



A Homebuyer-Focused Analysis of the Legal Developments Surrounding Real Estate Insolvency

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ABSTRACT :

This paper examines the evolution of India's real estate insolvency framework through a homebuyer-specific lens. It is argued that the Insolvency and Bankruptcy Code, 2016 is gradually transforming from a creditor-driven regime into a sector-specific mechanism. The paper traces how legislative amendments and judicial pronouncement have consistently opened new doors for homebuyers, changing their status to financial creditors while simultaneously cautioning against misuse through speculative investors. It is contended that recent developments such as project-wise insolvency, exclusion of speculative investors, regulated participation of Resident Welfare Associations, and the statutory recognition of possession as a remedy, underscore a conscious shift towards resolution over recovery, especially in the real estate sector. It is further argued that while these reforms seek to balance creditor autonomy and paramountcy with the constitutional right to shelter, there are still gaps that are yet to be addressed. In this light, the regime of real estate insolvency is analysed in depth, followed by certain suggestions aimed at further strengthening the legal framework.

INTRODUCTION

The concept of real estate insolvency is highly discussed and debated in the Indian legal landscape lately. This is because of the direct impact that it has, or has the ability to have, on middle class families across the nation. The framework of the Insolvency and Bankruptcy Code, 2016¹ (hereinafter referred to as the “IBC” or the “Code”) has traditionally majorly involved big-stake financial institutions and other operational creditors, however, real estate insolvency is one such sector where the major stakeholders are families all around us. This research paper focuses on this particular perspective and aims to analyse the latest developments around real estate insolvency in India. It also aims to trace the journey of these developments to analyse and decipher the legislative as well as the judicial intent regarding consistently safeguarding and strengthening the rights of genuine homebuyers, while also constantly being cautious about possible misuse of the relaxation of the process.

In the above light, this paper majorly covers *four* central discussion points. *Firstly*, the very right to initiate the corporate insolvency resolution process (hereinafter referred to as the “CIRP”) is analysed. Under this, the journey of homebuyers from the status of “*other creditors*” to “*financial creditors*” under the Code is covered along with the two key questions that arise in this regard. *Secondly*, the rights and role of Resident Welfare Associations (hereinafter referred to as the “RWAs”) or alternatively, the Homebuyers’ Associations are discussed. This becomes an important point since the sheer number of homebuyers involved in an average real estate project requires adequate representation to ensure proper facilitation of the process. Therefore, RWAs have been incorporated into the IBC framework, albeit with certain limitations, that shall be discussed hereinunder. *Thirdly*, discussion pertaining to the emerging concept of project-wise insolvency is undertaken, specifically from the perspective of homebuyers and whether it is more advantageous for them as compared to the traditional IBC framework. *Lastly*, the sector-specific and unique remedy of handover of possession is analysed and how the Supreme Court has made attempts to safeguard this right. In addition, other recent amendments are also covered in the last section of the body, immediately preceding the conclusion and the memo of the presentation.

HOMEBUYERS’ RIGHT OF INITIATION

• Evolution of their Status through Amendments

The status and rights that homebuyers exercise today were not always as clearly stipulated in the statute as they are now. Initially, the judiciary would grant the status of a financial creditor only on a factual basis, taking into consideration the specific terms of the contract.² Otherwise, homebuyers would

¹ Insolvency and Bankruptcy Code, 2016 (31 of 2016) (India).

² *Nikhil Mehta & Sons v. AMR Infrastructure* (2018) 2 Comp Cas-OL 88 (India); *Anil Mahindroo & Anr v Earth Organics Infrastructure* 2017 SCC OnLine NCLAT 216 (India).

generally either be categorised as operational creditors or would be excluded from either category,³ giving them next to no rights in the CIRP. This confusion regarding their status was further aggravated by the release of a new **Form F** in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016⁴ (hereinafter referred to as the “**CIRP Guidelines**”) which provided for claims by those who are neither financial creditors nor operational creditors. This insertion gave rise to the assumption that homebuyers fell under this residual category, thereby leaving them with negligible rights in the insolvency process despite the major stakes that they held. On the other hand, large-scale insolvencies, such as that of Jaypee Infratech⁵ and the Amrapali Group⁶ in 2017, brought the plight of affected allottees to light. Due to the halt on proceedings under the Consumer Protection Act, 2019⁷ (hereinafter referred to as “**CPA**”) and the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as “**RERA**”), owing to the imposition of moratorium under section 14 of the Code,⁸ thousands of allottees were affected. Some even moved the Supreme Court for cancellation of the insolvency proceedings.

It is in this backdrop that the Insolvency Law Committee released its report in March 2018⁹ (hereinafter referred to as the “**2018 ILC Report**”) which discussed all these challenges in detail. It also noted that delays in the real estate sector had become a common phenomenon, necessitating clarity in the status of genuine allottees. The 2018 ILC Report, alongside other observations, majorly noted that the definition of “*financial debt*” under **section 5(8)** of the Code,¹⁰ particularly in **5(8)(f)**, is sufficient to include homebuyers. The reasoning given was that this clause is a residual category which stated: “*any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing*”.¹¹ The ILC reasoned that the amounts raised from the advances paid by homebuyers have a commercial effect of borrowing since they constitute the majority funds for construction, are a tool for raising finance, and finally, upon default, entitle the homebuyers to receive compensation with interest, therefore also qualifying for the condition of being disbursed against the time value of money. To underscore the gravity of the issue at hand, an intriguing reference was made to the case of *Chitra Sharma v Union of India*¹² wherein the debt owed to homebuyers was fifteen thousand crores more than that owed to financial institutions. Therefore, a strong recommendation was made to insert a clear and explicit explanation in section 5(8)(f) to eliminate any inconsistencies in judicial rulings.

Subsequently, the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 (hereinafter referred to as the “**2018 Amendment**”)¹³ was introduced which finally gave statutory recognition to homebuyers as financial creditors by legislating on the aforementioned recommendation. As a result, two explanations were added to section 5(8)(f), the constitutionality of which was upheld by the Supreme Court in the landmark case of *Pioneer Urban Land and Infrastructure Limited v Union of India* in 2019. However, this was followed by unintended consequences as it enabled a single dissatisfied homebuyer to rattle an entire project, which was troublesome not only for the developer, but also for fellow-homebuyers who would now have to undergo the technical and complicated process of CIRP. More than 1800 cases were filed before the National Company Law Tribunal (hereinafter referred to as the “**NCLT**”, “**Adjudicating Authority**” or “**AA**”) within a short span of one and a half years, between June 2018 and November 2019.¹⁴ Therefore, the Insolvency and Bankruptcy Code (Amendment) Act, 2020 (hereinafter referred to as the “**2020 Amendment**”)¹⁵ was brought in that added a new proviso to **section 7**,¹⁶ stating that a minimum of one hundred creditors or ten percent creditors of the relevant class shall jointly file an application. This move was aimed at curbing the misuse of the right and at restricting frivolous litigation before the NCLT, avoiding overburdening. These amendments not only gave homebuyers the right to initiate proceedings under section 7, but they also gave them a seat at the Committee of Creditors (hereinafter referred to as the “**CoC**”), allowing them an active say in the resolution process.

• Two Key Questions

While the aforementioned amendments appeared as the solution to an emerging problem, they were merely the opening doors to the larger framework of real estate insolvency that was yet to be built over the course of the coming years. Inclusion of homebuyers as financial creditors gave rise to many legal questions. Most pertinently, it became a tool for misuse in the hand of speculative investors i.e., those creditors who entered into the transaction with the intent of gaining a commercial profit at the expiry of the project and not possession. At the hands of such speculative investors, these amendments became

³ *Col. Vinod Awasthy v AMR Infrastructure Ltd.*, CP No. (IB)-10(PB)/2017 (NCLT, Principal Bench) (India).

⁴ Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (India).

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⁷ Consumer Protection Act, 2019 (35 of 2019) (India).

⁸ Real Estate (Regulation and Development) Act, 2016 (16 of 2016) (India).

⁹ Insolvency Law Committee, Report of the Insolvency Law Committee (March 2018), Ministry of Corporate Affairs (India).

¹⁰ *Supra* note 1, § 5(8).

¹¹ *Supra* note 1, § 5(8)(f).

¹² *Chitra Sharma v Union of India & Ors.*, (2018) 18 SCC 575.

¹³ Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 (India).

¹⁴ Dr. Binoy J. Kattadiyil, *Impact of IBC on the Real Estate Industry*, 9 Int'l J. Multidisciplinary Educ. Res. 2(1) (February 2020).

¹⁵ Insolvency and Bankruptcy Code (Amendment) Act, 2020 (India).

¹⁶ *Supra* note 1, § 7.

a weapon for recovery and not resolution. Another issue that arose was with regards to differential treatment of those homebuyers who already held a decree for refund under RERA.

- **Exclusion of Speculative Investors**

The first instance where this term was used and the law was laid regarding exclusion of such creditors was seen in the *Pioneer Urban* case itself wherein it was held that at the pre-admission stage, the corporate debtor could oppose the initiation application by establishing that the person making such an application is a speculative investor.¹⁷ However, no in-depth discussion was undertaken regarding the factors to be considered for distinguishing between genuine buyers and such investors. This is the gap that was recently filled by yet another noteworthy ruling of the Supreme Court in *Mansi Brar Fernandez v Shubha Sharma*¹⁸ wherein a list of indicative factors was laid down. This included contractual terms, specifically if assured returns or buy-back clauses are included or alternatively, if possession is substituted by any similar arrangement of refund. The number of units purchased and the stage of the project at the time of the transaction were also held to be relevant factors necessitating higher scrutiny, though not conclusively establishing the allegation. Further, unrealistically high rates of interest over a short duration or a subsequent denial of accepting possession would indicate the real intent of the parties. Lastly, a drastic departure from the RERA model agreement in order to incorporate such terms was also noted as a relevant factor.

Not only did the Supreme Court clarify the law relating to this point of contention, but it also highlighted the right to shelter as a fundamental right,¹⁹ holding that allowing such speculative investors to undermine the right of genuine homebuyers would also be detrimental to the constitutional scheme. While upholding the intelligible differentia, it was noted that this distinction only exists at the stage of initiation and that such creditors are *not excluded* from filing claims in pursuance to the invitation by the Resolution Professional (hereinafter referred to as the “RP”).²⁰ Moving towards the conclusion, the Court also issued certain directions and suggestive guidelines, making the judgment extremely relevant for any discussion on the real estate insolvency framework in India.

- **Overlap with Refund Decree under RERA**

Under RERA, allottees that do not receive timely possession of their units, are entitled to compensation and interest as per **section 18**.²¹ This section allows for two kinds of remedies- *first*, seeking refund with interest if the allottee wishes to withdraw from the project and *second*, seeking monthly interest if the allottee does not so wish to withdraw. The gap that arose was whether an allottee with a RERA refund decree could be treated differently than an allottee without one. A possible reason for this ambiguity is the use of the word “*withdrawal*” in section 18. The word gives the impression that such a decree would amount to a withdrawal from the project, therefore affecting the stakes of such allottee in the insolvency process of the concerned developer.

The Supreme Court had earlier determined the scope of operation of the two legislations i.e., IBC and RERA.²² It held that both the legislations are beneficial in nature, thus must ideally be harmoniously read. However, in case of conflict, IBC would prevail, owing to its overriding nature as evidenced by **section 238**.²³ The specific contention regarding differential treatment was subsequently clarified in *Vishal Chelani v Debashis Nanda*²⁴ where the Supreme Court prohibited such hyper-classification within a single class of creditors, noting that this does not pass the test of **Article 14** of the Constitution of India²⁵ (hereinafter referred to as the “**Constitution**”). It was further observed that RERA cannot be used as a tool to create such extra-statutory classification since IBC cannot be made subordinate. Regardless, a decree or court order directing such repayment of amount and interest is a stronger proof of the debt owed to the creditor. Accordingly, such a decree or court order does not alter the status of a homebuyer.

THE ROLE OF RESIDENT WELFARE ASSOCIATIONS

RWAs are capable of playing an important role in the CIRP process. However, they do not have rights co-extensive with that of homebuyers themselves. While their participation is encouraged, a much needed line has also been drawn with regards to their rights. The proviso to **Regulation 36A(4)** of the CIRP Regulations,²⁶ inserted in February 2025, now allows a group or association of allottees to become prospective resolution applicants. This is further facilitated by entitling the CoC to reduce eligibility criteria set in accordance with **section 25(2)(h)** of the Code²⁷ and to relax the conditions regarding

¹⁷ *Pioneer Urban Land and Infrastructure Ltd. v Union of India*, (2019) 8 SCC 416 [50].

¹⁸ *Mansi Brar Fernandez v Shubha Sharma*, 2025 INSC 1110.

¹⁹ *Id* [20-20.7].

²⁰ *Id* [18.4.6].

²¹ *Supra* note 8, § 18.

²² *Supra* note 17 [50].

²³ *Supra* note 1, § 238 (India).

²⁴ *Vishal Chelani v Debashis Nanda*, (2023) 10 SCC 395 (India).

²⁵ India Const. art. 14.

²⁶ Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, reg. 36A(4).

²⁷ *Supra* note 1, § 25(2)(h) (India).

the refundable deposit.

The Supreme Court has, however, been cautious of not allowing impermissible entry to these associations into the framework of IBC. In *Elegna Co-op Housing and Commercial Society v Edelweiss Asset Reconstruction Company Limited*,²⁸ a judgment pronounced as recently as on 15th January, 2026, it was clarified that the role of these associations only kicks in at post-admission stage and not at the initiation stage. On an RWA's attempt to oppose initiation, the court noted that RWAs have no *locus standi* to intervene in pre-admission stage hearings as they are neither a creditor nor an authorised representative. Interestingly, relying on the *Glas Trust Company* case,²⁹ it was observed that the right to intervene arises once the proceedings become *in rem*, however, pre-admission, the proceedings remain *in personam*, not even allowing other rightful creditors to intervene. Regardless, the right to initiate/intervene at this preliminary stage, arises only in response to a debt owed, and not by fact of representation. Therefore, to impermissibly enlarge the definition of financial creditor under the Code would lead to overstepping and was accordingly disallowed. In this manner, the rights of allottees were safeguarded strictly within the statutory framework, rejecting the attempt at any extension of rights.

PROJECT-WISE INSOLVENCY AND ITS ADVANTAGES FOR HOMEBUYERS

This is yet another emerging model of CIRP in India wherein the insolvency process is limited only to the ailing project, excluding the healthy and viable projects of the developer from being drawn to uncertainty owing to defaults in only one of them. The first instance of the National Company Law Appellate Tribunal (hereinafter referred to as the “NCLAT”) directing such restricted insolvency resolution was seen in *Flat Buyers Association Winter Hills v Umang Realtech Pvt. Ltd.*³⁰ However, no legal standard for allowing such a model was laid. Therefore, these unaddressed gaps were finally clarified by the 2023 judgment of the Supreme Court in *Indiabulls Asset Reconstruction Co. Ltd. v Ram Kishore Arora*³¹ wherein the Court underscored the advantages of a project-wise insolvency. Majorly, it noted that throwing uncountable buyers into uncertainty and possibly dispossessing them from perfectly healthy project simply due to defaults in one project from the same developer would cause grave injustice and inconvenience. Therefore, this model was upheld and NCLAT's direction to constitute CoC only for the failing project was upheld.

While not discussed in the aforementioned ruling, another advantage is that of value of maximisation. This benefits not only the allottees, but also all the creditors. Individually focused resolution plans are likely to bring more profit and viable resolutions than a common plan for numerous projects. This also gives the chance to the CoC to consider multiple applicants and choose the best suited ones for separate projects. Further, the apex court in *Mansi Brar Fernandez* has also noted in **direction 6**³² that now, project-wise insolvency should be applied as a rule and only in specific circumstances can corporate insolvency be undertaken when the corporate debtor is a real estate developer. This has been followed as recently as January 2026 as well.³³ The concept has now also been statutorily incorporated in **regulation 36A** of CIRP Regulations³⁴ (36A(1) clarification and 36A(1A)) wherein the RP may now invite expression of interest for resolution plans either for the corporate debtor as a whole or only one or more assets/projects. However, it is to be noted that while these amendments seem ideal on paper, there are many complications that are bound to arise in the future, especially with regards to deliberate attempts of the debtor to divert funds to its healthy projects. Therefore, the judiciary must exercise strict caution and take into consideration the actions of the promoters of the defaulting project to ensure misuse of the model.

HANDOVER OF POSSESSION: A SECTOR-SPECIFIC REMEDY

Earlier, a clash existed between section 14 of the Code and an allottee's right to possession since any alienation of the corporate debtor's asset would be prohibited from the insolvency commencement date. Therefore, courts had to direct such handover on a case-to-case basis. This right, however, was deemed crucial, leading to the insertion of **regulation 4E**³⁵ that now allows the RP to handover possession with 66% approval from CoC, upon a request by an allottee who has fulfilled his side of the agreement. These conditions ensure that the financial creditors still hold control over such crucial decisions, while also giving a statutory pathway to the allottees to at least invoke the right.

In a recent judgment, *Amit Nehra v Pawan Kumar Garg*,³⁶ the Supreme Court safeguarded this right as against diluted compensation. Even after including the name of the appellants in the final published list of financial creditors, they were differently treated in the resolution plan, entitling them only to 50%

²⁸ *Elegna Coop. Housing & Commercial Society Ltd. v Edelweiss Asset Reconstruction Co. Ltd.*, 2026 SCC OnLine SC 82.

²⁹ *GLAS Trust Co. LLC v BYJU Raveendran*, (2025) 3 SCC 625 (India).

³⁰ *Flat Buyers Assn. v Umang Realtech*, (2020) 12 Comp Cas-OL 174 (India).

³¹ *Indiabulls Asset Reconstruction Co. Ltd. v Ram Kishore Arora*, 2023 SCC OnLine SC 612.

³² *Supra* note 18, [21.2].

³³ *Gagan Tandon v IL & FS Financial Services Ltd.*, 2026 SCC OnLine NCLAT 16.

³⁴ *Supra* note 26, reg. 36A.

³⁵ *Supra* note 26, reg. 4E.

³⁶ *Amit Nehra v Pawan Kumar Garg*, 2025 SCC OnLine SC 1941 (India).

compensation on the alleged ground of the claims being belated. The Court held that relegating bonafide allottees who have paid substantial consideration years in advance to the status of mere refund claimants is contrary to the objective of the legislative framework. It was further noted that the sudatory duty of the RP to publish a list of financial creditors cannot be misused in such a manner and cannot be treated as a formality. Resultantly, the Supreme Court has made it abundantly clear that it seeks to protect the rights of homebuyers, albeit within the bounds of the statute.

OTHER AMENDMENTS

Apart from the amended sections and regulations discussed throughout the paper, some additional noteworthy amendments are as follows:

With regards to ensuring compliance with real estate terms, two amendments were introduced in February 2025. *Firstly*, **regulation 18(4)**³⁷ was inserted, CoC may now direct the RP to invite “*competent authority*”, as defined under **section 2(zk)** of RERA,³⁸ to meetings to provide their inputs concerning the viability and validity of the resolution plan. This amendment is aimed at curbing post-resolution litigation that arises due to challenges regarding relevant compliances that are raised by such authorities. *Secondly*, **regulation 30C**³⁹ was inserted obligating the RP to submit a detailed report on development rights and status of permissions required. This report has to first be submitted to the CoC and with the comments received accordingly, it has to be presented to the NCLT on or before the sixtieth day from the insolvency commencement date.

In addition, adequate representation of the allottees is another point that appears to be at the forefront of the legislative developments. For this, an Authorised Representative must be appointed prior to the first meeting of the CoC (**section 21(6A)(b)**)⁴⁰ where a specified number of creditors from the same class is reached. This person should be an Insolvency Professional, as defined in **section 3(19)**,⁴¹ and is also accorded voting rights as per the manner laid in **section 25A**.⁴² This right is also noted in **regulation 25A**.⁴³ Another layer of representation has been recently added as well under **regulation 16C**⁴⁴ in the form of a Facilitator, who may be appointed by the CoC upon fulfilment of certain conditions. Such an Insolvency Professional can be appointed when out of a class of creditors of at least a thousand creditors, a sub-group of a minimum of hundred creditors requests for such appointment. The roles and duties of such a Facilitator are mentioned in **regulation 16D**⁴⁵ and include ensuring proper communication between the AR and the creditors, providing information and clarifications to creditors about CIRP as per AR’s advice, and attending all CoC meetings as observer.

CONCLUSION AND SUGGESTIONS

According to the Economic Survey of 2023-24, IBC has been the most favoured remedy among the three. While the developments that have taken place are noteworthy and are made in good faith, there are certain concluding suggestions that can still be incorporated. *Firstly*, for the purposes of handover of possession under Regulation 4E, the approval percentage required from the CoC could be reduced to 51% instead (as this is the minimum required percentage under the Code) in order to allow easier facilitation of the remedy. Additionally, often times due to the delays and defaults on the side of the developer, not all obligations of the homebuyers under the agreement are fulfilled. Therefore, this condition also should be subjected to the corporate debtor’s conduct, giving the homebuyers a genuine chance at seeking possession of a unit that they have invested their earnest money in. *Secondly*, as was also noted by the Supreme Court in *Mansi Brar*, an early warning mechanism could be introduced alongside pre-bankruptcy mediation, which would allow a friendly settlement without throwing the project into the complex process of insolvency. To further facilitate this, certain government funds, such as the SWAMIH fund, can also be set up to allow capital assistance to distressed developers in case the project is substantially complete. *And lastly*, while the courts have made consistent effort to prevent liquidation in real estate, as a recourse of last resort, the homebuyers can be given a proportionate mortgage charge over the unit in proportion to the advance paid by them, in order to ensure the position of a secured creditor under the waterfall mechanism under **section 53** of the Code.⁴⁶ With similar positive steps in the future, real estate insolvency in India could prove successful, protecting homebuyers in the longer run. However, the framework needs to be built in a way to adapt to the complexities that this area brings.

³⁷ *Supra* note 26, reg. 18(4).

³⁸ *Supra* note 8, § 2(zk).

³⁹ *Supra* note 26, reg. 30C.

⁴⁰ *Supra* note 1, § 21(6A)(b).

⁴¹ *Supra* note 1, § 3(19).

⁴² *Supra* note 1, § 25A.

⁴³ *Supra* note 26, reg. 25A.

⁴⁴ *Supra* note 26, reg. 16C.

⁴⁵ *Supra* note 26, reg. 16D.

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