBC), 2016 and the Real Estate (Regulatory and Development) Act (RERA), 2016, challenges persist—particularly in ensuring effective protection for homebuyers during insolvency proceedings. Dr. Kapur’s study offers a comprehensive legal and empirical analysis of these gaps and explores practical solutions to improve the resolution process.

The report provides valuable insights, highlighting the need for regulatory clarity, stronger enforcement mechanisms, and greater participation of homebuyer associations. Notably, the recommendations—ranging from pre-insurance of projects and Reverse CIRP models to the inclusion of real estate experts and streamlined communication—offer a forward-looking roadmap for reform. This report will serve as a useful guide for regulators, policymakers, and stakeholders working towards a more responsive and inclusive insolvency framework.

I would like to take this opportunity to express my thanks to Dr. Navrang Saini and CA K.V. Jain, IP for reviewing the report and in providing their valuable input during the research by the researcher.

I also appreciate the efforts put in by CA. Rahul Madan - Managing Director, CA Leena Aggarwal - Dy Director, and CS Sakshi Aggarwal, in charge of the Research Department of IIPI for providing their technical and administrative support in bringing out this report.

I am confident that this Research Report will be useful to understand evolving Laws of Insolvency in the world.

Dr. Ashok Kumar Mishra,  
Chairman, IIPI-Governing Board

Date : 19<sup>th</sup> September 2025  
Place: New Delhi

## ACKNOWLEDGEMENT

I would like to take this opportunity to express my humble gratitude to the supervisors and mentors of the research report titled *“Gap Identification and Conflict Resolution between Insolvency and Bankruptcy Code, 2016 and Real Estate (Regulation and Development) Act, 2016: A Remedial Approach for Home buyers”*. I am grateful to the Research Committee, Indian Institute of Insolvency Professionals of ICAI (IIPI), New Delhi, CA Mr. Rahul Madan, Managing Director, IIPI of ICAI and Ms. Sakshi Aggarwal, Research Officer, IIPI for giving me the opportunity to work on this topic.

I am also grateful to the Chief Guide Dr. Navrang Saini, Former Chairperson, Insolvency and Bankruptcy Board of India and Domain Expert CA Krishan Vrind Jain, Insolvency Professional for helping me to develop a formulated approach to the research and providing their valuable inputs.

In the end, I would like to extend my sincere gratitude to my research team Ms. Himani Anand, Research Associate, Mr. Akshat Verma, Research Assistant and Ms. Hashvi Bansal, Research Assistant who worked meticulously in completing this research. I am also grateful to my family for encouraging and motivating me to complete the research project.

**Dr. Neha Kapur Chawla**

**Researcher**

## TABLE OF CONTENTS

S. No.	Contents	Page No.
	<b>LIST OF ABBREVIATIONS</b>	<b>5</b>
	<b>EXECUTIVE SUMMARY</b>	<b>7</b>
<b>1.</b>	<b>INTRODUCTION</b> Introduction Outline of the Study Overview of the real estate sector in India List of real estate companies undergone successful insolvencies in the NCR region	<b>10</b>
<b>2.</b>	<b>CONCEPTUAL FRAMEWORK OF HOMEBUYERS UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016 AND REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016</b> Scope of the term 'Allottee' Remedies available to homebuyers under RERA, 2016 Remedies available to homebuyers under IBC, 2016 Existing Conflict between RERA, 2016 and IBC, 2016	<b>27</b>
<b>3.</b>	<b>IDENTIFICATION OF GAPS BETWEEN INSOLVENCY AND BANKRUPTCY CODE, 2016 AND REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016</b> Conflicting areas in the Insolvency and Bankruptcy Code, 2016 Conflicting areas in Real Estate (Regulation and Development) Act, 2016	<b>34</b>
<b>4.</b>	<b>ANALYSIS OF RESPONSES FROM HOMEBUYERS AND INSOLVENCY PROFESSIONALS</b> Evaluation of homebuyer's responses Examination of responses by Insolvency Professionals	<b>40</b>
<b>5.</b>	<b>A GLIMPSE OF INTERNATIONAL NORMS RELATING TO INSOLVENCY OF REAL ESTATE COMPANIES</b> United Kingdom Individual enforcement procedure Liquidation Administrative receivership Restructuring plan United States Reorganization procedure Involuntary Insolvency	<b>44</b>
<b>6.</b>	<b>ALTERNATIVE REMEDIES TO CIRP IN REAL ESTATE INSOLVENCY</b> Mediation Reverse Corporate Insolvency Resolution Process Project wise CIRP	<b>48</b>
<b>7.</b>	<b>CONCLUSION AND SUGGESTIONS</b> Conclusion Suggestions Pre-insolvency period Insolvency Options Insolvency Procedural aspects Post RERA approval of the project	<b>49</b>
	<b>BIBLIOGRAPHY</b>	<b>58</b>

## LIST OF ABBREVIATIONS

Abbreviation	Full Form
<b>&amp;</b>	And
<b>V.</b>	Versus
<b>CIRP</b>	Corporate Insolvency Resolution Process
<b>IBC</b>	Insolvency and Bankruptcy Code
<b>RERA</b>	Real Estate Regulatory Authority
<b>Approx.</b>	Approximately
<b>NCLT</b>	National Company Law Tribunal
<b>%</b>	Percentage
<b>PPIRP</b>	Pre-Packaged Insolvency Resolution Process
<b>IP</b>	Insolvency Professional
<b>Etc.</b>	Et Cetera
<b>UK</b>	United Kingdom
<b>USA</b>	United States of America
<b>BLRC</b>	Bankruptcy Law Reforms
<b>CVA</b>	Company Voluntary Arrangement
<b>BIS</b>	Bureau of Indian Standards
<b>IBBI</b>	Insolvency and Bankruptcy Board of India
<b>et. Al</b>	Et alia
<b>COC</b>	Committee of Creditors
<b>NCLAT</b>	National Company Law Appellate Tribunal
<b>GDP</b>	Gross Domestic Product
<b>\$</b>	Dollar
<b>NSE</b>	National Stock Exchange
<b>DLF</b>	Delhi Land and Finance
<b>sq. Feet</b>	Square feet
<b>NPA</b>	Non-Performing Asset
<b>Rs.</b>	Rupees
<b>Bn.</b>	Billion
<b>NARCL</b>	National Asset Reconstruction Company Ltd.

<b>Ltd.</b>	Limited
<b>SEAC</b>	State Level Expert Appraisal Committee
<b>SEIAA</b>	State Environment Impact Assessment Authority
<b>DPIL</b>	Darwin Platform Infrastructure Ltd
<b>CD</b>	Corporate Debtor
<b>OC</b>	Operational Creditor
<b>Corp.</b>	Corporation
<b>U. P</b>	Uttar Pradesh
<b>MCLR</b>	Marginal Cost of Funds based lending Rate
<b>Pvt.</b>	Private
<b>UOI</b>	Union of India
<b>S.</b>	Section
<b>ADR</b>	Alternative Dispute Resolution
<b>RP</b>	Resolution Professional
<b>NCDRC</b>	National Consumer Dispute Redressal Commission
<b>CVL</b>	Creditor's Voluntary Liquidation
<b>NOC</b>	No Objection Certificate
<b>IRDAI</b>	Insurance Regulatory and Development Authority of India
<b>PRA</b>	Prospective Resolution Applicant
<b>EDC</b>	External Development Charges
<b>IDC</b>	Infrastructure Development Charges
<b>GST</b>	Goods and Services Tax
<b>AR</b>	Authorized Representative
<b>CCI</b>	Competition Commission of India
<b>FAQs</b>	Frequently Asked Questions
<b>AI</b>	Artificial Intelligence
<b>NBCC</b>	National Buildings Construction Corporation
<b>JDA</b>	Joint Development Agreement
<b>CPA</b>	Consumer Protection Act, 2019

## EXECUTIVE SUMMARY

### **Gap Identification and Conflict Resolution between Insolvency and Bankruptcy Code, 2016 and Real Estate Regulation and Development Act, 2016: A Remedial Approach for Home Buyers. Objective of the Research:**

- a. The study has been undertaken with the following objectives:
- To examine the problems faced by home buyers or allottees during the insolvency resolution process of real estate companies.
  - To analyze the gaps in the legal and regulatory framework in the Code for smooth implementation of the insolvency resolution of real estate companies.
  - To study various alternatives for insolvency resolution of real estate companies
  - To explore effective methods for speedy insolvency resolution of real estate companies
  - To evaluate the gaps in the legal and regulatory framework of the Real Estate (Regulatory and Development) Act, 2016 for protecting the rights of homebuyers.

**b. Methodology used in the research (whether approved at the time of proposal):**

Yes, the doctrinal and empirical research methodology was approved for the topic at the time of proposal.

Since the present study is aimed at understanding the concepts relating to legal and policy measures of the topic at hand, the research method employed has been doctrinal. It primarily involves identifying the law and then interpreting and analyzing it. In the present study the main sources of data will be primary i.e., legislations and committee reports and secondary such as research reports, articles and blogs. All of them would be taken into account in order to study the implications and gaps in the current framework. The analysis of the provisions of the two legislations i.e., Real Estate (Regulation and Development) Act, 2016, and Insolvency and Bankruptcy Code, 2016 vis-à-vis the interest of home buyers would be undertaken. This would enable the researcher to ascertain whether the insolvency resolution of a real estate developer should be the first preferred option for the home buyer in case of non-delivery of possession. In addition to this, the study would also undertake collection of data from home buyers or registered associations of home buyers regarding the problems faced by them due to delay in insolvency resolution and liquidation of the corporate debtor. The research would also, undertake a study of rules and procedures relating to insolvency of real estate companies and the status of home buyers under the Insolvency laws of other jurisdictions. Good practices and suggestions would be carved out from various countries that have similar treatment for real estate companies.

**c. Key findings in the Research:**

- The IBC, 2016 is not adequately equipped to deal with divergent interests of home buyers as issues like information asymmetry, validity of late claims by home buyers, demand for specific resolution for the benefit of allottees etc. exist.
- The RERA, 2016 also lacks the necessary teeth to curb deviation of funds by builders, monitoring of builder-buyer agreement, absence of a stringent judicial mechanism under the Act etc.
- In order to address the grievances, home buyers preferred approaching the RERA authority over other forums including the NCLT under IBC.
- As a remedy, the majority of homebuyers are found to be interested in obtaining the possession at the earliest rather than refund of the amount deposited by them or ownership of a different house of an alternate project of the same builder.
- The home buyers preferred to be represented by home buyer associations rather than the authorized representative.
- Most of the homebuyers were unaware of this fact that though they are a part of the COC but if the CIRP fails then they fall much below the priority in the waterfall mechanism provided u/s 53 of the IBC, 2016.
- The Insolvency Professionals raised concerns like the role of Authorized Representative must be regulated by enhancing his role in the process of conducting meetings with the members of the COC and he must enable the creation of an online portal for the smooth conduct of the voting process by home buyers.
- RERA should always appoint an Authorised Officer to attend COC meetings and the clearance from RERA authority should be made compulsory like that of CCI.
- If the leases are there from government bodies, they should also be made part of COC proceedings. At the time of approval of resolution plan RERA should be a necessary party.
- Since promoters under RERA are landowners and developers so the same should be for the purpose of Section 17, IBC, 2016 i.e., treating them as management with suspended powers.
- RERA proceedings should be linked to Information Utility, so that home buyer's claims can be allowed to be filed directly on to the IU as this will help in reducing litigation.
- In order to overcome challenges of valuation methodology, clear guidelines about the methodology must be adopted.



- Priority funds or interim finance in the context of real estate should be given importance and section 29A must be redefined.
- Reverse CIRP can be a better option to solve the conflicting claims of secured and unsecured creditors in real estate insolvency.

**d. Key recommendations by the Researcher:**

- Pre-insurance of real estate projects
- Classification of homebuyers as secured financial creditors
- Inclusion of real estate experts
- Reverse CIRP and CVAs
- Flexible resolution plans
- ‘As is where is’ basis allotment to the allottees i.e., transfer of ownership to homebuyers during the CIRP with the approval of the Committee of Creditors
- Inclusion of land authorities in the meetings of Committee of Creditors
- Empowering committee of creditors to facilitate participation of association of homebuyers as resolution applicants
- Inclusion of notional interest in homebuyers claims during CIRP

**e. Action(s) to be taken by the Regulators/Govt./other stakeholders (specifically), for further improvement through legislative or administrative measures, etc.:**

**1. Real Estate Regulation and Development Authority**

- Compulsory functioning of home buyer associations
- Mandatory provision of ADR such as Mediation and Arbitration in RERA
- Monitoring of real estate projects by RERA Authorities
- Execution of builder-buyer agreement as per RERA rules
- Implementation of RERA provisions like completion of projects by takeover and compensation to homebuyers in a stringent manner
- Adherence to the regulations of RBI and other regulatory authorities

**2. Insolvency and Bankruptcy Board of India**

- Specialized Real Estate Insolvency Professionals
- Effective communication between Authorized Representatives and homebuyers
- Implementation of Cramdown Provisions
- Unified Platform for Insolvency Resolution
- Appointment of Facilitators to disseminate information between authorized representatives and homebuyers

## **Project Report**

### **1. Introduction**

India, enacted two significant laws that govern different aspects of the real estate sector i.e., the Insolvency and Bankruptcy Code<sup>1</sup>, 2016 (IBC) and the Real Estate (Regulation and Development) Act<sup>2</sup>, 2016 (RERA). Despite having separate goals, there is a link between the two laws that aids in addressing the numerous issues the real estate industry faces. The IBC, 2016 provides a framework for the resolution of insolvency and bankruptcy cases in India. The process of addressing financial hardship faced by companies, including real estate developers, is meant to be streamlined and accelerated. Under it if a real estate developer defaults on its financial commitments, such as loan repayment etc. then a financial creditor or the real estate developer can itself initiate the insolvency resolution process.

RERA, on the other hand, safeguards homebuyers' rights and advances accountability and transparency in the real estate industry. It mandates the registration of real estate projects and the establishment of Real Estate Regulatory Authorities (RERAs) at the state level to control and monitor the industry. By enforcing rules on project disclosures, the use of funds, delivery deadlines, and construction quality, RERA seeks to prevent fraud, assure timely project completion, and protect buyers' rights.

IBC has ramifications for the real estate industry and its stakeholders, even though its primary focus is the settlement of insolvency cases. RERA is essential in defending the interests of purchasers when a real estate developer is solvent. Stalled real estate projects may be finished with the help of the resolution procedure under IBC. In some circumstances, a developer's financial hardship can be successfully resolved by the infusion of fresh capital, a change in management, or the transfer of assets to a more capable organization. Homebuyers awaiting possession of their residences may find respite from this, which can restart stagnant projects.

The interaction between IBC and RERA exemplifies a team effort to overcome the difficulties that the real estate industry faces. Both regulations seek to uphold stakeholders' rights, advance openness, and guarantee that projects are finished on scheduled date. By combining these laws, a more thorough regulatory framework is created for India's real estate market, while alleviating financial hardship and defending homebuyers' rights.

---

<sup>1</sup> The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016.

<sup>2</sup> The Real Estate (Regulation and Development) Act, 2016, No. 16, Acts of Parliament, 2016.

It is pertinent to mention that homebuyers suffer serious repercussions if a real estate company faces insolvency. They are left in a condition of uncertainty with their investments at risk due to stalled or unfinished projects. Delayed possession of homes not only disrupts their lives but also leads to financial burdens since they must continue to pay for accommodation while the construction is ongoing. Homebuyers also experience psychological discomfort, losing faith in the market, and suffering possible financial losses if they are unable to recoup their investments.

On the other hand, financial institutions and investors which have funded developers are the ones most impacted by real estate industry insolvencies. When developers default on loans, banks and lending organizations may face a rise in non-performing assets (NPAs). This puts a burden on their finances and limits their ability to lend money to other industries. Investors, whether institutional or individual, have financial setbacks and a loss of confidence, which impacts their future willingness to make investments in the real estate market.

This research is an attempt to study the challenges faced by homebuyers in obtaining relief under RERA as well as during the insolvency resolution of the real estate company. The gaps in both the legislations have been studied with the help of recent judgments and case studies where homebuyer's rights have been protected by the Courts. The problems faced during representation in the COC, lack of clear guidelines on valuation of assets, position of homebuyers as unsecured creditors in the liquidation proceedings have been examined in detail.

## **Research Objectives**

The study has been undertaken with the following objectives:

- To examine the problems faced by home buyers or allottees during the insolvency resolution process of real estate companies.
- To analyze the gaps in the legal and regulatory framework in the Code for smooth implementation of the insolvency resolution of real estate companies.
- To study various alternatives for insolvency resolution of real estate companies
- To explore effective methods for speedy insolvency resolution of real estate companies
- To evaluate the gaps in the legal and regulatory framework of the Real Estate (Regulatory and Development) Act, 2016 for protecting the rights of homebuyers.

## **Literature Review**

**Chitra Sharma v. Union of India, [2017] 144 SCL 1 (SC), the hon'ble Supreme Court** held that a home buyer shall be considered equivalent to banks and financial institutions, shall have a right of representation in the COC on its own or through an authorized representative in a class of creditors. This case for the first time declared that a home buyer would have priority over government and operational creditors and can initiate a CIRP against the defaulting promoter due to either non-delivery of home or non-refund of the amount deposited with interest.

**Bikram Chatterji v. Union of India, 2019 SCC OnLine SC 901, the hon'ble Supreme Court** observed that since homebuyers are being deprived of their rights under the Code so they deserve to get the same benefit as is given to other financial creditors within the provisions of the Code.

The Insolvency Law Committee (2018)<sup>3</sup>, the Committee took cognizance of the fact that the money raised by the builder is for a future asset that is to be constructed in the next 4-5 years and thus on the failure of completion of real estate project money must be repaid on time value of money.

**Pioneer Urban Land and Infrastructure Limited & Another. v. Union of India & Others. 2019 SCC OnLine SC 1005, the hon'ble Supreme Court** held that the Insolvency and Bankruptcy Code (Amendment) Act, 2018 does not violates the rights guaranteed under Articles 14, 19(1)(g) read with Article 19(6), or 300-A of the Constitution of India. It observed that a harmonious construction shall be drawn between RERA and IBC. In instances of conflict between the two legislations IBC shall be given precedence over RERA.

**Nikhil Mehta & Sons (HUF) & Others. v. AMR Infrastructure Ltd. 2017 SCC OnLine NCLAT 859, the hon'ble NCLAT** ruled that raising of funds by the builder under the assured return scheme will have the effect of “commercial effect of borrowing” and would be construed as a debt within the meaning of section 5 (8) (f) of the IBC.

**Ram Kishor Arora Suspended Director of M/s. Supertech Ltd. v. Union Bank of India & Another, Company Appeal (AT) (IN) No. 406 of 2022, the hon'ble NCLAT** gave an order for project-wise insolvency resolution of the real estate company. It suggested that an amendment in the code in this respect is yet to be introduced.

---

<sup>3</sup> Paragraph 1.5 of the Report of the Insolvency Law Committee, Ministry of Corporate Affairs, Government of India, March, 2018, [https://www.mca.gov.in/Ministry/pdf/ILRReport2603\\_03042018.pdf](https://www.mca.gov.in/Ministry/pdf/ILRReport2603_03042018.pdf).

**Manish Kumar v. Union of India, SCC OnLine SC 30, the hon'ble Supreme Court** upheld the validity of the Insolvency and Bankruptcy Code (Amendment) Act, 2020 which requires the fulfilment of a threshold of at least 100 or 10% of creditors in the same class to initiate insolvency resolution under the Code.

**Jaypee Kensington Boulevard Apartments Welfare Association. v. NBCC (India) Ltd. (2022) 1 SCC 401, the hon'ble Supreme Court** held that since home buyers are financial creditors under the IBC, they are also a part of the Committee of Creditors and their vote should also be considered while computing the majority vote of 66% in approval of a resolution plan.

**Anand Murti v. Soni Infratech (P) Ltd. (2023) 3 SCC 743, the hon'ble Supreme Court** approved the settlement plan for construction of flats and gave it to the homebuyers on the same price so that their interest is protected. It was held that this would be in the best interest of the homebuyers as the initiation of CIRP would have resulted in escalation of prices of the flats.

**Ashoka Hi-Tech Builders Pvt. Ltd v. Sanjay Kundra & Another, Company appeal (AT) (Insolvency) No. 46 of 2023, the hon'ble NCLAT** held that the landowner is not a financial creditor within the meaning of Section 5(8) of the IBC and could not be included in the COC.

**Aastha & Rohan (2023)** recommended that Alternative Dispute Resolution mechanism such as conciliation forums can provide a cost-effective remedy to homebuyers and reduce the burden on RERA authorities.

**Sushil Kumar Antal, (2023)** suggested that it may not be feasible for the homebuyers to fulfil the minimum requirement of 10% or 100 as some homebuyers may be inclined towards different options during the CIRP.

**Gausia Shaikh and Anjali Sharma (2022)** identified the problems faced by homebuyers in the Jaypee case. It also provided a comparative analysis of other countries i.e., UK, USA and Australia on the treatment of homebuyers.

**Ketan Mukhija and Shorya Singhal, (2023)** recommended that for smooth implementation of PPIRP in real estate insolvency the appointment of authorised representative for initiating CIRP should be done in the same meeting. A robust mechanism should be built to develop trust between the financial creditor and the corporate debtor including homebuyers.

**Akshay Bhandari and Prakul Khera (2020)** observed that the threshold under the Amendment Act, 2020 is a balance between judiciary's attempt to provide a right and legislature's intent to save the purpose of the code. Allottees under threshold have all the rights under RERA and CPA and above the threshold would have rights under the IBC.

**D. Dhanuraj (2020)** pointed that the government is suggested to build the capacity of RERA as the first point of grievance redressal. If the parties fail to reach an amenable resolution at RERA and all other provisions get exhausted, majority homebuyers could approach the NCLT for resolution mechanism. Else, there is no doubt that the IBC in the current form will play havoc to the home buyers. The Amendment implemented in June 2018 in the IBC has weakened the institution by fostering more cases getting posted there.

**Aashiesh Agarwaal (2022)** suggested that inviting separate resolution plans for each asset would enable different resolution applicants to bid for separate assets depending upon their strengths such as geography, asset type and nature of development.

**Rajiv Mani (2022)** has drawn a comparative study of alternative forms of dispute resolution such as Mediation as a tool for insolvency resolution. He stressed upon the need to enforce Mediation even in real estate cases also similar to the measures undertaken in other legislations in India.

**Mehreen Garg and Arya Majumdar (2023)** have strongly argued that no benefit is served to the homebuyers by including them as financial creditors under the IBC when the allotment letters issued to them by builders do not create a charge in their favour. They examined that though the provisions of RERA, 2016, TPA, 1882 and IBC, 2016 confer homebuyers with the status of secured financial creditors but they have not been judicially identified to be so.

**Vishal Dave et al (2023)** have examined the hindrances in the protection of interests of homebuyers in a real estate insolvency. Issues such as difficulty in verification of claims by the resolution professional, uncertainty in defining scope of homebuyers, partnerships between landowners and developers play a significant role.

## **Research Questions**

- Whether classifying a home buyer as a secured financial creditor under the Insolvency and Bankruptcy Code would provide an efficacious remedy to home buyers?
- Whether amendments made by the Insolvency and Bankruptcy (Second Amendment) Act, 2018, 2019 and 2020 have redressed the issues of home buyers?
- Whether the imposition of a moratorium as provided under the Code on suits or proceedings initiated under RERA, 2016 jeopardizes the rights of home buyers?
- What is the impact of the creation of multiple remedies on the enforcement of the rights of home buyers?
- What measures should be undertaken by the Insolvency and Bankruptcy Board of India (IBBI) for enhancing the representation of home buyers in the insolvency resolution process?

## **Statement of Problem**

The present study is intended to focus on the issues surrounding the rights of home buyers during the insolvency of real estate companies. With the help of a doctrinal and empirical method, the current research work exercise attempts to study the hurdles faced by home buyers in getting their dues from a real estate developer in the event of the latter's insolvency. It seeks to examine the issues relating to the participation of home buyers in the insolvency process and treatment of claims of landowners if the land title is not in the name of the corporate debtor. Further, matters related to change in valuation methodology to capture project wise value, monitoring of construction during the process in the overall conduct of insolvency process will also be examined.

Besides, the study also endeavors to find out gaps in the current legal framework such as treatment of home buyers who don't vote in favour of the resolution plan, measures to achieve timely resolution of the insolvency process, resolution of the project or tower instead of the corporate debtor as a whole etc. It attempts to analyze issues if the corporate debtor goes into liquidation and the effectiveness of the legal and regulatory framework in dealing with such cases. A systematic probe into these questions will be made in the study.

## **Research Gap**

The existence of multiple legislations creates a conundrum and fails to provide an effective solution to the plight of home buyers. Though RERA is an industry specific Act and IBC is not meant for the real estate sector, there are conflicting provisions in both the legislations. Since

the two legislations operate in completely different areas, the impact is faced by the homebuyers which results in uncertainty about efficacy of remedies and culminates in a feeble recovery system for home buyers. Thus, the researcher suggests that more suitable mechanisms and methods must be developed in order to ensure greater participation and smooth recovery for every home buyer in the insolvency process. This is necessary to avoid any clash and conflict of provisions stated in these laws. This would also result in strengthening the real estate sector in India.

### **Research Hypothesis**

Problems of delay in insolvency resolution, position of homebuyers during liquidation of developer, overlapping provisions under IBC and RERA make the Insolvency Code ineffective in addressing the rights of home buyers.

### **Research Methodology**

Since the present study is aimed at understanding the concepts relating to legal and policy measures of the topic at hand, the research method employed has been doctrinal. It primarily involves identifying the law and then interpreting and analyzing it. In the present study the main sources of data will be primary i.e., legislations and committee reports and secondary such as research reports, articles and blogs. All of them would be taken into account in order to study the implications and gaps in the current framework. The analysis of the provisions of the two legislations i.e., Real Estate (Regulation and Development) Act, 2016, and Insolvency and Bankruptcy Code, 2016 vis-à-vis the interest of home buyers would be undertaken. This would enable the researcher to ascertain whether the insolvency resolution of a real estate developer should be the first preferred option for the home buyer in case of non-delivery of possession. In addition to this, the study would also undertake collection of data from home buyers or registered associations of home buyers regarding the problems faced by them due to delay in insolvency resolution and liquidation of the corporate debtor. The research would also, undertake a study of rules and procedures relating to insolvency of real estate companies and the status of home buyers under the Insolvency laws of other jurisdictions. Good practices and suggestions would be carved out from various countries that have similar treatment for real estate companies.

### **Tools for Primary Data Collection**

A questionnaire was prepared through which the respondents i.e., home buyers of real estate companies whose insolvency process is pending or has been completed were surveyed about the most preferred legislation for maximization of their dues, implications of existing legal



framework and ways to improve the present position of home buyers in India. Also, an interview schedule was prepared through which the Insolvency Professionals of real estate companies were asked to give their feedback in conducting such insolvencies. Issues such as role of authorized representatives, delayed claims, treatment of orders of RERA were asked so that changes in the present system can be made.

### **Sample**

The universe of study is home buyers whose real estate projects either have an undergoing insolvency resolution proceeding or where the insolvency proceedings have been completed. The respondents are home buyers of Ireo Fiveriver, Pinjore, Panchkula, Haryana and Jaypee Wishtown Project located in Noida, Uttar Pradesh. Also, the respondents include Insolvency Professionals registered with IIIPI, ICAI, Delhi and located in different states like Punjab, Maharashtra, Gujarat etc.

### **Scope and Limitation of the study**

The study has been attempted to look at the contours of the remedies provided to home buyers under the two legislations i.e., Real Estate (Regulation and Development) Act, 2016, and Insolvency and Bankruptcy Code, 2016. The cases of real estate developers against whom the CIRP has been initiated by home buyers have been analyzed to ascertain the issues faced by them in the process. Further, the judgments of the various Courts and authorities have been examined to determine the overlapping areas among them. Based on this, the study would make an endeavor to make suggestions for possible changes and new mechanisms for a faster and smoother insolvency resolution of real estate companies. The researcher would study the changes to be introduced by Insolvency and Bankruptcy Board of India for effective and expeditious resolution of real estate projects. Thus, the present study is limited to the present position of home buyers and has incorporated the modifications introduced by Insolvency and Bankruptcy Board of India and the Government of India in the year 2023 and 2024 for the smooth and effective insolvency resolution process of real estate companies.

### **Overview of real estate sector in India**

Project delays are a significant problem in the Indian real estate industry. Due to issues such as lack of funding, poor planning, and regulatory obstacles, developers frequently fail to finish projects on schedule. Because of the cash that has been already invested in unfinished projects, these delays not only put purchasers and investors in financial trouble but also affect general economic growth. Any real estate transaction must ensure transparency, yet this is still a big

problem in India. Customers frequently run across hidden fees, unstated prices, and deceptive advertising, which makes them lose faith in the industry. Potential buyers face difficulties in making informed judgments due to the lack of a clear system for project approvals, price, and contract conditions.

Further in India, title and land conflicts commonly impede real estate purchases. Ineffective land titling systems have led to protracted legal disputes and ambiguous property ownership in the past. Buyers run the danger of making investments in properties that might be embroiled in legal disputes and thus putting their money at risk. Additionally, the absence of standardized practices across various aspects of the real estate sector creates confusion and hampers its growth. It is challenging for buyers and investors to evaluate the legitimacy of projects due to inconsistent project approvals, building standards, and pricing patterns. On the other hand, standardization would increase accountability, transparency, and overall sector efficiency. This can be estimated from the following table which depicts the price of residential properties across during 2023.<sup>4</sup>

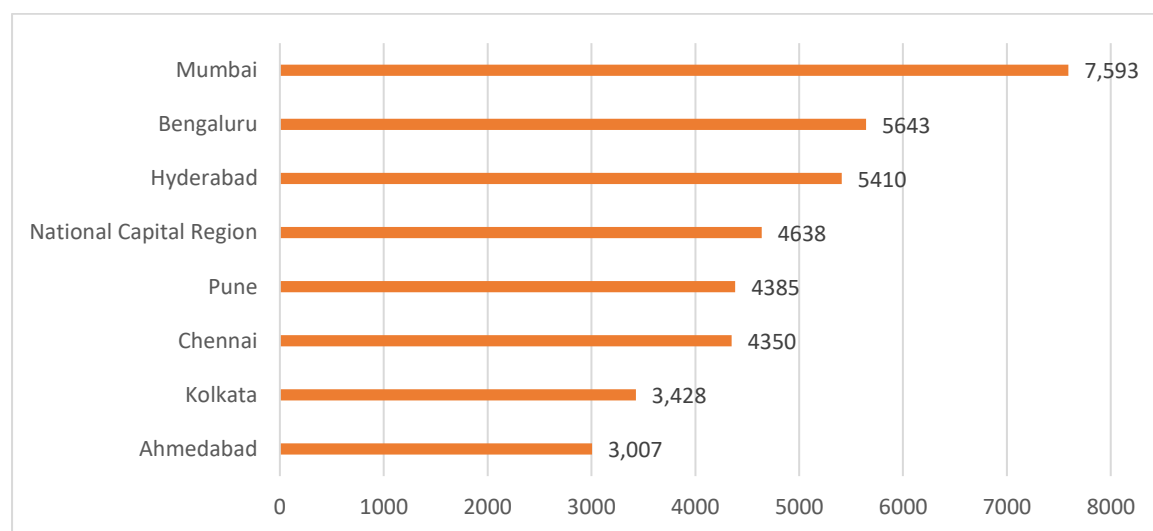


Fig 1: Price of residential properties across India in Indian rupees per square feet

The above figure depicts the price of residential properties which have been utmost high in the metro cities where Mumbai occupies the first position in having a price of Rs. 7593 per square feet.

<sup>4</sup> Gulam Zia, Knight Frank, India Real Estate Residential and Office Market H1- 2022, <https://www.knightfrank.co.in/research/india-real-estate-residential-and-office-market-h1-2022-9150.aspx>.

**Data Pertaining to complaints received against promoters under RERA,  
2016**

S. No.	State	Project Applications Received	Registered Projects	Agent Applications Received	Registered Agents	Complaints Received	Complaints Disposed	Percentage of complaints disposed
1.	Bihar	1289	1036	322	285	1416	0	0
2.	Goa	619	608	231	228	121	47	38.8
3.	Gujarat	8096	7384	1329	1222	2944	1986	67.45
4.	Himachal Pradesh	186	186	117	117	153	107	69.93
5.	Madhya Pradesh	3282	2720	980	706	4619	3639	78.78
6.	Maharashtra	26439	26272	24762	24573	11685	8162	69.88
7.	Punjab	1032	917	2250	2084	1759	874	49.68
8.	Rajasthan	1394	1297	1749	1572	1586	378	23.83
9.	Tamil Nadu	2176	1941	1351	1351	1678	1192	71.03
10.	Uttar Pradesh	3028	2874	3923	3923	28221	21159	74.97

Table 1: Data on Real Estate Cases in some of the States.<sup>5</sup>

An analysis of the above data clearly highlights the high number of complaints filed before RERA amongst the 10 states in India. It also depicts that highest number of complaints have been disposed of by Madhya Pradesh RERA i.e., 78.78% and the lowest i.e., nil by Bihar RERA. The states with high number of undisposed complaints against the builders have been Uttar Pradesh, Maharashtra and Bihar i.e., 7062, 3523 and 1416 respectively.

---

<sup>5</sup> ALL INDIA FORUM OF REAL ESTATE REGULATORY AUTHORITIES, <http://aiforera.in/statewise-rera>, (last visited Jun. 10, 2024).

## Data pertaining to implementation progress report of RERA, 2016

Sl.	State	General Rules	Establishment of Regulatory Authority	Establishment of Appellate Tribunal	Web Portal	Adjudicating Officer	Registrations		Total no. of Cases disposed by Authority
							Projects	Agents	
1	Bihar	Notified	Permanent	Permanent	Setup	Not Appointed	1741	603	3771
2	Goa	Notified	Permanent	Permanent	Setup	Appointed	1269	512	420
3	Gujarat	Notified	Permanent	Permanent	Setup	Appointed	13594	2897	6170
4	Himachal Pradesh	Notified	Permanent	Permanent	Setup	Appointed	196	123	126
5	Madhya Pradesh	Notified	Permanent	Permanent	Setup	Appointed	6318	1491	5935
6	Maharashtra	Notified	Permanent	Permanent	Setup	Appointed	46284	47515	17684
7	Punjab	Notified	Permanent	Permanent	Setup	Appointed	1259	3160	3307
8	Rajasthan	Notified	Permanent	Permanent	Setup	Appointed	3074	8615	3374
9	Tamil Nadu	Notified	Permanent	Permanent	Setup	Appointed	24167	3142	3253
10	Uttar Pradesh	Notified	Permanent	Permanent	Setup	Appointed	3682	6715	46483

Table 2: Data pertaining to implementation progress report of RERA, 2016<sup>6</sup>

An analysis of the above data depicts that the highest number of real estate projects and agents have been registered by Maharashtra RERA i.e. 46,284 and 47,515 respectively and the lowest have been by Himachal Pradesh i.e. 196 and 123 respectively. The highest number of cases disposed by a RERA Authority is by Uttar Pradesh RERA i.e. 46,483 and Maharashtra i.e., 17,684. Also, though the total number of cases disposed by Bihar RERA are 3771 but an adjudicating officer has not been appointed.

---

<sup>6</sup> Ministry of Housing and Urban Affairs, Real Estate (Regulation and Development) Act, 2016, Implementation Progress Report, as on 12.8.2024, <https://mohua.gov.in/cms/implementation-status.php>, (last visited Mar. 3, 2025).

## Data pertaining to Insolvencies in the Real Estate Sector<sup>7</sup>

Fig 2: Sectoral Distribution of CIRPs: Admission

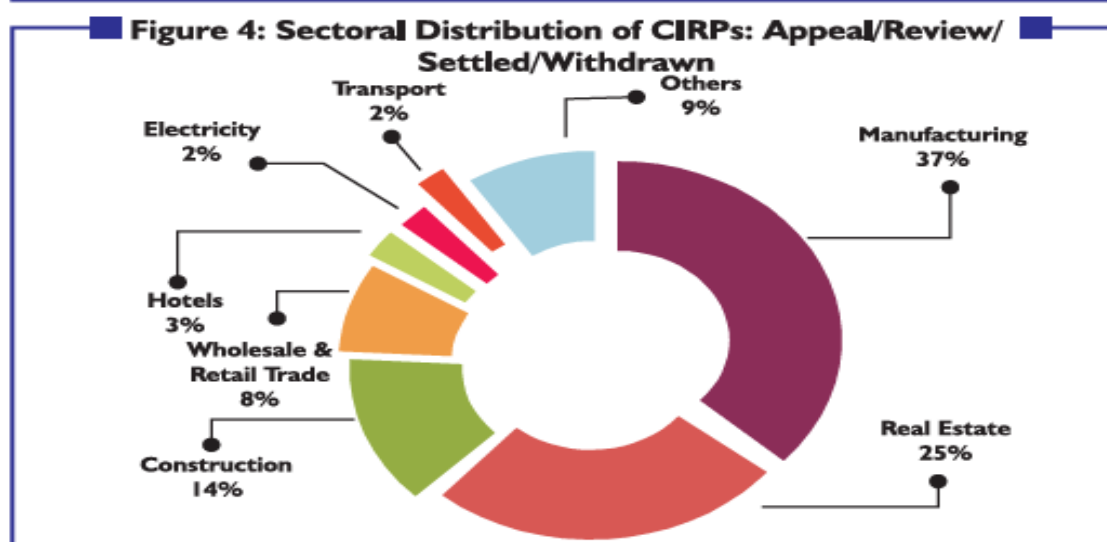
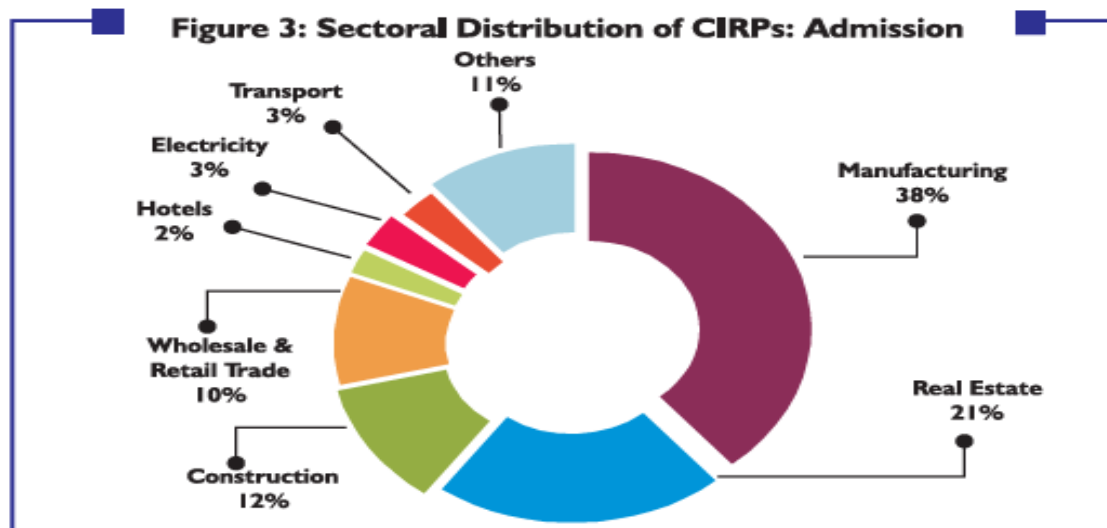


Fig 3: Sectoral Distribution of CIRPs: Appeal/Review/Settled/Withdrawn

<sup>7</sup> INSOLVENCY AND BANKRUPTCY BOARD OF INDIA, Quarterly Newsletter, January-March, 2024, <https://ibbi.gov.in/uploads/publication/21aa7620a9e809f7a20b432ecc89888b.pdf> (last visited Jun. 10, 2024).

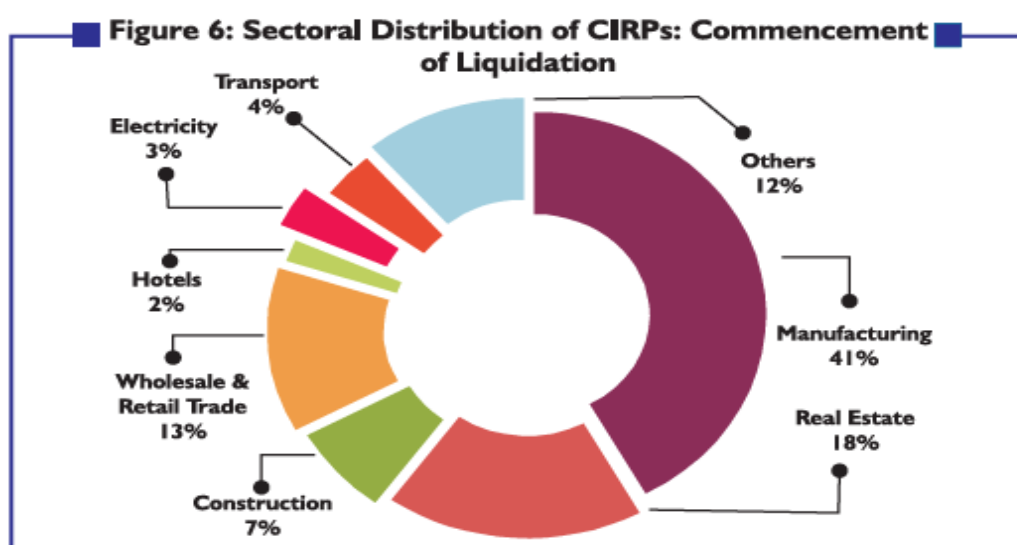
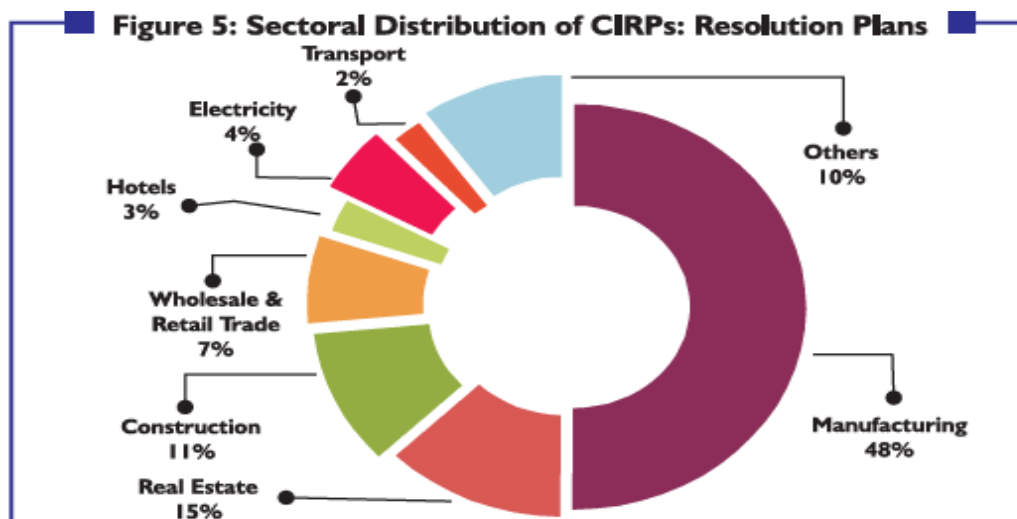


Fig 4: Sectoral Distribution of CIRPs: Appeal/Review/Settled/Withdrawn

Fig 5: Sectoral Distribution of CIRPs: Commencement of Liquidation

The above chart depicts that 18% of cases in real estate sector have been subjected to liquidation which is not only the last resort remedy under IBC but also the last preference of homebuyers as they prefer possession of the flat rather than sale to another buyer.<sup>8</sup>

<sup>8</sup> The survey responses collected from the homebuyers also depict that 85% of the homebuyers would seek possession of the flat at the earliest when a dispute is established.

Outcome	Description	CIRPs initiated by				
		FCs	OCs	CDs	FISPs	Total
Status of CIRPs	Closure by Appeal/Review/Settled	347	798	9	0	1154
	Closure by Withdrawal u/s 12A	306	756	8	0	1070
	Closure by Approval of Resolution Plan	547	322	74	4	947
	Closure by Commencement of Liquidation	1148	1071	257	0	2476
	Ongoing	1092	720	108	0	1920
	Total	3440	3667	456	4	7567

Table 2: Result of CIRPs, initiated Stakeholder as on March 31, 2024 published by IBBI.

The table above depicts that 7567 applications were admitted by the NCLT ever since its inception in 2016 wherein around 21% of admitted cases were that of the real estate sector. The real estate sector forming the second largest sector in terms of CIRP initiated against companies after the manufacturing sector. The data also provides that out of the 2224 applications which have either been appealed, reviewed, settled, or withdrawn, the real estate sector is responsible for 25% of such closures which is a testament to the solution-oriented approach and awareness shown by the various stakeholders in the real estate segment to resolve their disputes. Similarly, 15% of the total no. of CIRPs ending in successful resolution which amounts to 947 is attributed to the real estate sector. Furthermore, 18% of the total 2476 applications which have been closed by the commencement of liquidation are attributed to the real estate sector. This provides more credence to the fact that real estate sector is one of the pioneers of the Insolvency and Bankruptcy Code modeled evidenced by their success in cessation of the applications by appeal, settlement, withdrawal, resolution plan, liquidation etc. This leads to an inference that RERA has not been able to deal effectively with homebuyer's complaints due to a lack in implementation of its powers and hence needs an urgent mechanism to bring strict action against promoters.

### List of real estate companies undergone successful insolvencies

S. No	Name of the Builder Co.	Date of CIRP Initiation	Order Accepting them as Home Buyer (included in Financial Creditor List)	Date of the Resolution Plan being Accepted	The Percentage Allocated to the Home Buyer under the Resolution Plan of the whole debt	Total Amount of Claims for Homebuyers	Net Amount of Claims	Stage of CIRP
1.	JAYPEE INFRATECH LIMITED	09.08.2017	19.05.2021	09.05.2023	55.61%	One Hundred Twenty Eight Billion Three Hundred Sixty Three Million Four Hundred Twenty Three Thousand Three Hundred Seventy Nine (128363423379)	Two Hundred Thirty Billion Eight Hundred Thirty Two Million Seven Hundred Three Thousand Four Hundred Sixty Five (230832703465)	Pending
2.	SUPERTECH LIMITED	25.03.2022	01.05.2023	11.05.2023	51.25%	Eight Billion Six Hundred Sixty Five Million	Sixteen Billion Nine Hundred Nine Million Four	Pending



						Three Hundred Fourteen Thousand Five Hundred Sixteen (8665314516)	Hundred Thirty Seven Thousand Thirty Four (16909437034)	
3.	UMANG REALTECH (Reverse CIRP case)		N/A	22.08.2019	N/A			Pending
4.	THREE C HOMES PRIVATE LIMITED	19.12.2019	27.05.2023	13.06.2023	100%	One Billion Two Hundred Sixty Two Million One Hundred Fifteen Thousand Five Hundred Sixty One (1262115561)	One Billion Two Hundred Sixty Two Million One Hundred Fifteen Thousand Five Hundred Sixty One (1262115561)	Pending
5.	ANSAL PROPERTIES AND INFRASTRUCTURE LTD.	17.11.2022	14.04.2023	Not Finalised	99.91%	Three Billion Seven Hundred Ninety -Six Million Nine Hundred Seventy Thousand One Hundred Forty Nine (3796970149)	Three Billion Eight Hundred Million Five Hundred Fifteen Thousand Six Hundred Seventy Three (3800515673)	Completed
6.	LOGIX INFRATECH LTD.	29.09.2022	28.12.2023	To be Finalised	98.35%	Eight Billion Seven Hundred Twenty Two Million Four Hundred Sixty One Thousand Nine Hundred	Eight Billion Eight Hundred Sixty Eight Million Six Hundred Eight Thousand Seven Hundred	Pending

						Fifty Eight (872246195 8)	Eighteen (886860871 8)	
7.	SHUBHKAMNA BUILDTECH PRIVATE LIMITED	26.11.20 18	25.02.20 21	12.09.2022	87.6 %	Five Billion Three Hundred Seventy Six Million Five Hundred Eighty Six Thousand Six Hundred Eighty Nine (537658668 9)	Seven Billion One Hundred Eighty Million Nine Hundred Sixty Two Thousand Eighty Three (718096208 3)	Comp leted
8.	EARTH INFRASTRUCTU RE LIMITED	06.06.20 18	14.11.20 19	08.06.2021	91.9 9%	Thirteen Billion Six Hundred Five Million Nine Hundred Ninety One Thousand Nine Hundred Fifty Nine (136059919 59)	fourteen billion seven hundred eighty nine million nine hundred seventy six thousand one hundred eighty one (147899761 81)	Comp leted
9.	ROHTAS PROJECTS LTD.	30.09.20 19	04.03.20 21	13.12.2021	71.8 0%	Two Billion Seven Hundred Eighty Four Million Two Hundred Sixty Three Thousand Nine Hundred Seventy Four (278426397 4)	Three Billion Eight Hundred Seventy Eight Million Sixty Seven Thousand Two Hundred Ninety Seven (387806729 7)	Pendi ng
10.	ARENA SUPERSRTUCTU RES PVT LTD	29.10.20 20	09.05.20 22	20.07.2023	63.1 7%	Four billion eight hundred forty-eight million four hundred thirty-two thousand six	Seven billion six hundred seventy-four million six hundred eighty-eight thousand nine hundred	Comp leted

						hundred thirty-one (484843263 1)	eleven (767468891 1)	
11.	IREO FIVERIVER PRIVATE LIMITED	13.12.20 18	22.1.201 9	2.01.2020		178.24 Crores	149.20 Crores	Comp leted

Table 3: List of real estate companies undergone successful insolvencies<sup>9</sup>

The percentage of debt allotted to homebuyers under the resolution plan ranges from 51.25% to 100%. The highest percentage is for Three C Homes Private Limited, which means that homebuyers in this case will receive the full amount of their claims. The company with the lowest percentage is Rohtas Projects Limited, which indicates that in this scenario, homebuyers would only be compensated for 71.80% of their claims. The total amount of claims for homebuyers ranges from ₹1.26 billion to ₹14.79 billion. The highest amount is for Jaypee Infratech Limited, which means that homebuyers in this case have the highest potential to recover their losses. The lowest amount is for Umang Realtech, which means that homebuyers in this case have the lowest potential to recover their losses. The net amount of claims (after deducting the amount received by homebuyers under the resolution plan) ranges from ₹14.43 billion to ₹3.87 billion. Earth Infrastructure Limited received the largest net amount, indicating that after the resolution plan was put into effect, homebuyers in this case made the most financial gains. The lowest net amount is for Rohtas Projects Limited, which means that homebuyers in this case have recovered the least money after the resolution plan was implemented. The stage of CIRP for the companies listed varies from pending to completed. The firms who have finished the CIRP procedure have already paid out the sum owed to homebuyers in accordance with the resolution plan. The companies that are still pending in the CIRP process are in the process of negotiating the terms of the resolution plan with homebuyers.

## **2. Conceptual Framework of homebuyers under Insolvency and Bankruptcy Code, 2016 and Real Estate (Regulation and Development) Act, 2016**

Homebuyers are not particularly defined under the IBC. Though, the terms homebuyer and home allottee have been used interchangeably. The term “Allottee” has been defined under

<sup>9</sup> INSOLVENCY AND BANKRUPTCY BOARD OF INDIA, <https://ibbi.gov.in/en> (last visited Jun. 12, 2024).

Section 2(d) of the RERA, 2016<sup>10</sup>. The IBC does not define allottees as it considers the same definition as defined under the RERA, 2016. Though the term ‘financial debt’ as defined u/s 5 (8) of IBC, 2016 includes under clause (f) the amount given by a homebuyer to the builder<sup>11</sup>. Further, the term ‘real estate project’ is defined under RERA, 2016 u/s 2 (zn)<sup>12</sup>. Simultaneously, an amendment was carried out in the IBBI Regulations, 2016, which introduced a separate category for Homebuyers i.e., Creditors in class.<sup>13</sup> Due to the frequent filing of cases by homebuyers, the builders challenged the validity of the Insolvency and Bankruptcy Code (Second amendment) Act, 2018 in the case of *Pioneer Urban and Land Infrastructure Co. Ltd. v. Union of India*<sup>14</sup>, wherein hon’ble the Supreme Court upheld the validity of the amendment and ruled that “the money raised by developers from the homebuyers is done with a profit-making motive and therefore it has a commercial effect of a borrowing and hence, is included within the definition of ‘financial debt’ under section 5(8)(f) of the IBC.”

## Scope of the term ‘Allottee’

### a. Buy Back Clause

The homebuyer as an allottee under the IBC has been given additional rights depending upon the nature of the agreement for sale. One such right is in the form of a buy back clause wherein the homebuyer after proving himself to be an allottee gets a right to offer the flat or apartment to the builder along with interest at the end of 24 months. In such a scenario the homebuyer will not be under an obligation to enforce the buy-back clause but will only have a right to sell

---

<sup>10</sup> “allottee” in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent”.

<sup>11</sup> “Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[Explanation. -For the purposes of this sub-clause, -

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016.

<sup>12</sup> “The development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto”.

<sup>13</sup> Proviso to section 7 (2) provides that a minimum of 10% or 100 homebuyers must file the application for initiation of CIRP against the promoter of a real estate company.

<sup>14</sup> (2019) 8 Supreme Court Cases 416.

the apartment back to the builder. Also, such an agreement having a buy-back clause will not alter the basic nature of the transaction and even if buy-back is triggered the purchaser of the apartment shall be considered as an allottee, as held in the case of *HT Media Limited v. Imperial Structures Limited*<sup>15</sup>.

### **b. Assured return clause**

Usually in real estate projects, builders offer investors an assured return plan wherein returns ranging from 10%-12% are offered to investors till the possession is transferred to them. This also enables the builder to raise finance at a lesser rate of interest than the one offered from banks or financial institutions. As a result, the hon'ble NCLAT, in the case of *Nikhil Mehta and Sons v. AMR Infrastructure Ltd.*<sup>16</sup> recognised that amount received under the assured return scheme acts as a 'time value of money' since it is obtained at an agreed rate of interest. It also held that through this method builders raise funds from the open market at a low rate of interest by making investors as financial creditors.

### **c. Distinction between Home buyers, Unit holders and Lease holders**

The difference between homebuyers and lease holders can be drawn from section 2(d) of the RERA, 2016 which explicitly provides that the term allottee does not consist of persons to whom a plot is given on rent. Thus, the person who is allotted any part of real estate project just on lease cannot be considered as an allottee. Further, even, the term allottees do not include Unit holders. This was stated by the hon'ble Supreme Court in the case of *Franklin Templeton Trustee Services (P) Ltd. v. Amruta Garg*<sup>17</sup>, wherein it was clarified that unit holders take calculated risks and are entitled to receive profits or liable to bear losses as per the conditions of the risk undertaken and so they cannot be considered as equivalent to homebuyers. On the other hand, homebuyers neither take any kind of risk nor are entitled to any gains or subject to any losses until they are given the ownership of immovable property they contracted for.

### **Remedies available to homebuyers under RERA, 2016**

The Real Estate (Regulation and Development) Act was enacted in 2016 to protect the interests of consumers in the real estate sector. Absence of standard norms to regulate and promote the real estate sector was the major reason for enforcing RERA. All projects of more than 500

---

<sup>15</sup> CP (IB)2228(PB)/2019.

<sup>16</sup> 2017 SCC OnLine NCLAT 859.

<sup>17</sup> (2021) 9 SCC 606.

square metres had to be compulsorily registered under RERA. The major aspects dealt by RERA relate to submission of information by the builder, carpet area, limitation fee, regulation of advance fee to 10%, mandatory deposit of the 70% of the amount collected from the buyers in the escrow account, etc. The main aim of the Act is to prevent malpractices against the homebuyers such as delay in delivery of possession of units, faulty transfer of titles and compromise with the quality of project. Now, with the enactment of RERA, home buyers can approach the RERA authority for such wrongdoings or breach of builder-buyer agreement.

### **Completion of Projects by Takeover**

Under Section 19(3) of the RERA, 2016, the promoters are liable to complete the projects within the time period specified in the builder- buyer agreement and the homebuyers are entitled to possession of the same. In case the promoter does not deliver the project within the stipulated time, the home buyers can approach the RERA Authorities u/s 31 of the RERA Act, 2016.<sup>18</sup> Such RERA authorities have even the power to cancel the registration of the projects or to take over the projects by themselves and ensure their timely completion in order to deliver the possession to the allottees. The RERA Act, 2016 also gives powers to RERA Authorities to allow the committee of Allottees to take over the project. One such decision was announced by the UP RERA on 6<sup>th</sup> June, 2020 where the task of completing Yamuna Expressway project was given to the group of homebuyers. Though the project had started in the year 2011 but the construction was stalled since 2015, so for timely completion of the project, the UP RERA allocated the same to the homebuyers.<sup>19</sup>

### **Refund with/without interest**

The RERA, 2016 also allows the homebuyers to claim refunds along with interests in case there is delay in delivery of possession on behalf of the promoters. The same has been incorporated to ensure timely delivery of projects to the home buyers. The RERA Act, 2016 allows the allottee to withdraw from the project in case the promoter fails to complete or is unable to give possession of the apartment, plot or building as per the agreement for sale or due to

---

<sup>18</sup> Section 31, RERA, 2016 provides that any aggrieved person including an association of allottees or any voluntary consumer association may file a complaint with the Authority or the Adjudicating officer for any violation of the provisions of this Act or rules made thereunder.

<sup>19</sup> PSA Impex Private Limited v. State of U.P. and others, Civil Writ Petition No.3259 of 2020, decided on 6.2.2020.

discontinuance of his business as a developer on account of suspension or revocation of the registration.<sup>20</sup>

## **Compensation to the Homebuyers**

Section 12 of the RERA, 2016 entitles the home buyers to obtain compensation for any loss or damage suffered by them due to the false statement or information submitted by the builder in the advertisement or prospectus<sup>21</sup>. Also, the loss of finances caused due to defect in the title of land, shall be compensated by the builder and such a claim shall not be barred by provisions of Limitation Act, 1963<sup>22</sup>. Further, the builder is liable to compensate the homebuyers for any defect or poor quality of service<sup>23</sup>. This provision was also upheld by the NCDRC in the case of *Veena Khanna v. Ansal Properties & Industries Ltd.*<sup>24</sup>, wherein it was held that payment of interest alone is insufficient compensation and adequate compensation must be provided together with interest at the bank rate to the home buyer in case of delayed delivery of possession of the property.

## **Remedies available to home buyers under the Insolvency and Bankruptcy Code, 2016**

The Insolvency and Bankruptcy Code, 2016 was enacted in order to provide the creditors with the option of initiating the insolvency proceedings against the corporate debtor. It was introduced in order to improve the mechanism of resolving conflicts between the creditor and corporate debtor. It eases the closing of the unviable business's by evaluating its assets in order to ensure their money back to the creditors. Moreover, it guarantees that the procedure for resolution and liquidation of the corporate debtor is completed in a fixed time frame, thus saving the creditors from years of litigation and expenses associated with it.<sup>25</sup>

## **Homebuyers as Financial Creditors**

Initially the IBC classified home buyers as operational creditors and did not include them within the ambit of financial creditors. Accordingly, the hon'ble Supreme Court had rejected the application of homebuyers for initiation of insolvency proceedings in the case of *Col. Vinod*

---

<sup>20</sup> Section 18 (1), RERA, 2016.

<sup>21</sup> Section 12, RERA, 2016.

<sup>22</sup> Section 18 (2), RERA, 2016.

<sup>23</sup> Section 14 (3), RERA, 2016.

<sup>24</sup> AIR 2007 (NOC) 2136 (NCC) (NCDRC).

<sup>25</sup> Paragraph 3.3.1 of the Report of the Bankruptcy Law Reforms Committee, Volume I: Rationale and Design, November, 2015, [https://ibbi.gov.in/BLRCReportVol1\\_04112015.pdf](https://ibbi.gov.in/BLRCReportVol1_04112015.pdf).

*Awasthy v. A.M.R Infrastructure Ltd*<sup>26</sup>. Later the Insolvency Committee headed by Mr. Injeti Srinivas recognised the need for inclusion of homebuyers as financial creditors under the Code.<sup>27</sup> Though the Amendment Ordinance, 2018 for the first time recognized the position of home buyers as financial creditors under the IBC, but was resisted by the builders.<sup>28</sup> Nevertheless, the hon'ble Supreme Court in the cases of *Pioneer Urban and Land Infrastructure Co. Ltd. v. Union of India*<sup>29</sup> and *Manish Kumar v. Union of India*<sup>30</sup>, upheld the constitutionality of the Amendment. Recently also the hon'ble Supreme Court in the case of *Axis Bank Ltd. v. Value Infracon India (P.) Ltd.*<sup>31</sup>, pronounced a similar judgment. Further, in order to afford greater protection to the home buyers, the hon'ble Supreme Court has construed a liberal interpretation of a homebuyer who has been awarded a decree in his favour under the RERA, 2016 to be a financial creditor for the purposes of the IBC, 2016.<sup>32</sup>

### **Minimum percentage required for initiating a CIRP**

The IBC was further amended by adding a proviso to Section 7, which provides the requisite minimum number of allottees who can initiate the insolvency proceedings either by a minimum of 100 or 10% allottees of the same project<sup>33</sup>. The same was challenged but in *Manish Kumar v. Union of India*<sup>34</sup>, wherein the hon'ble Supreme Court upheld the validity of the Amendment requiring the minimum threshold in order to initiate the Corporate Insolvency proceeding against the Corporate Debtor. The Court was of the view that allowing a single allottee to initiate the Corporate Insolvency proceedings under Section 7 of IBC will put the interest of other real estate allottees at perils. In another case, *Amit Katyal v. Meera Ahuja*<sup>35</sup>, the hon'ble Supreme Court recently reiterated its previous judgement.

### **Homebuyers as Unsecured Financial Creditors in liquidation proceedings**

After the enactment of IBC (Amendment) Act, 2018, homebuyers, despite being included in the COC, are still not treated as secured financial creditors. In pursuance of this, the hon'ble

---

<sup>26</sup> 2017 SCC OnLine NCLT 16 278.

<sup>27</sup> Paragraph 1.9 of the Report of the Insolvency Law Committee, Ministry of Corporate Affairs, Government of India, March, 2018, [https://www.mca.gov.in/Ministry/pdf/ILRReport2603\\_03042018.pdf](https://www.mca.gov.in/Ministry/pdf/ILRReport2603_03042018.pdf).

<sup>28</sup> The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, No. 26, Acts of Parliament, 2018.

<sup>29</sup> Supra Note 13.

<sup>30</sup> 2021 SCC OnLine SC 30.

<sup>31</sup> [2022] 135 taxmann.com 109 (NCLAT).

<sup>32</sup> Vishal Chelani & ors. v. Debashis Nanda, the RP Bulland Buildtech Pvt Ltd., 2023 INSC 913, it was observed that once the recovery certificate has been issued, the party in possession of the recovery certificate is to be considered as a financial creditor.

<sup>33</sup> The Insolvency and Bankruptcy (Amendment) Act, 2020, No. 1, Acts of Parliament, 2020.

<sup>34</sup> 2021 SCC OnLine SC 30.

<sup>35</sup> (2022) 8 SCC 320.



Supreme Court in the case of *Pioneer Urban and Land Infrastructure Co. Ltd. v. Union of India*<sup>36</sup> clarified that homebuyers are to be regarded as unsecured creditors.<sup>37</sup> Further, the hon'ble NCLAT in the case of *Flat Buyers Association Winter Hill-77, Gurgaon v. Umang Realtech Pvt. Ltd Through IRP and Others*<sup>38</sup>, established that the unsecured creditors have a right over the assets of the corporate debtor i.e., flats/apartment, assets of the company. But in case of real estate since the plot which is sold is not even created the homebuyer's first claim would be to receive the property for which he has paid. This gives rise to a floating charge in favour of the homebuyer.<sup>39</sup>

As the same property is mortgaged by the homebuyer to a bank and the same property is also charged by the builder with the bank, claim of the homebuyer becomes doubtful. Thus, both the bank and homebuyer do not fulfil the criteria of being a financial creditor. Same was reiterated by the hon'ble Supreme Court in the case of *Rajesh Goyal v. Babita Gupta*<sup>40</sup>, as how can a homebuyer be considered as a secured financial creditor when at the first instance the letter of allotment does not create any charge in their favour.

### **Existing Conflict between RERA, 2016 and IBC, 2016**

The IBC, 2016 allows a group of home buyers of a real estate project to file for initiation of corporate insolvency resolution of the promoter company. On the other hand, RERA, 2016 provides for an individual home buyer to seek refund of the money paid and to claim interest on it. There has been a continuous tussle between both the legislations as seeking remedy under the RERA, 2016 acts as a barrier for other home buyers who seek to approach the NCLT under the IBC. Also, some provisions of both the acts are contradictory to each other. Thus, interest of individual homebuyers under RERA vis-à-vis the interests of multiple homebuyers under IBC leads to a conflict.

### **Moratorium under IBC, 2016**

Section 14 of the IBC provides for the imposition of moratorium on the commencement of insolvency proceedings. According to the provision, no other legal claim can be filed against the corporate debtor once the CIRP proceedings commence under the IBC. This cool off period

---

<sup>36</sup> Supra Note 13.

<sup>37</sup> The Court observed "True, allottees are unsecured creditors, but they have a vital interest in amounts that are advanced for completion of the project, maybe to the extent of 100% of the project being funded by them alone".

<sup>38</sup> Company Appeal (AT) (Insolvency) No. 926 of 2019.

<sup>39</sup> Floating charge is a convenient and flexible method of securing a claim while letting a debtor sell his assets where required and also upholding the creditor's interest.

<sup>40</sup> Company Appeal (AT) (Insolvency) No. 1056 of 2019.

is effective till approval of the resolution plan by the COC or the liquidation of the corporate Debtor. This creates a conflict in case an individual home buyer wishes to approach the RERA authority seeking remedy against the promoter. After the commencement of moratorium or initiation of CIRP, home buyer is left with no option to exercise his rights under RERA and no other legal action could also be initiated against such corporate debtor. This makes the RERA or in fact any other remedy ineffective.

### **Non- Obstante Clauses of RERA, 2016 and IBC, 2016**

A major area of conflict and contradiction between RERA and IBC are the overriding provisions in both the legislations. Section 89 of the RERA, 2016 provides a non-obstante clause<sup>41</sup>. At the same time, section 238 of IBC, 2016 also creates an overriding effect over existing legislations. In order to address the conundrum, the hon'ble Supreme Court in the *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*<sup>42</sup> applied the principle of harmonious construction and emphasized that “the main aim of both the legislations was protection of interests of homebuyers and hence remedies under both the legislations are concurrent in nature and the aggrieved has the right to choose between them. There is no doubt that IBC supersedes RERA in case of conflict but it is pertinent to mention that even creation of multiple legislations has not resulted in the expected return to the homebuyers i.e., possession of the plot”.

### **3. Identification of Gaps between Insolvency and Bankruptcy Code, 2016 and Real Estate (Regulation and Development) Act, 2016**

#### **Conflicting Area's in the Insolvency and Bankruptcy Code, 2016**

##### **a. Divergent Interests of Homebuyers**

Even though the IBC has clear provisions that allottees in a real estate project are included within financial creditors and have become an integral part of the Committee of Creditors, there are instances where their interests diverge from the objectives of the corporate insolvency resolution process. Unlike other financial creditors, allottees typically prioritize obtaining ownership and possession of the plot, apartment, or building as compared to receiving repayment of their advances with haircuts or proceeding with the liquidation process. This

---

<sup>41</sup> It states that "The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force".

<sup>42</sup> Supra Note 13.

creates an inherent conflict of interests between allottees and other financial creditors, particularly banks and financial institutions whose only interest lies in refund of the loan amount or even liquidation of the promoter's company.<sup>43</sup>

## **b. Information Asymmetry and validity of late claims by homebuyers**

Majority of homebuyers are unaware of the functioning and time-sensitive nature of the Code, leading to their inability to submit their claims within the specified period of time. Compounding to this issue, is the fact that most allottees do not even reside in the locality where the real estate project is being developed, resulting in a lack of awareness regarding the current status of the project. The use of a newspaper with broad distribution only in the region where the Corporate Debtor's registered office is located for public announcements according to Section 15 of the IBC further exacerbates the problem, and renders it ineffective. Consequently, allottees often approach the NCLT at a later stage to seek the inclusion of their claims, causing delays in the CIRP, undermining the Code's time-bound objective, and increasing the overall costs of the CIRP. On the other hand, even though homebuyers have a knowledge of both the Resolution Professional (RP) and the debtor but are sometimes excluded from the resolution plan. In such cases, issue of validity of late claims arises. Accordingly, in *Shankar Sawant & Another v. Mr. Arun Kapoor*<sup>44</sup>, the homebuyers were denied inclusion in the resolution plan by the RP due to the approval of resolution plan by the COC already and only pending approval from the NCLT. Due to this, the NCLT emphasized that since the presented plan is still pending adjudication, the claim of the homebuyer's remains valid. It based its decision on the judgment of hon'ble Supreme Court in the case of *Ghanshyam Mishra v. Edelweiss Asset Reconstruction Co. Ltd.*<sup>45</sup> where the Court had clarified that claims under a resolution plan are only frozen when the resolution plan is approved by the Adjudicating Authority. Claims that are not part of the resolution plan are considered extinguished. This was so because of the application of doctrine of clean slate.<sup>46</sup>

---

<sup>43</sup> The Supreme Court in *Union Bank of India, Jaipur v. Rajasthan Real Estate Regulatory Authority & others*, D.B. Special Leave Petition (Civil) No. 1861-1871/2021 held that RERA has the authority to hear complaints from an aggrieved homebuyer against a bank who takes recourse to section 13 (4) of the SARFAESI Act, 2002.

<sup>44</sup> Company Appeal No. 9 of 2022.

<sup>45</sup> Civil Appeal No.8129 of 2019 SC.

<sup>46</sup> Section 31 (1), IBC, 2016 provides the legislative ground for application of doctrine of clean slate by stating that once a resolution plan is approved by the Adjudicating Authority it shall be binding on the corporate debtor and all categories of creditors.

In a recent case of *Puneet Kaur v. KV Developers*<sup>47</sup>, the hon'ble NCLAT addressed the issue of claims extinguished upon the expiry of the notice period. The Tribunal expressed the view that unless the Adjudicating Authority approves the resolution plan, creditors' claims cannot be considered extinguished. Even if a claim is filed late i.e., after the approval of the resolution plan by the COC, its finality is to be determined by the Adjudicating Authority. In fact, the issue of non-inclusion of homebuyers in the Information memorandum leads to delay of the CIRP.

### **c. Initiation of CIRP against the entire company**

In cases where, only one project of a promoter converts into a defaulting entity but due to the provisions of CIRP provided under the IBC, the entire company's insolvency has to be initiated leading to halt of several well-performing projects as well. In such instances a new framework under the IBC can be introduced for real estate insolvencies where the CIRP provisions shall apply to the defaulted project only. Recently, in February, 2024, the IBBI has inserted a clarification in regulation 36A, after sub-regulation (1). It provides that the resolution professional after the approval of the committee may invite a resolution plan for each real estate project or group of projects of the corporate debtor.<sup>48</sup>

Under this specialized framework also known as the project-wise CIRP, it ensures that each project is kept separate from the other assets of the corporate debtor. Taking a cue from this, the NCLAT in *Whispering Tower Flat Owner Welfare Association v. Abhay Narayan Manudhane, RP of Corporate Debtor and others*<sup>49</sup>, allowed an extension of 90 days beyond 330 days as the COC decided to invite expression of interest project-wise for the corporate debtor. Though this concept goes against the objectives of CIRP as suggested by the BLRC but is more suitable for real estate insolvencies so that homebuyers can participate in the process and have minimum liability in the CIRP.<sup>50</sup>

### **d. Issue relating to revised threshold limit**

The threshold for filing an application initiating CIRP against a real estate developer must be filed by a minimum of 10% or 100 homebuyers in order to form a class of creditors within the category of financial creditors. For homebuyers to fulfil this criterion becomes a challenging

---

<sup>47</sup> Company Appeal (AT) (Insolvency) No. 390 of 2022.

<sup>48</sup> Insolvency and Bankruptcy Board of India, Notification No. IBBI/2023-24/GN/REG113, dated 15th February, 2024 (w.e.f. 15-02-2024).

<sup>49</sup> Company Appeal (AT) (Insolvency) Nos. 896, 980 & 1045 of 2021.

<sup>50</sup> In *Mr. N. Kumar Resolution Professional, M/s. Sheltrex Developers Pvt. Ltd v. M/s. Tata Capital Housing Finance Ltd.*, Civil Petition (IB)/889/(CHE)/2019, the NCLT held that in the present scenario project wise CIRP is not feasible solution since it is against the provisions of the IBC and cannot be approved by the COC.

task as this is required to be fulfilled on the date of filing of the application u/s 7. In view of the other parallel remedies available to homebuyers and settlement of dispute between a group of homebuyers and the promoter, it works as a hindrance on the right of homebuyers to independently approach the NCLT which is not the case with other financial and operational creditors. This also places real estate allottees behind all other financial and operational creditors when it comes to initiating the CIRP for any default above Rs. 1 Crore.

### **e. Delay in Resolution vis-à-vis role of Authorized Representative (AR)**

Once the CIRP is initiated, home buyers, as financial creditors, will have the right to participate in the meetings of the COC. Since home buyers are numerous and unfamiliar with assessing a company's commercial viability, delays in the CIRP may occur due to difficulties in reaching a consensus among a large number of creditors. Though the IBBI Regulations<sup>51</sup> provide for appointment of an authorized representative by the majority of homebuyers by way of e-voting, there is often a lack of effective communication between them. Thus, the primary role of an AR although is not to finalize the acceptance of claims by the IRP but he must give a fair hearing to any issue raised by the homebuyers and communicate the practical position in the correct manner.<sup>52</sup>

### **f. Demand for Specific Resolution for the benefit of allottees**

Owing to the large number of homebuyers in a real estate project, homebuyers might seek redressal in the form of obtaining ownership or possession of the unit. Currently due to a moratorium being imposed on any transaction pertaining to the real estate project, the homebuyers are not permitted to take possession of a unit.

## **Conflicting Areas in Real Estate (Regulation and Development) Act, 2016**

### **a. Forged RERA Registration Numbers**

Though the RERA Act, 2016 was enacted with the objective of ensuring transparency in the real estate sector, but it fails to verify the information provided by real estate agents, builders, financiers, chartered accountants, engineers etc. who are involved as intermediaries in the registration process under it. The self-declaration documents are not attached with a proof of any disclosures made in them. One step in this direction has been initiated by Maharashtra

---

<sup>51</sup> Regulation 16A, Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, <https://ibbi.gov.in/uploads/legalframework/17079b9123b1e517e074bef04e7c3400.pdf>.

<sup>52</sup> Indrajit Mukherjee, *Role of Authorised representative under IBC, 2016- Neglected but Critical*, THE RESOLUTION PROFESSIONAL, 29-34, July (2022).

RERA Authority by imposing the requirement of an affidavit and converting the entire process into an online mode.<sup>53</sup>

## **b. Deviation of funds**

Despite the mandatory provisions relating to creation of an escrow account where the 70% of the funds collected from homebuyers are required to be maintained,<sup>54</sup> the promoters fail to maintain such account and in fact deviate the funds to other projects. The Supreme Court also noted this fact in the case of Amrapali group where a hefty amount of Rs. 2765 crores was diverted by the builder towards other projects. It held that such a conduct on the part of the builder amounts to misappropriation and criminal breach of trust. The Court also observed that this is a regular practice on the part of the builders and undermines the rights of the home buyers despite the existence of contrary provisions under the RERA, 2016.<sup>55</sup> Even the recent cases before Karnataka RERA reveal that the promoters of numerous real estate companies have not got their project accounts audited within six months after the completion of every financial year by a chartered accountant and also failed to upload the said documents on the website of its RERA Authority.<sup>56</sup> Accordingly, a penalty u/s 60 has been imposed on various promoters for non-compliance of section 4 (2) (L) (D), RERA, 2016.<sup>57</sup> This depicts that despite such provisions under RERA, 2016, the builders very often indulge in such financial misappropriation.

## **c. Concerns regarding ambiguous terms and scope of the Act**

The RERA, 2016 though earmarked for the real estate sector does not define the term “Construction Execution Certificate”. The non-existence of a vital provision often leads to a lack of monitoring of a project’s development as per the sanctioned plan and approved layout.<sup>58</sup> Likewise, section 76 (2) of the RERA, 2016 grants the State the discretion to deal with the money obtained through penalties, but it does not specify the appropriate use of these funds. To address this legal lacuna, clarity should be brought under the provisions stated in sections

---

<sup>53</sup> Rule 3 (6) r/w Form B, Maharashtra Real Estate (Regulation and Development) Registration of real estate project, real estate agents Rules, 2017 require an affidavit cum declaration and verification to be submitted by the promoter at the time of registration of the project.

<sup>54</sup> Section 4 (2) (L) (D), RERA, 2016.

<sup>55</sup> 2019 SCC OnLine SC 901.

<sup>56</sup> <https://rera.karnataka.gov.in/viewAllProjectOrders>.

<sup>57</sup> file:///C:/Users/kapur/Downloads/004338watermark.pdf.

<sup>58</sup> Section 14, RERA, 2016 prohibits the promoter from doing any additions and alterations in the sanctioned plans, layout plans except with the consent of two-thirds of the allottees but it does not provide with any mechanism to check whether it has been adhered to by the promoter.

76 (2), 82, 83 and 84 by not giving absolute power of rule-making to the appropriate government to supersede the RERA authority. This would enable the establishment of an autonomous body with minimal interference from the State government. Further, cases where units have been sold on super built-up area calculations, it would be prudent to add an exemption clause to exclude such instances so that the builder does not charge high amounts without giving the exact details as to area sold.<sup>59</sup> Super built-up area is the common area and refers to spaces shared by the allottees and are used for different purposes useful to all the allottees.

#### **d. Lack of monitoring of builder-buyer agreement**

4. One sided builder-buyer agreements have been very common in case of projects launched before 2016 and particularly for legacy projects like Jaypee, Supertech etc. With the enforcement of RERA, 2016, the RERA authority has introduced a model builder-buyer agreement in every state. But the monitoring of these agreements is not done in a very judicious manner by the authority. Even when the builder-buyer agreement is silent on imposition of any additional charges, club membership charges, External Development charges (EDC), Infrastructure Development Charges (IDC) are levied by the promoters on the homebuyers. Accordingly, the Supreme Court in the case of *Ashwini Kumar Upadhyay v. Union of India & Others*<sup>60</sup>, held that the centre should lay down the model builder- buyer agreement which should be followed throughout all the states. But it is the duty of State RERA authorities to monitor the **builder-** buyer agreement and to ensure that such agreements are not one-sided and the **balance** between rights of homebuyers and the builders is maintained.

#### **e. Delay in issuance of permits**

The delay in issuance of permits and obtaining clearances from the RERA authorities is one of the major causes of delay in construction of real estate projects. In India, obtaining permits takes a very long time as compared to other countries in the world. The procedure of obtaining permits includes processes and it normally takes 196 days to get construction permits. Moreover, the cost of permits is also very high in India.<sup>61</sup> In a report published by World Bank,

---

<sup>59</sup> Section 4 (h), RERA, 2016 obligates the promoter to furnish documents relating to the number, type and carpet area, balcony and verandah area of the apartment for sale together with the registration documents.

<sup>60</sup> Writ Petition (Civil) No.1216 of 2020.

<sup>61</sup> Sambhav Ranka & Nitesh Tiwari, Real Estate (Regulation and Development) Act, 2016: A Private Equity Perspective, Press Reader, (June 27, 2017), [www.pressreader.com/india/mint-st/20170627/281621010346269](http://www.pressreader.com/india/mint-st/20170627/281621010346269).

it was stated that, “the cost of construction permit in Greater Mumbai is 46.05% of the cost of construction”.<sup>62</sup> Both these factors coupled with factors such as corruption led to delay in the construction of projects along with the hike in the construction prices. As a result, the builders are unable to complete the projects they undertake. Eventually, homebuyers become sufferers for the inadequacies of the project.

#### **f. Judicial mechanism under the Act**

The RERA, 2016 provides that the authority and Tribunals shall dispose the matter as expeditiously as possible.<sup>63</sup> Otherwise, they have to give a reason in writing for the delay. But the Act suffers from lacunae which makes the speedy disposal very difficult. The first is in the form of provision which limits the jurisdiction of the Act to apartments where the area of land exceeds 500 square meters and number of apartments to be developed is more than 8 inclusive of all phases.<sup>64</sup> This results in the exclusion of the projects in urban and rural middle areas where the project size is small.

### **5. Analysis of responses taken from home buyers and Insolvency Professionals**

A research design consisting of sampling method and analytical tool was adopted. The survey consisted of 26 questions which was answered by 20 homebuyers of those projects whose insolvency resolution process is either ongoing or has been completed. Also, views of Insolvency Professionals working in the real estate sector located in Delhi, Chandigarh Mumbai and Ahmedabad were collected through an interview schedule.

#### **Evaluation of Homebuyer’s responses**

Presently, homebuyers can obtain redressal of their grievances either under the CPA, 2019, RERA, 2016 or IBC, 2016. Through this research, an attempt has been made to study the gaps in the implementation of RERA, 2016 and IBC, 2016 by finding out the problems faced by homebuyers during the insolvency resolution process of a real estate company. As per the survey, almost all homebuyers revealed that the builder had not created a homebuyer association at the time of signing of the builder-buyer agreement. Further, it was found that

---

<sup>62</sup> The World Bank, Dealing with Construction Permits in Mumbai – India, Doingbusiness.org, (23<sup>rd</sup> July, 2017), [www.doingbusiness.org/data/exploreeconomies/india/sub/mumbai/topic/dealing-with-construction-permits](http://www.doingbusiness.org/data/exploreeconomies/india/sub/mumbai/topic/dealing-with-construction-permits).

<sup>63</sup> Section 29 (4) RERA, 2016 provides that RERA shall dispose the matter within a period of 60 days from the date of receipt of application.

<sup>64</sup> Section 3, RERA, 2016.

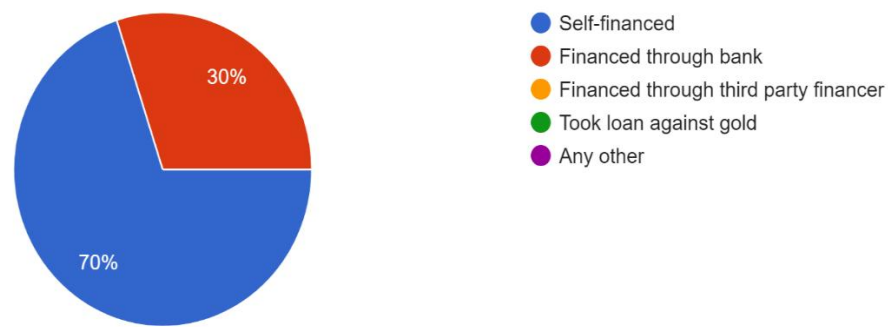


almost 55% of the homebuyers preferred to approach the RERA authority as compared to consumer commission under CPA, 2019 and NCLT under IBC. Only 30% of the homebuyers preferred addressing their grievances through the NCLT for initiating insolvency proceedings. This can be attributed to the provision under the IBC as per which a minimum of 100 homebuyers or 10% of the total homebuyers only can collectively initiate a CIRP. This shows that a single homebuyer who is aggrieved by the builder's default has no voice.



On the other hand, 55% of the homebuyers showed interest in opting for Alternative Dispute Resolution mechanism such as arbitration or negotiation apart from litigation for redressal of their grievances. This will enable a quick and smooth resolution between the parties. Further, 85% of the homebuyers disclosed that their interest lies more in getting the possession of the flat at the earliest rather than refund and 10% revealed that they are not interested in getting the refund amount after the completion of the insolvency proceedings. This implies that while 10% showed preference for getting refund of the principal amount with or without interest and only 5% of the homebuyers opted for liquidation of the real estate company as the best relief against the default of the builder. With numerous real estate companies going into insolvency resolution process, only 65% revealed that they are aware about both IBC and RERA remedies and 30% of the homebuyers said they are neither aware about RERA nor IBC remedies.

The graph below shows that 70% of the respondents had invested their hard-earned savings in buying their dream home while only 30% of the home buyers took help in financing from banks.



While 70% of the respondents suffered a delay or disruption in completion of the real estate project and 20% disclosed that the builder refused to help when delay in the project occurred. When the respondents were asked about their interest in taking ownership of a different house of an alternate project of the same promoter if offered a mixed response was received.<sup>65</sup>

The homebuyers were also asked as to whether they thoroughly checked regarding any pending proceeding or litigation against the promoter before purchasing the flat, to which most of the buyers replied in negative. Though majority of the homebuyers replied that they had thoroughly read the prospectus before investing in the project. This can be attributed to the model builder-buyer agreement introduced after the enactment of the RERA, 2016 whereby every builder has been compelled to comply with the terms and conditions set out in the model agreement by the State RERA authority. When asked about the representation of homebuyers in the COC, the respondents preferred to be represented by the home buyer's association rather than the authorized representative appointed under the IBBI Regulations.<sup>66</sup>

During liquidation of the real estate company, the homebuyers would fall in the category of unsecured creditors but most of the homebuyers were unaware of this fact that though they are a part of the COC but if the CIRP fails then they fall much below the priority in the waterfall mechanism provided u/s 53 of the IBC, 2016.<sup>67</sup>

## **Examination of responses by Insolvency Professionals**

<sup>65</sup> Only 25% of the homebuyers agreed if such a proposal is offered to them whereas 40% replied that they might be interested.

<sup>66</sup> Though Regulation 16 A, Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, lays down clear guidelines for the appointment and role of an AR but there is often a lack of balanced approach in his working to undertake majority views of homebuyers as a class of creditors.

<sup>67</sup> Section 53 (1) (d), IBC, 2016 includes the financial debts owed to unsecured creditors. The homebuyers due a lack of creation of a security interest in their favour fall in the 4<sup>th</sup> position during the distribution of claims from the liquidation estate.

The Insolvency professionals of real estate companies in the interview schedule replied that the role of an Authorized Representative in real estate insolvencies is of prime concern for homebuyers. Well-regulated framework for monitoring their involvement with the resolution professional and the homebuyers must be introduced. He should be allowed to raise concerns on behalf of different groups amongst the homebuyer associations rather than simple majority decision and should assist in educating about the process to homebuyers & importance of timelines. Further, remuneration of AR should be increased with reimbursement of legal expenses. Also, the more you improve the more the litigation will happen. He must compulsorily do video conferencing and not just e-voting. Additionally, there should be accountability fixed towards the class of homebuyers. Portal and website should be made just like in the case of Jaypee infra it was made by RP, same should be done by AR disclosing FAQ's.

The insolvency professionals commented that in order to achieve timely and effective resolution of homebuyer's claims, RERA orders should be treated as a decree if no appeal is filed and home buyer should be classified as secured financial creditor. Further, RERA should always appoint an Authorised Officer to attend COC meetings and the clearance from RERA authority should be made compulsory like that of CCI. If the leases are there from government bodies, they should also be made part of COC proceedings. At the time of approval of resolution plan RERA should be a necessary party. Promoters under RERA are landowners and developers and the same should be for the purpose of Section 17 treating them as management with suspended powers. Additionally, technology can be used effectively to invite and process homebuyer claims. RERA orders must be implemented for solvent companies and rights of third-party land owners or private parties should be protected by not making them responsible for acts or omissions of builders. Also, RERA proceedings should be linked to Information Utility, so that home buyer's claims can be allowed to be filled directly on to the IU as this will help in reducing litigation.

Regarding the challenges of valuation methodology, required cost to complete the projects etc. the IP's responded that there is a need for clear guidelines about the methodology to be adopted for valuation and the valuer should have specialised skills to complete valuation of the housing project. Valuation Method shall be properly coded in the following manner a) Valuation in case of flats sold and Agreement to Sale registered b) Unregistered agreements c) Sale through allotment letter d) Sale without obtaining NOC from Lenders e) Registrar registering flats

where NOC is not obtained in cases where mortgage registered f) treatment of advance received from homebuyers.

Further, the IP's commented that PPIRP in case of real estate insolvency will not be successful and will depend on a case-to-case basis provided if secured creditors support is obtained. There is a need to understand the importance of priority funds/interim finance in the context of real estate. This needs to be facilitated and section 29A needs to be redefined. For this, current regulations and the Code needs to be amended by empowering NCLT to allow interim finance as is in some of the other jurisdictions. This could be vested with one special notified bench of NCLT (with facility of online hearing) having the expertise and understanding for a period of 2-3 years after which it can be extended to all benches of NCLT.

About the prospects of reverse CIRP, the IP's have given a positive response if it is codified under the Code then the interest of homebuyers will be protected and there is a better chance of completion of projects. This will help in early resolution of cases by solving the problem of conflicting claims of both the secured and unsecured creditors.

## **6. A glimpse of international norms relating to Insolvency of real estate companies**

### **United Kingdom**

The Insolvency Act, 1986<sup>68</sup> is the principal insolvency statute in the U.K, read with insolvency rules which were set-up in 2016. The Insolvency Act, 1986 regulates the following insolvency processes:

- 1) Company Voluntary Arrangements ( s)
- 2) Administrations
- 3) Winding up
- 4) Administrative receiverships

### **Individual Enforcement Procedure**

#### **Company Voluntary Arrangement**

A CVA allows a company to enter into an arrangement with its creditors in satisfaction of some, or all, of its debts. Such arrangements are supervised by a qualified insolvency practitioner, with management retaining control of the day to day running of the business.

---

<sup>68</sup> The Insolvency Act, 1986, Chapter 45, Acts of United Kingdom Parliament, 1986.

Usually, a CVA may be used to allow the restructuring of underperforming properties and compromising significant trade or other unsecured liabilities. Generally, in such instances, financially struggling companies and their creditors engage in out-of-court restructurings. CVAs are adopted by the Court once approved by the creditors. Further, directors of the firm or the insolvency officer, if the business is under administration or liquidation, may initiate a CVA. It becomes binding once approved by a minimum of 50% of shareholders and a majority of 75% in value of unsecured creditor claims voted on at the CVA meeting. However, a CVA cannot affect the rights of preferential or secured creditors without their explicit consent. Generally, a standalone CVA does not trigger a moratorium on creditors' actions, except for small companies.<sup>69</sup>

While the UK insolvency regime allows connected parties and promoters to participate in the resolution process of a company (e.g., CAV, administration, pre-pack sales) and submit resolution plans, it also imposes strict liability on directors/promoters for committing offenses related to company insolvency. Under the UK Insolvency Act, if any person involved in the promotion, formation, or management of the company has misapplied, misappropriated, or wrongfully retained money or property of the company, a liquidator, creditor, or shareholder can file an application and seek a Court order requiring them to repay or restore the property or contribute to the company's assets as compensation for breach of duty. Similar reliefs are also available where the directors or promoters have engaged in fraudulent or wrongful trading.<sup>70</sup>

## **Housing Administrators to deal with Real Estate Insolvencies**

In response to Cosmopolitan Housing Group's financial troubles in 2012<sup>71</sup>, a separate administrative regime for housing professionals was implemented in 2018<sup>72</sup>. In the U.K, it established the concept of a housing administrator, who plays a crucial role in addressing the financial distress of social housing providers. A housing administrator has two primary objectives:

1. **Financial Rescue:** To restore the financial viability of the social housing provider and safeguard the interests of its tenants.

---

<sup>69</sup> Section 4, The Insolvency Act, 1986, Chapter 45, Acts of United Kingdom Parliament, 1986.

<sup>70</sup> Chapter X, The Insolvency Act, 1986, Chapter 45, Acts of United Kingdom Parliament, 1986.

<sup>71</sup> In re Cosmopolitan Hotel, 85 F.2d 851.

<sup>72</sup> The Housing Administration (England and Wales) Rules, 2018.

2. **Regulated Sector Preservation:** To prioritize the retention of social housing within the regulated sector, ensuring that it remains under the management of another registered provider.

## **Liquidation**

### **Creditors Voluntary Liquidation (CVL)**

To start a CVL, the board of directors must first meet and agree to call a general meeting of shareholders. At the general meeting, the shareholders must vote to liquidate the company and appoint a liquidator. After this meeting, creditors have the opportunity to nominate a liquidator in place of the liquidator appointed by the shareholders. There are two ways creditors can nominate a liquidator; either by deemed consent or a virtual meeting. A physical meeting can be convened provided it's requisitioned before the decision is made as to who is to be liquidator.<sup>73</sup>

### **Administrative Receivership**

The exclusive utilization of administrative receivership as an insolvency procedure is restricted to secured creditors. This entails granting the creditor a charge over the assets of the company, thereby granting them the authority to sell those assets in order to repay the debt. Typically, administrative receivership is exercised when a business violates the financing covenants governing the terms and conditions of its loans. In order to appoint an administrative receiver, the creditor must have a floating charge over a substantial part or all of the company's assets that were created before September 15, 2003. The purpose of an administrative receiver is to secure repayment of the outstanding loan by selling the company's assets.

## **Restructuring Plan**

In June, 2020 the Corporate Insolvency and Governance Act<sup>74</sup> introduced a new restructuring procedure known as the Restructuring Plan. It provides companies in financial distress with a more powerful restructuring tool than has previously existed in the UK insolvency regime. The company's creditors and shareholders must approve the restructuring plan, and will vote in classes. Each class will be deemed to approve the restructuring plan if 75% by value of that class vote in its favour.

---

<sup>73</sup> Chapter IV, The Insolvency Act, 1986, Chapter 45, Acts of United Kingdom Parliament, 1986.

<sup>74</sup> The Corporate Insolvency and Governance Act, 2020, Chapter 12, Acts of United Kingdom Parliament, 2020.

## **United States**

### **Reorganisation Procedure**

Chapter 11 of the United States Bankruptcy Code serves as the primary mechanism for corporate restructuring, but it can also serve the purpose of an orderly liquidation if needed. Chapter 15, on the other hand, outlines the procedure for recognizing foreign insolvency or restructuring proceedings and conducting related proceedings in the United States. These ancillary proceedings are meant to support foreign proceedings, overseen by a foreign representative, and promote cooperation between U.S. and foreign Courts.

Further, when a voluntary bankruptcy petition is filed, an automatic stay goes into effect, preventing secured and unsecured creditors from taking action against the debtor or the debtor's assets without further approval from the Court. This stay usually continues until the assets are no longer part of the estate or the restructuring is completed. A Chapter 11 restructuring aims to facilitate collaboration between management (potentially including significant shareholders) and the company's creditors to reach an agreement on the best path forward for the company to maximize its value. Both shareholders and creditors can propose transactions that could lead to the company emerging from bankruptcy. However, during the initial 120 days following the filing date, only the company has the exclusive right to propose a reorganization plan and seek its approval. The court may extend this exclusivity period beyond 120 days, but not beyond 18 months from the filing date.

### **Involuntary Insolvency**

Under **chapter 11** of the United States Bankruptcy Code, an involuntary case may be commenced by three or more creditors who hold undisputed non-contingent claims against the company. The claims of the creditor must hold value that aggregates to \$18,600 or more than the value of any collateral securing the claim of the creditors. In case there are less than 12 creditors of the debtor, an application under chapter 11 can be filed by a single creditor. In case any petition is filed in bad faith then it may result in damages awarded against the petitioning creditor.

## **7. Alternative remedies to CIRP in real estate insolvency**

### **Mediation**

Mediation is an in-personam remedy which seeks to enable solutions based on an individual's consent. It not only saves time and effort but is the most cost-effective solution of conflict resolution. As compared to the usual method of dismantling assets of the company and then organizing them as per business interests, it can enable it in swift and amicable dispute resolution. In larger insolvency cases, mediation can be used as a tool to speed up the process along with cost-effectiveness. In real estate cases, mediation can be applied in the CIRP similar to the U.S where ADR techniques are applied for conducting negotiations between debtor and a single or multiple creditors to come to an agreement. This situation is defined as a 'cramdown'. A cramdown is the judicial power to confirm or amend a plan even against the wishes of certain creditors. Thus, when a debtor comes to an agreement with some creditors, the other creditors cannot challenge the agreement and must comply with it.

### **Reverse Corporate Insolvency Resolution Process**

This is a unique form of CIRP solely introduced for the real estate insolvency. It allows the one of the promoter of the same company to remain outside the corporate insolvency resolution process but plays the role of a financial creditor or lender to ensure that the CIRP reaches success and the allottees take possession of their flats during the CIRP without any third party intervention. Consequently, the conflict between the various stakeholders is reduced to a minimum as they all achieve the desired outcomes. Accordingly, in *Flat Buyers Association Winter Hills – 77, Gurgaon v. Umang Realtech Pvt. Ltd through IRP & Others*<sup>75</sup>, the NCLT had for the first time introduced this concept considering the facts of the case so that the debtor remains a going concern and allowed the allottees to pay the remaining amount and obtain the possession.<sup>76</sup>

### **Project wise CIRP**

---

<sup>75</sup> Company Appeal (AT) Insolvency No. 926 of 2019.

<sup>76</sup> In this case, one of the promoters, Uppal Housing Pvt. Ltd. agreed to invest in the corporate debtor and homebuyers agreed to pay 30% at the time of registration of the flat. The entire procedure was completed under the IRP's supervision and the promoter was asked to give a deadline for completion of the project by an affidavit.



In order to ensure that the impact of CIRP is localized and a financially sound promoter is not forced to go for insolvency the concept of project wise in real estate insolvency has been instituted. This was reinstated by the NCLAT in the case of *Ram Kishor Arora Suspended Director of M/s. Supertech Ltd. v. Union Bank of India and Another*<sup>77</sup>, wherein the Tribunal confined the CIRP proceedings to the specific project and not to other projects of the same real estate company which are located differently and where land and owner are different and even allottees and financial institutions are different for such projects. Later, the Court has confirmed project wise CIRP in cases of *Anand Murti v. Soni Infratech Private Limited*<sup>78</sup> and *Rajesh Goyal v. Babita Gupta*,<sup>79</sup>.

## 8. Conclusion and Suggestions

### Conclusion

Thus, the IBC, 2016 and RERA, 2016 provide separate mechanisms to homebuyers for protection of their rights. Both the legislations have been enacted with earmarked objectives. As RERA is an industry specific Act whereas IBC is not meant for the real estate sector. Though the RERA, 2016 brought significant reforms by introducing mandatory registration and disclosures by the builders and enforced a model builder-buyer agreement to safeguard the interests of homebuyers. But it fails to perform the role of a sector regulator as it fails to assess the viability of a project as well as its debt to equity ratio position. The industry practices of builders though part of the behavioural mechanism is very complicated for homebuyers due to non-demarcation of powers of RERA for grievance and redressal.

On the other hand, the IBC, 2016 though includes homebuyers within the category of financial creditors, only enables the initiation of insolvency by homebuyers but does not give them the status of a secured financial creditor in the insolvency resolution process or as equivalent to banks in the liquidation process. Additionally, the IBC lacks a stringent mechanism to check the diversion and siphoning by builders and the adjudication in such cases is very slow.<sup>80</sup>

---

<sup>77</sup> Company Appeal (AT) (IN) No. 406 of 2022.

<sup>78</sup> Civil Appeal No. 7534 of 2021.

<sup>79</sup> Company Appeal (AT) (Ins.) No. 1056 of 2019, the NCLAT, New Delhi allowed funding from the promoter for the completion of the project so as to safeguard the interests of all stakeholders including homebuyers.

<sup>80</sup> Though section 66, IBC, 2016 prohibits fraudulent trading by the corporate debtor during the CIRP or liquidation process. It provides that if the Adjudicating Authority on an application of the resolution professional finds that the business of the corporate debtor has been carried out to defraud the creditors of the corporate debtor or for any fraudulent purpose then it may pass an order that any persons who were knowingly parties to the carrying out of business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

However, in a recent judgment of the Supreme Court, it was held that the NCLT has the power to hold individuals connected to the corporate debtor personally responsible if they knowingly participated in the fraudulent activities involving the corporate debtor. But it is not within NCLT's purview to involve third parties or entities in such matters and demand compensation on behalf of the corporate debtor.<sup>81</sup> This implies that NCLT is not empowered to pass orders against an outside party which may be connected to such a fraud. Further, the existence of a 2-year look-back period in case of avoidance transactions enables the builder to evade his liability as financial frauds take a considerable time and usually are revealed after a period of 5 years.<sup>82</sup> In such cases, instead of a forensic audit, fraud investigation from the date of starting of the project is the need of the hour.

## **Suggestions**

### **1) Pre insolvency period**

#### **a. Pre-insurance of real estate projects**

Mandatory insurance of advance payments, pre-insured projects and stricter home loan scrutiny deserve thoughtful consideration. Requiring insurance companies to insure the monies collected from the home buyers so that in case of default the home buyers are secured by insurance policy and get back their investment. Insurance premium can be a part of the project cost, and this will work as a critic since according to the builder the insurance companies will charge the premium on deliverables. Infact, suitable risk-based premiums should be meticulously crafted with utmost care to cater the needs of every individual homebuyer. This would also prevent misuse and ensure affordability. Further, increased scrutiny of home loans for real estate projects would provide a safeguard to homebuyers. Banks which are responsible for providing insurance on loans, would have a vested interest in undertaking a due-diligence before disbursing funds, potentially discarding shaky projects. The Insurance Regulatory and Development Authority of India (IRDAI) can be entrusted with the development of a policy framework for setting standardized risks, coverage criteria, and premium calculations which would create a transparent and accountable system. An amendment in the RERA, 2016 can be introduced to make pre-insurance mandatory for registration of every project which is essentially adding another layer of protection. Insurance companies with careful project

---

<sup>81</sup> Gluckrich Capital Private Ltd. v. State of West Bengal and others, SLP (Criminal) Diary No. 6732/2023.

<sup>82</sup> Section 43 (4) (a), IBC, 2016 provides that the relevant time for a preferential transaction shall be 2 years preceding the insolvency commencement date.

evaluation can ensure project's insurance also identifying potential risks and deterring dubious builders.

### **b. Classification of Homebuyers as secured financial creditors**

Under the provisions of RERA, 2016 not only an inherent interest in the specific immovable property is created in favour of the homebuyer but they are also entitled to secure the performance of the 'builder-buyer' agreement in such a way that it gives rise to a pecuniary liability. It is to be noted that the acknowledgement of allotment letters by banks also acts as evidence of allottees' interest. These letters are considered as collateral for home loans, shedding light on the tangible nature of allottees' claim. Moreover, unlike banks whose mortgages should adhere to fine details, the homebuyer's lien is created by operation of law under RERA making it automatic and directly linked to the specific property. Thus, on a harmonious reading of RERA, 2016 IBC, 2016 and the Transfer of Property Act, 1882, it is strongly suggested that homebuyers should be recognized as secured financial creditors in liquidation proceedings.

### **c. Inclusion of real estate experts**

Real Estate companies as a matter of convenience always tend to collect substantial advance payments from homebuyers prior to the commencement of the construction. This money obtained by the builder company should be invested. For this purpose, a post of certified real estate expert, or similar professional should be created who would be tasked with overseeing the fund management, ensuring responsible investment, and reducing the risk of misuse. These funds should be channelled into secure instruments like redeemable debentures, bonds, or even company shares that accords stringent safeguards. This will act as a shield for the company from cost overruns caused due to inflation or potential market volatility.

### **d. Mandatory functioning of Homebuyer Associations**

A mandatory provision for establishment of home buyer's associations by builders should be introduced under the RERA, 2016. Such associations should have a minimum number of homebuyers as well as independent members as a criterion for their establishment and shall work in the best interest of homebuyers from the first day when the funds are invested by the homebuyers. This would lead to enhanced representation of homebuyers in the COC and would reduce the communication gap between homebuyers and authorised representatives.

## **2) Insolvency Options**

### **a. Reverse CIRP and CVA**

Reverse CIRP bears similarities to the UK's CVA process. CVAs enable struggling companies and their creditors to restructure debts out of court, offering an alternative to formal administration wherein new prospective buyers are selected to buyout the ailing firm. Directors of the firm or the insolvency officer, if the business is under administration or liquidation, may initiate a CVA. Thus, it becomes binding once approved by a minimum of 50% of shareholders and a majority of 75% in value of unsecured creditor claims voted on at the CVA meeting. The benefits of CVAs are that they do not affect the rights of preferential or secured creditors without their explicit consent and even does not trigger a moratorium on creditors' actions, except for small companies. Adaptation of the core principles to suit the Indian context and real estate specificities would strengthen Reverse CIRP. This could involve incorporating elements like creditor voting thresholds, addressing secured creditor rights, and considering a strike off of moratorium.

### **b. Flexible Resolution Plans**

Based on the principle of restructuring the viable or profit-making assets and sale of unviable or loss-making assets flexible resolution plans at the stage of CIRP can be introduced. This framework will be able to provide flexibility in the insolvency process as a middle ground between resolution and liquidation to incentivise Prospective Resolution Applicants (PRAs). This in turn will help in making the bidding process more competitive and increase the realisation value when compared to traditional liquidation. A report submitted by the Standing Committee on Implementation of the Insolvency and Bankruptcy Code<sup>83</sup> had also recommended the insertion of flexible resolution plans in the Code. Additionally, on an average only 4% of the admitted claims were realized during liquidation process as compared to 27% which were realized through the CIRP.<sup>84</sup> This demonstrates how the creditors are forced to take huge haircuts in case of liquidation. This quandary associated with low realization and flexibility in the existing CIRP can be solved by amending the Code to provide flexibility in the resolution approach, which will authorize the COC to move forward with the resolution of functional parts of the insolvent company and liquidate the non-functional aspects separately through single or multiple resolution plans for any number of assets of the company.

---

<sup>83</sup> The Standing Committee on Finance on Implementation of Insolvency and Bankruptcy Code – Pitfalls and Solutions, 32<sup>nd</sup> report 2020, [https://eparlib.nic.in/bitstream/123456789/811572/1/17\\_Finance\\_32.pdf](https://eparlib.nic.in/bitstream/123456789/811572/1/17_Finance_32.pdf).

<sup>84</sup> INSOLVENCY AND BANKRUPTCY BOARD OF INDIA, Newsletter, July-September, 2023, Vol. 28, <https://ibbi.gov.in/uploads/publication/b4ce3516920836e9ff9b1e816137bf97.pdf>.

### **c. Mandatory provision of ADR such as Mediation and Arbitration in RERA**

Keeping in mind the current impediments in the insolvency resolution process leading to long delays in the achievement of results, mediation or arbitration can be introduced at the stage of RERA proceedings. For this, an effective implementation of model builder-buyer agreement must be followed in every dispute. This will enable an amicable settlement of disputes and if required it can be settled by the RERA authority. In case if a homebuyer is dissatisfied with the award passed by the Arbitrator, then, it can be challenged under Section 34 of the Arbitration and Conciliation Act, 1996. However, in case the award is challenged and any relief is provided to either of the parties, the same shall be kept in a separate account maintained with the RERA or in case of builder, the award amount shall be debited from the Escrow account maintained with the RERA authority. This can also be seen from the questionnaire posed to homebuyers which revealed that 55% of the respondents would prefer ADR mechanisms like mediation as a mode for settlement of any dispute against the builder.

### **d. ‘As is where is’ basis allotment to the allottees**

Many a times, during the construction of the plots but before its completion, the promoter becomes insolvent and the project is left incomplete due to the ongoing CIRP proceedings. In such cases, the option of ‘as is where is’ allotment to the home buyers can be adopted. The homebuyers shall be allotted half-constructed projects and money from them for the remaining construction can be returned or reduced according to the proportion of the construction to be completed. This will enable homebuyers to get possession of the unit and construction could also be completed from the amount refunded to them.<sup>85</sup> Also, in instances where the possession has been transferred to the homebuyers, the RP shall be allowed to hand over the ownership of a plot, apartment or building to the allottees through transfer during the resolution process with the approval of the COC<sup>86</sup>.

### **e. Inclusion of Land authorities in the COC Meetings**

---

<sup>85</sup> Insolvency and Bankruptcy Board of India, Discussion Paper, Real-Estate Related Proposals- CIRP & Liquidation, November, 2023, [https://ibbi.gov.in/uploads/public\\_comments/Discussion\\_Paper\\_Real\\_Estate\\_November2023\\_Final.pdf](https://ibbi.gov.in/uploads/public_comments/Discussion_Paper_Real_Estate_November2023_Final.pdf).

<sup>86</sup> Insolvency and Bankruptcy Board of India, Discussion Paper on issues related to Real Estate, 7<sup>th</sup> November, 2024, [chrome-extension://efaidnbmnnnibpcajpcglefindmkaj/https://ibbi.gov.in/uploads/public\\_comments/Discussion%20Paper-%20Real-Estate%202024.pdf](https://ibbi.gov.in/uploads/public_comments/Discussion%20Paper-%20Real-Estate%202024.pdf).

Currently land authorities are not included anywhere during the CIRP of the real estate corporate debtor. While land authorities are a part of the regulatory process under RERA, they are classified as operational creditors under the IBC and thus not included in the COC. Representation of land authorities in the COC meetings can provide a formal channel to them to give inputs, though not allowing them to vote but ensuring enhancement of coordination between land authorities and financial creditors. This in turn would boost confidence among homebuyers and ensure a smooth resolution of the real estate corporate debtor vis-à-vis interest of homebuyers.<sup>87</sup>

#### **f. Empowerment of COC to facilitate participation of associations of allottees as resolution applicants**

In order to achieve the objectives of the IBC, 2016 and facilitating the homebuyer's interest in the CIRP, the COC must be empowered to allow the participation of association of allottees as resolution applicants. This can be done by the COC by mitigating the eligibility criteria for submission of expression of interest and earnest money deposit requirements for an association of allottees that represent at least 100 or 10% of allottees whichever is higher.<sup>88</sup>

#### **g. Inclusion of interest in homebuyer's claims in CIRP**

Real estate insolvencies have an added claim of notional interest by homebuyers which represents the opportunity cost of the money they paid towards the property which goes into insolvency proceedings under the IBC. Currently, Regulation 16A (7) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides for calculating voting share based on financial debt with an 8% per annum interest rate. This average rate of 8% is often seen as a safe option as interest rate on a fixed deposit also ranges between 7%-11%. Though presently the 8% interest rate is considered in determining the voting share of homebuyers but not for the actual claim. If the 8% interest rate is included in the homebuyers claim under the resolution plan and distributed in the waterfall mechanism u/s 53 of the IBC, the homebuyers would not be required to approach other forums like CPA, RERA to obtain such orders.<sup>89</sup> This would enable a smooth insolvency resolution process for the homebuyers.

### **3) Insolvency procedural aspects**

---

<sup>87</sup> Supra Note 86.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

### **a. Specialized Real Estate Insolvency Professionals**

The real estate sector is one of the most complex and dynamic sectors where interests of multiple categories of stakeholders are involved. This signifies that decision-making and assessment of claims has to be done very judiciously. An Insolvency Professional though possessing the knowledge of insolvency aspects must also be aware of the practical realities of the real estate sector. In this direction, a list of specialized real estate IP's must be created by the IBBI so that crucial real estate insolvency cases are handled by them.

### **b. Effective communication between Authorized Representatives and homebuyers**

To ensure effective communication and protection of interest of homebuyers in the meetings of the COC, the role of authorized representatives appointed under section 21 (6A)<sup>90</sup> of the IBC, 2016 must be strengthened. The AR must inform the homebuyers of their rights and make sure that they are adequately represented equivalent to other financial creditors. Clearly outlining AR's responsibility would ensure transparency and accountability in the COC. Also, increased remuneration with legal expense reimbursement would attract qualified individuals. This would result in ARs active collaboration with the RP, prioritizing homebuyer's sentiments in resolution plans. A step in this direction has been made by recent amendments in the role of AR such as enhanced fee for attending and convening meetings of the committee of creditors and collaboration with the homebuyers to ensure protection of their interests.<sup>91</sup> It is also suggested that the AR should apprise homebuyers about the discussions in the COC and share the minutes of the COC meeting with the class of homebuyers it represents as per Section 25A (2) of the IBC, 2016.<sup>92</sup> Further, in order to facilitate communication between AR and homebuyers, facilitators can be appointed to disseminate information and clarify rules of the CIRP as per advice of the AR. To ensure a pertinent role of the facilitator, a fee can be allocated to be paid to them and included in the insolvency resolution process cost.<sup>93</sup>

### **c. Implementation of Cramdown Provisions**

---

<sup>90</sup> Section 21(6A), IBC, 2016 provides that the authorized representative shall attend the meetings of the committee of creditors and vote on behalf of each financial creditor to the extent of his voting share.

<sup>91</sup> Regulations 8, 9 and 10, Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Notification No. No. IBBI/2023-24/GN/REG106, dated 18th September, 2023.

<sup>92</sup> Supra Note 86.

<sup>93</sup> Ibid.

Currently, real estate insolvencies prioritize the objective of maximization of value of the corporate debtor's assets which conflicts with the interest of homebuyers. To address this imbalance, cramdown provisions can be introduced under the IBC. Such provisions allow Court to make changes in a resolution plan even if some secured creditors do not consent to such modifications. This would enable homebuyers to reinforce the resolution plan under which they would be able to obtain possession of the property.

#### **d. Unified Platform for Insolvency Resolution**

The present process of initiating an insolvency application can be drastically improved by allowing the verified records of default flow from the Information Utility to NCLT directly and notices be served electronically to all parties which are already on the platform. Countries like Singapore, UK, and Colombia have successfully deployed integrated technology platforms for insolvency ecosystems<sup>94</sup> enabled by AI, Big Data analytics, Cloud Computing etc. This will significantly boost the efficiency of the whole process by providing a single credible source to all stakeholders, with better outcomes in terms of time and realisation.

### **4. Post RERA approval of the project**

#### **a. Monitoring of project by RERA Authorities**

The RERA authority should establish a project monitoring mechanism to ensure continuous monitoring of the development of each project. This can also be done in consultation with home buyers or committee of home buyers. It should be ensured that this monitoring is other than for release of finances from Escrow Account.

#### **b. Execution of builder-buyer agreement as per RERA rules**

The RERA authority must ensure that the builder executes the builder-buyer agreement as per the RERA rules only. In case of lack of fulfillment of such a condition, the RERA must take an action of non-execution of such an agreement or impose penalty on the builder.

#### **c. Adherence to the regulations of RBI and other regulatory authorities**

The RERA authority should monitor that the builder is adhering to the regulations of Reserve Bank of India with regard to subvention and indirect financing of the project by payment of

---

<sup>94</sup> *Colombia is using AI to improve insolvency proceedings, DLA PIPER.*  
<https://www.dlapiper.com/en/insights/publications/panorama/2022/colombia-is-using-ai-to-improve-insolvency-proceedings>.



interest to the homebuyers, also known as indirect financing. Also, RERA must ensure that there is continuous adherence of the terms of licence granted by RERA. This includes the fact as to whether the builder is complying with the promises made in advertisement such as accepting 10% booking amount and payment of remaining 90% on possession. Currently, the builder after receiving the booking amount of 10% of the flat, asks the buyer to take loan from the bank in his individual capacity. Thus, promoting indirect financing. If the home buyer is unable to obtain the loan or there is delay in approval of the loan, then an exorbitant delayed payment fee is charged from the home buyer. Also hidden fees, unstated prices, and deceptive advertising must be regulated by RERA as per rules.

## **BIBLIOGRAPHY**

### **STATUTES**

1. The Insolvency and Bankruptcy Code 2016.
2. The Real Estate (Regulation and Development) Act 2016.
3. The Corporate Insolvency and Governance Act, 2020.
4. Bankruptcy Code, 11 U.S.C.
5. The Insolvency Act, 1986.

### **BOOKS**

1. Dr. Adv. Harshul Savla, Adv Darsh Dharod & Adv. Shamiana Hussain, Insolvency & Bankruptcy Code | Real Estate Sector (2023).
2. Sumant Batra, Corporate Insolvency Law and Practice, (1<sup>st</sup> edn.) 2017.
3. Akaant Kumar Mittal, Insolvency and Bankruptcy Code: Law and Practice, vol 1 (2<sup>nd</sup> edn.) 2023.
4. Susan Thomas, Insolvency and Bankruptcy Reforms in India, India Studies in Business and Economics, Springer, 2022.

### **ARTICLES**

1. Venkateshwaran H. (2020), "Financial Creditor, Operational Creditor and An Overview on Home-Buyers under Indian Bankruptcy Code", Supremo amicus journal, Vol. 15.
2. Khare U. (2021), "Insolvency in Real Estate: A Difficult Balancing Act", JGILS Working Paper No. 3 / 2021.
3. Pryor S., & Garg R. (2020), "Differential Treatment Among Creditors Under India's Insolvency and Bankruptcy Code", 94 Amer. Bankr. L.J. 123.
4. Shah, Rachita and Diljit, Arundhati (2020) "Real Estate Developers and Homebuyers: Finding a Harmony Under the IBC," National Law School Business Law Review: Vol. 6: Iss. 1, Article 6.
5. Kumar V. (2022), "Pre-Pack Insolvency Resolution Process (PPIRP) for Real Estate Developers: Challenges and Road Ahead", 2022 The Resolution Professional, Taxman
6. Neema S., & Singh A, (2022), "A tussle between IBC and RERA - Deciphering the common path", Taxman
7. Chung K. & Wei C., "ADR Techniques in Resolution Processss", IBBI & FCDO

8. Bhandari A , Khera P (2020), “ Homebuyers and IBC: A case Analysis of Evolution and the Threshold under IBC (Amendment) Act 2020
9. Mani R, Mediation in Insolvency Matters, Insolvency and Bankruptcy Regime in India A Narrative (2020) Insolvency and Bankruptcy Board of India articles 6/2020
10. Shaikh G & Sharma A, (2020), “Real Estate Insolvencies and the Status of homebuyers”, Insolvency & Bankruptcy Reforms in India, Springer
11. Jawaria K & Dad M, “ Treating Homebuyers as Financial Creditors: An Enduring Solution or Not?, Manupatra
12. Malpani K. & Agarwal P. (2020), “Homebuyer’s Right as Financial Creditor in Insolvency & Bankruptcy Code”, Taxman
13. Jain N, (2020) “ Homebuyers Conundrum: Is there even a dispute between RERA and IBC?, Taxman
14. Dr. Binoy J Kattadiyil,(2020), “ Impact of IBC on the Real Estate Industry, Feb 2020 IJMNR Issue 2(1) Vol 9
15. Mukhija K & Singhal S , 2023, “ India: Real Estate Ecosystem Under IBC”, Mondaq
16. Moral A & Mehra V,(2023) “ The Rera versus Sarfaesi Supremacy, Induslaw
17. Gupta A , Navigating IBC and Real Estate Regulations, IJALR
18. Bakshi Ishan, (2019), ‘Insolvency and Bankruptcy Code Should be the Preferred Option for Resolution of Bad Loans, Not the Last Resort’, (The Indian Express, 20 November 2019)
19. Chatterjee Sumit, (2023), Reverse CIRP under the Insolvency and Bankruptcy Code: NCLT’s innovative approach to protect the interests of Homebuyers, IJPIEL
20. Pathak Alankrita & Shah Jay, (2023), Analysing the Insolvency Resolution Mechanism for the Real Estate Sector in India: Need for a ‘Concrete’ Framework?, IBBI Pub, Pg. 23
21. Garg M & Majumdar B. Arjya (2023), The Homebuyers Conundrum in Real Estate Insolvency, IBBI Pub., Pg 351
22. Vishal J Dave, Mayur Jugtawat and Sejal Palan, (2023), RERA Vs. IBC: Landowner, Developer, Builder, Allottee at Crossroads, IBBI Pub., Pg. 549
23. Birla Mahadev & Singhvi Nipun (2023), Lower Interest claim by allottee vs higher interest as per RERA law: Cheers for Homebuyers, Taxman
24. Mishra Amit & Pandey Shivam, “It takes a village to raise a child-the development of corporate Insolvency Law in India for Real Estate Companies”, National Law University, Delhi Journal of Legal Studies, Vol II, Pg. No. 23-40.

25. Neema Saloni & Singh Aditi(2022), A Tussle between IBC and Rera-Deciphering the common path.
26. Kamalnath A. and Kaul ,(2022), Adding Mediation to India’s Corporate Resolution Process”, International Insolvency Review.
27. Simeon Djankova , Caralee McLiesha & Andrei Shleifer, Private credit in 129 countries, Journal of Financial Economics 84 (2007) 299–329.
28. Sambhav Ranka & Nitesh Tiwari, Real Estate (Regulation and Development) Act, 2016: A Private Equity Perspective, PRESS READER, (June 27, 2017)
29. Birla Mahadev & Singhvi Nipun, (2019), “Remedies for ‘Home Buyers’ under RERA and Insolvency Code”, 105 Taxman 243
30. Vishal J Dave, Mayur Jugtawat and Sejal Palan (2023), RERA Vs. IBC: Landowner, Developer, Builder, Allottee at Crossroads, IBBI, Emerging India on IBC, 2023
31. Mehreen Garg and Arjya B. Majumdar, (2023) The Homebuyers Conundrum in Real Estate Insolvency, IBBI, Emerging India on IBC, 2023
32. Indrajit Mukherjee, *Role of Authorised representative under IBC, 2016- Neglected but Critical*, THE RESOLUTION PROFESSIONAL, 29-34, July (2022).
33. IIM Ahmedabad Report on Effectiveness of the Resolution Process : Firm outcomes in the Post-IBC Period ,August 2023.

## COMMITTEE REPORTS

1. Discussion Paper, Ministry of Corporate Affairs,18.01.2023, inviting comments on changes proposed to the Code.
2. Discussion Paper, Real-Estate Related Proposals- CIRP & Liquidation, IBBI, November 2023.
3. Discussion Paper, Issues related to Real Estate, IBBI, November, 2024.
4. Amitabh Kant, Report of the Committee to examine the issues related to legacy stalled real estate projects, July, 2023.
5. ‘Insolvency Law Committee Report’ (PRS India, 2 December 2020).
6. Mr. Injeti Srinivas, Report of the Insolvency Law Committee, Ministry of Corporate Affairs, Government of India, (March, 2018).
7. Ministry of Corporate Affairs, Report of the Insolvency Law Committee, 20 February 2020.
8. World Bank, Ease of Doing Business Report 2016 (October 27, 2015).
9. Cork Committee Report 1982 (17 June 1982)

## **WEBSITES**

1. <https://ibbi.gov.in/>
2. <https://www.scconline.com/>
3. <https://www.taxmann.com>
4. <https://aiforera.in/>
5. <https://www.mhrera.com/>
6. <https://rera.karnataka.gov.in/home?language=en>
7. <https://mohua.gov.in/index.php>