

# Evolution of Various Legal Dimensions for Flatbuyers in Bharat

Aditya Goyal<sup>1</sup>, Ekta Gupta<sup>2</sup>

<sup>1</sup>Student, Amity University, NOIDA

<sup>2</sup>Professor, Amity University, NOIDA

## Abstract:

This paper delves into the dynamic landscape of laws regulating the rights and responsibilities of flat buyers in India, tracing the evolution of the legal framework from its inception to the present day. The journey unfolds against the backdrop of India's rapidly growing real estate sector, characterized by its multifaceted challenges and opportunities. The study encompasses an in-depth examination of key legislations, judicial precedents, and policy interventions that have shaped the rights and protections afforded to flat buyers.

Beginning with an exploration of early property laws, the paper elucidates the factors that necessitated specialized regulations governing the purchase of flats and apartments. The advent of cooperative housing societies and the Real Estate (Regulation and Development) Act, 2016, marks significant milestones in this evolution, with an emphasis on consumer protection, transparency, and accountability. The analysis extends to the interplay between statutory provisions and evolving judicial interpretations, highlighting landmark cases that have influenced the legal landscape.

Furthermore, the paper investigates the impact of technological advancements, such as online property transactions and blockchain, on the legal aspects of flat purchases. It scrutinizes the role of digitization in enhancing transparency, reducing fraud, and expediting dispute resolution mechanisms.

The study also considers the challenges and gaps in the existing legal framework, offering insights into potential areas for reform. Issues like delays in project completion, ambiguous contractual terms, and the efficacy of dispute resolution mechanisms are examined through a critical lens. Additionally, the paper sheds light on the role of consumer awareness and education in empowering flat buyers to make informed decisions.

In conclusion, the Evolution of Law for Flat Buyers in India is a comprehensive analysis that not only maps the historical development of legal frameworks but also provides a forward-looking perspective on potential reforms and innovations. This research contributes to a deeper understanding of the legal dynamics surrounding flat purchases, offering valuable insights for policymakers, legal practitioners, and stakeholders in the real estate industry.

## CHAPTER 1: INTRODUCTION TO LAW FOR FLAT BUYERS IN INDIA

In India, both state-specific and federal legislation control real estate. So why is it that the Constitution of India states that property transfers and deeds and papers must be registered in both the State and Concurrent lists? When it comes to registering a property, the procedure becomes more difficult. To begin, let's review the fundamentals of Indian real estate law. In the field of real estate law, the law

controls the purchase, use, and sale of land. It is the legislation that determines how and what individuals may do with their property. Real property law is another name for real estate law.

Because it deals with actual property, the field of law known as real estate is appropriately named. In contrast to personal property, which consists of tangible items, real property consists of land. Real property includes things like buildings and other significant constructions that are permanently affixed to the land. Deeds, titles, finance, zoning, taxes and estate planning are only some of the numerous areas of real estate law.

Real Estate Regulatory Authority (RERA) governs the acquisition of property in India. Real estate developments are governed by the Real Estate (Regulation and Development) Act of 2016 and the agency established under it, the Real Estate Regulatory Authority (RERA). It was created with the express purpose of safeguarding the real estate industry's interests of customers. In order to expedite the resolution of disputes, the Real Estate Regulatory Authority and Appellate Tribunal were formed. As a result, projects and major actors in the real estate industry must be registered.

There is no land registration system under Indian real estate law. Rather, the term "registration" refers to the documentation used to transfer the ownership of a property from the seller to the buyer. The Registration Act, 1908, mandates that all papers and instruments connected to land be registered. In India, there is a well-defined system for document registration, which is supported by a solid government apparatus.

The Indian Stamp Act, 1899, oversees the payment of stamp duty for property transactions in India. Buyers are responsible for paying this fee to the state governments as part of the registration process. Taxes are collected at the state level; hence the rates vary from one state to the next. If you live in a state where stamp duty is calculated as a percentage of the overall transaction, you're in luck.

When it comes to real estate transactions, the Transfer of Property Act, 1882, is another law that has to be considered. This is defined under the Transfer of Property Act, which states that the transfer of ownership in return for an agreed-upon sum is called a sale. As outlined in the Registration Act, 1908, the only way to transfer tangible immovable property is via registered paperwork. For example, if a buyer does not know of an issue that might have been discovered with reasonable care, he or she has a legal need to report it to a prospective buyer under Section 55 of the said Act. If the vendor misrepresents anything, the buyer has a claim against the seller for damages or indemnification.

Despite the fact that the seller makes every detail of the property and his title available to the buyer, it is the buyer's responsibility to carry out a due diligence and verify the seller's ownership and the entire title deed. That was a quick overview of Indian real estate law. Now, let's speak about the paperwork that a prospective buyer should review before making a purchase.

#### ***Documents required to be checked for a flat buyer:***

Buying a home can be a complex procedure particularly when the topic of documentation is involved. A defect in any of the documents, or the absence of a particular document, too, could cause a burden for the homebuyer in future. Thus, it is extremely significant to confirm all the documents are in place before purchasing property in Bangalore. This article will illustrate the documentation required to be checked before purchasing property:

- In certain cases, builders or developers sell properties before they have received a layout permission from the city or county. It is your responsibility as a buyer to be certain that the builder has provided you with layout approval before making an offer on a property. The purchase of a property without this certificate is risky

- You should always look into the city's master plan before buying a home or property there. If a builder or developer's promises don't match up, you'll be able to tell. The property's infrastructure will always be depicted in the master plan.
- Land records - These are the official papers that verify the land's status in terms of outstanding loans, ownership, etc. Land records are among the most important documents to review since they certify the property's validity.
- If you're planning to buy a property, you'll need to review the land-use certificate, or CLU (Change of Land Use). The CLU will offer you with all the information you need to know about building residential homes on commercial, agricultural, or other types of property. To secure a risk-free land acquisition, one must insist that the developer/builder provide this certificate or a copy of the CLU.
- When purchasing land, you need an occupancy certificate (OC) to ensure that all necessary services, such as drainage, power, water, and so on, are in place. To put it another way, this document verifies that the property may be lived in by a prospective buyer.
- You will need to sign an allotment letter from the builder. After the land purchase advance has been made, this will be carried out. This letter will have important details, such as the payment breakdown, in it. Make sure you have this letter from the builder or developer since they might be penalised if they don't deliver the property on schedule.
- NOCs are issued by a variety of organisations, including safety, power, and water. No objection certificates may be issued by any of these organisations. Without a NOC, it is illegal to sell a house/property. Make sure your builder gets the No objection certificate before you pay any money for the home.
- In order to begin any building, a builder must first get a building commencement certificate. Prior to acquiring a property, it is essential to receive this certificate from local planning committees.
- An official document issued by the municipal board after the project has been finished is called a completion certificate (CC).
- The builder will offer you with an agreement that includes both the buyer and the seller, called a buyer-seller agreement, after you make a down payment on the property. Details about the property and its terms and conditions are laid down in this agreement.
- A document that must be acquired when the project has been finished is the registration of the sale deed. Ownership documents may be acquired through the office of the registrar. Prior to acquiring a home, it is critical that you review this paper thoroughly.
- After obtaining the selling deed, you'll get a certificate stating that you now own the property. When a person takes possession of a piece of property, they are given a certificate to prove their ownership.

For the 2014-15 financial year (FY), the Indian economy expanded at a faster pace of 7.3 percent than forecast, and is expected to increase at a rate of 7-7.5 percent in 2015-16, according to JLL India. We should expect a two-digit growth rate in the next years if this acceleration continues, backed by an encouraging business climate and government measures.

India's real estate market boomed from 2006 to 2013 after Foreign Direct Investment (FDI) was made legal in the country in 2004. However, the real estate market has been in decline for the last two years (from 2014 to the present). The following are the primary causes of the real estate boom and bust in India.

### ***The Legal Process of Buying a House in India***

#### **1) Confirmation of the authorship of the work**

Prior to making an offer on a property, a buyer must verify the authenticity of the title to the property. It should not have any outstanding loans or fees or any sort of encumbrances. All records should be examined for at least the preceding 12 years, and any legal inconsistencies should be examined for at least preceding 30 years.

#### **2) Verification of the seller's identity**

Validating the seller's identification is just as vital, if not more, than verifying the flat's title paperwork (s). Don't be afraid to demand proof of identity such as a PAN Card or Aadhar Card when applying for an Indian visa. Legal paperwork pertaining to a company's CIN number, registration, etc. should be inspected if the vendor is a business.

#### **3) Land Use Documentation**

To begin the process of purchasing a property, it is essential to determine the kind of land whether it is for residential, commercial, industrial, agricultural, or non-agricultural use. Laws in many states and countries ban the use of land for uses other than those for which it was originally designated. Look for legal paperwork proving that the land and its useability have been transformed. As a last check, make sure that the land has been built in line with the zoning plan, which may include aspects like commercial, residential, parks and open spaces, or both etc.

#### **4) Approvals for construction.**

Verifying the construction or layout plan is essential when working with an existing structure. For example, it must be approved by municipal, government, statutory, and regulatory agencies, etc., to supply power and water, environmental clearances and fire safety, etc.

#### ***Hypothesis -***

- 1. The law of flat-buyers in India is not very prominent.** However, there are various other laws naturally linked with the same like the Real estate laws. The supreme court has also stepped in and identified the plight of the flat buyers in India and the need for a stronger set of stringent laws to improve the efficacy of the same.
- 2. To understand the pros and cons for buyers to invest in a real estate market.**

#### ***Plausible pros could be:***

- A step towards securing their money, as 70% of sales revenue will now be secure in a locked account, as there will be more competition for timely completion of projects and their delivery to the customer.
- An increase in the prominence of construction as a result of a five-year fault responsibility period.
- More efficient conflict resolution mechanisms, such as mediation and specialist courts.
- Maintaining a strict sales policy on the carpet area would aid in clarity.
- A more coordinated environment for agents.
- A better understanding of the builder's delivery history.

#### ***Plausible cons could be:***

- The totalitarian authorities have not yet specified a timeline for the imposition of penalties. Customers might also be affected by a reversal in the penalties imposed by totalitarian regimes.
- Reduced competition may result in increased asset costs as a result of the legislation. Without authorisation, it might take months or even years for new projects to get off the ground, making them infructuous by efflux of time.

### 3. To understand the legal process for buying a flat in India:

Purchasing a home in India is one of the most time-consuming and expensive endeavours a person can do. Millions of people in India want to possess their own home. Being an once-in-a-lifetime event for majority of the population, purchase of a home has the homebuyer's emotional attachment to the activity from the beginning. When it comes to purchasing a home, the first thing to consider is your budget, location, and personal or family demands. However, when it comes to making a final choice, we enter the realm of the Indian legal procedure of purchasing a property.

#### *Research Objectives*

The primary goal of this study is to identify the most significant determinants of Indian homebuyers' choices. It's no secret that the real estate industry is a major player in the global economy. Real estate sector happens to be the second-largest industry in India, following the agriculture sector, and is expected to grow at a rate of 30% over the next ten years. The purpose of this research is to highlight the most important aspects of the Indian real estate industry. To begin, this article examines India's real estate market's growth patterns. Secondly and more importantly, this article examines the rise and collapse of the Indian real estate market and the factors that fuelled this boom and crisis. There are both good and bad effects of India's most industry. Apartments might be compared to a product that people want to purchase. A consumer's lifetime investment in an apartment, flat, or house is influenced by the product's price. In the real estate market, customers are required to make judgments based on the current market conditions and their own financial circumstances and budgets. In the real estate industry the third P, i.e., location, or the position of the apartment, is the essence. The location has a direct impact on the price. Advertising, public relations, personal selling, and sales promotions all fall under the umbrella term "promotional aspect" (Kotler, 2012). It is possible to use each of the 4Ps to influence customer behaviour (McDonald and Meldrum, 2007).

Consumer behaviour is defined by Schiffman and Kanuk (2010) as the actions that customers do while looking for, acquiring and using goods and services that are intended to meet their requirements, as well as when evaluating and discarding those that do not.

Each and every company area has been influenced by consumer purchasing habits. The study of consumer behaviour and its effect on real estate has become a major focus in the field of real estate. Several consumer behaviour theories have been applied to real estate research (Gibler and Nelson) but there is still more to be discovered. Investors' and purchasers' real estate is the subject of several studies that have been published. There has been some research on the Lithuanian residential real estate market done recently by Lepkova et al (2016a). Economic efficiency, technical excellence, and functional quality were all taken into account while assessing the dwelling quality in new construction. Based on aspects like as commercial prospects, the law-and-order environment, medical/educational facilities, and more, Misra et al. (2013) studied the attitudes of purchasers of residential units in NCR. These factors were not taken into account in the planned project since the National Capital Region (NCR) offers several economic prospects and medical/educational facilities.

There are a plethora of options for real estate investors now that technology has brought them all closer than ever before. Customer service is not a one-size-fits-all proposition, according to Homburg and colleagues (2011). When it comes to creating long-term connections, real estate salespeople understand the importance of prioritising their clients. Agents might benefit from the outcomes of this study by better evaluating and comprehending the aspects that affect the ideal degree of customer service. Fourth-party research looked at how rising prices and urbanization-related issues including land scarcity and

overcrowding have influenced real estate buyers' perspectives. Customer satisfaction in the real estate industry has been studied, with a focus on resale properties.

### ***Methodology***

This work makes use of derived research as a strategy. Data from many sources, including government, corporations, trade unions, media and real estate periodicals have been consulted for secondary data.

### ***Literature Review***

For decades, the study of consumer purchasing behaviour has been a top priority for researchers. There is a direct correlation between consumer behaviour and corporate success in the marketplace (Kotler and Keller, 2012). Many variables influence consumer buying decisions, including demographics (such as age, gender and wealth), psychology (such as internal motivation), and society (such as peer pressure) (Udel.edu, 2016). In addition, Blackwell et al. (2006)'s five-stage model has an impact on how consumers arrive at their final decisions. Search, assessment, purchase and post-buy analysis are all five steps of the process.

Consumers buy to meet their own needs and desires, which have long been recognized as the driving force behind their purchasing habits (Dudovskiy, 2015). Needs and desires are not the same thing. A consumer's desire for any product or service may be represented as a need, whereas a consumer's desire for a specific product can be described as a want.

You may learn more about your consumer's moods and behaviours by analysing their purchasing habits, which isn't an exception in the real estate industry. Consumer loyalty is a result of consumer behaviour. Customer's happiness and retention are critical to long-term company success. In today's market, the focus is on the client. Long-term client retention and loyalty need a strategy focused on the needs of the consumer. Using a web search engine to make predictions about consumer behaviour is also beneficial. (Goel et al., 2010).

4P stands for product, pricing, location and promotion and they all are interrelated to each other. All of these 4P components have a significant role in influencing consumer behaviour in real estate. Real estate buying intention is influenced by factors such as attitude, subjective norm, perceived behavioural control and financial resources.

## **CHAPTER 2: HISTORICAL BACKGROUND OF LAW OF FLAT BUYERS IN INDIA**

Every individual enjoys the experience of purchasing a home, and having a beautiful home may be the greatest desire of their lives. A person spends his or her hard-earned money in order to provide a home for his or her family, yet all of these ambitions might be dashed at any moment. In today's environment, every house buyer is concerned about being taken advantage of by unscrupulous builders, and incidences of deceit, fraud, and other forms of deception are increasing on a daily basis. The low-income house buyer is unsure if he will get the property after paying the builder's fee, and he is also unsure whether the property will be delivered on schedule and in satisfactory condition. Smart buyers should be aware of all of the solutions that are accessible to them in the event of a financial crisis. The government has recognised the challenges that first-time home purchasers are experiencing and has taken appropriate steps to assist them. However, there are situations when a first-time house buyer is not informed of his or her legal rights. Increasingly rigorous legislation is being implemented, and some of the remedies available to buyers under different statutes include the following:

- Consumer Protection Act, 1986 (CPA)
- Real Estate (Regulation & Development) Bill, 2013

- Insolvency and Bankruptcy Code, 2016 (IBC)
- Arbitration & Conciliation Act, 1996
- Competition Commission of India (CCI)
- Civil Remedy
- Criminal Remedy

### ***CONSUMER PROTECTION ACT, 1986***

Consumer Protection Act created numerous dispute resolution forums at various levels, including District Forums, State Commissions, and the National Consumer Dispute Redressal Commission (NCDRC), which was founded in 2009. Such Forums/Commissions have been established, with jurisdictions specified in terms of geographic region and monetary value, respectively. A consumer complaint may be filed by a Home Buyer under the Consumer Protection Act if the builder fails to provide adequate service or if the builder fails to deliver the home in a timely manner. There is no obligation to obtain the services of an Advocate in order to make such a complaint since the processes that must be followed are straightforward. The Applicant must submit a Complaint, as well as any supporting documentation, with the appropriate forum. The Complaint may be filed by any individual consumer or by a group of consumers who have a common cause of action. The relevant Consumer Forum may, as part of the relief granted to aggrieved home buyers, issue an Order directing the builder or developer to refund the money as well as compensation for any loss or damage suffered by the homebuyers as a result of the builder or developer's failure to provide adequate service or any other alter remedy prayed by the complainant or the consumer forum deems fit.

### ***REAL ESTATE (REGULATIONS AND DEVELOPMENT) BILL, 2013***

The Real Estate Bill was a sector-specific regulatory bill meant to control the business of selling and purchasing real estate properties, i.e., the relationship or contractual obligation that exists between the allottee and the promoter of the real estate property. The Real Estate Bill was proposed with the intent to address the concerns of both buyers and sellers in the sector. It was both a preventive and curative legislation, and it had the authority to enforce specific performance based on contractual obligations. It was also an ex-ante law, meaning that it takes effect immediately.

#### ***Contours of Real Estate Bill***

With the Real Estate Bill, a void between the development/municipal legislation and the Apartment Ownership Act was to be filled, and transactions (such as buying and selling) were to be regulated, as well as contract enforcement. Because of the significant shortages, the Indian real estate market operates in a unique way, with a considerable time lag between the first payment and the actual ownership of the property, rather than a ready-made commodity that can be sold outright.

There is a lot of activity going on while the development is taking place and before ownership is handed over, but the concerns of purchasers and promoters are not addressed. It takes effect when the property is put on the market for sale; and its scope expires when the property is handed over to the buyer and the buyers' association. Concerns of purchasers and promoters had to be addressed, as well as clogged courts in the civil and criminal arenas. With the ability to enforce specific performance based on contractual obligations and a fast-track adjudicatory mechanism, this legislation was meant to be both preventative and curative. It included penalties, interest and compensation for violators on all parties involved in the transaction, including the real estate agent (promoter, buyer, and seller).

The Real Estate Bill covered all residential real estate in a planning area, including homes and any other non-residential use. A key point to remember is that the law only aims to regulate transactions, such as home sales, not building, which is the responsibility of the states or metropolitan local governments.

A central bill was proposed under Articles 6, 7 and 46 of the Seventh Schedule of the Constitution, which covers "transfer of property," "registration of deeds and documents," "contracts including partnership, agency, contracts of carriage, and other special forms of contract," and "jurisdiction and powers of all courts, except the Supreme Court." This bill is a central bill. To meet the urgent needs of Indian consumers and to delegate sovereign responsibilities to the public interest, the Real Estate Bill was enacted. Federalism is maintained by enabling the states to establish the regulatory body and the appellate tribunal, and the central government's function is restricted to union territories without legislature. Customers and developers alike will be held accountable for their actions under this framework. For example, it aims to ensure that the promoter and purchaser have equal access to information; those contractual requirements are transparent; and that a fast-track dispute resolution mechanism is in place.

**Important Definitions:** A number of important definitions are included in the bill, including "advertisement" and "allottee" and the "apartment," "carpet area," and "common spaces," as well as the "development works," "planning area," and the "promoter," "prospectus," "real estate agent," and the "real estate project."

**Applicability:** In the event of land with a planned area of more than 1,000 square meters or 12 flats, this regulation applies to all residential real estate, including homes and any other non-residential use. However, the central government might decrease the barrier of 1,000 sqm or 12 flats depending on local circumstances at the request of the state or union territory government.

**Registration of Real Estate Projects:** All residential real estate projects over a certain 1) threshold must be registered with the concerned Real Estate Regulatory Authority after receiving all necessary licenses for development from municipal urban and other competent authorities, but prior to its sale, as mandated by the law. The project must be registered within 15 days of the application being submitted. To avoid adding a layer to the sanctioning process, real-time registration does not allow for any document examination. As required by the law or the rules and regulations adopted thereunder, the authority must give the project a registration number, which includes a login ID and password for filling up the project's data by the promoter. Only if the application does not meet the requirements of this Act or the rules or regulations imposed thereunder may the authority reject it. There are exceptions to this rule, of course, but no application may be refused without a written explanation and an opportunity to be heard. If the regulatory body does not act on the application within 15 days of receiving it, the law calls for "deemed registration."

If a developer wants to sell a real estate project, they must first register it with the appropriate regulatory authorities before attempting to sell it: The ban on the market prohibits the solicitation of customers for the purpose of selling by any medium of advertising. It was deemed necessary to include this clause to prevent homebuyers from being enticed into making acquisitions in the residential real estate industry without first obtaining authorization from the appropriate authorities, SO placing their investment at risk.

**Mandatory Disclosures:** In order to ensure transparency, the bill mandates that all registered projects be made public, requiring the disclosure of all relevant information, including details of the project's promoters and all of its components (such as its layout plan, development plan, and land status), the



number of apartments booked, and the status of statutory approvals and disclosure of proforma agreements. Any inaccurate or misleading information will be held liable by the promoter if this declaration is made at the beginning of the process of registering.

**Promotional Responsibilities:** The bill mandates specific promoter responsibilities and duties, such as disclosing all relevant information about a real estate project, adhering to approved plans and project specifications, assuring the veracity of advertisements and prospectuses, entering into a sale agreement, rectifying structural defects, and carrying out conveyances and other transfer agreements.

**Maintaining a Separate Bank Account for Each Project Was Required:** Diversion of monies received from allottees was a major problem in the real estate industry, resulting in project delays and cost overruns. Earlier versions of the law included provisions for bank guarantees for all projects being built by the promoter to solve this issue. As a result of these discussions, the bank guarantee requirement was dropped from consideration since it was thought that it would raise the project's cost, which would be paid by the home buyers. This led to an amendment to the statute, which mandated the promoter to deposit 70 percent or such smaller percentage as the relevant government informed them of, the money raised from allottees in an escrow account within 15 days of its realization, to pay construction costs. Self-certification by the promoter is in keeping with the spirit of the Real Estate Bill, thus withdrawals from this bank account may only be made on the basis of such certification. A separate bank account was not mandated by the bill because these matters are governed by accounting standards and procedures/guidelines issued in this regard by the competent bodies like the Institute of Chartered Accountants of India, etc., and the bill was designed to allow operational flexibility and avoid regulatory overregulation. However, if any departure is brought to the attention of the authorities, they might investigate and issue necessary directives, including penalties.

**Registration of Real Estate Agents:** It established a mandatory registration requirement for real estate agents who support the sale of any real estate project or a portion of a real estate project that is registered under the law with the real estate regulatory agency. Real estate agents must be supplied with a unique registration number when they first register with the state. This number must be cited by the real estate agent in every transaction he facilitates.

**Functions of real estate agents:** It mandates that the concerned real estate agents shall maintain and preserve books of accounts, records, and documents; that they are not to engage in any unfair/unlawful trade activities through misrepresentation or concealment of important facts; they shall facilitate the possession of documents to the concerned allottees who are entitled at the time of booking; and that they comply with any other functions that may be specified by rules enacted in this regard.

**Allottees have the following rights and responsibilities:** Specifically, the bill granted homebuyers the following rights: the right to obtain information about the property booked; the right to know the stage-wise time schedule of project completion, including the provisions for water, sanitation, and electricity; the right to claim possession of the apartment in accordance with the promoter's declaration; the right to receive necessary documents and plans in connection with possession; and the right to receive necessary documents and plans in connection with possession. In addition, it imposed certain obligations on the homebuyer, including the obligation to make all necessary payments and fulfil all other obligations as stipulated in the agreement; the obligation to pay registration fees, municipal taxes, water and electricity charges, maintenance fees, ground rent, and other charges; and the obligation to contribute to the formation of an association or society or cooperative society of the allottees, or a federation of the same.

**Incorporation of the Real Estate Regulatory Authority (RERA):** According to the bill, it was mandatory for the appropriate government (state or union territory government, as the case may be) within one year of the law's implementation to establish *one* or more regulatory authorities with specifying their functions, powers, and responsibilities to exercise supervision oversight over real estate transactions; to appoint adjudicating officers to resolve disputes between parties, and to assess a penalty in the event of a violation. The bill included sufficient safeguards to ensure the independence of the regulatory authority and to prevent any possibility of regulatory capture. These include the appointment of the chairperson and members by a selection committee; a restriction on the employment of the chairperson and members after they have left office; questions in authority meetings to be decided by a majority of votes, with the chairperson having a casting vote in the event of a tie; and the appointment of the chairperson and members by an appointment committee.

The bill also proposed for the preparation of an annual statement of accounts in the manner prescribed by the appropriate government in consultation with the Comptroller and Auditor General (CAG) of India, which must include a description of all activities carried out during the previous year as well as a schedule of work for the upcoming year's programs of work. It stipulates that a copy of the report created as a result of the consultations be brought before each House of Parliament, state legislature, or union territory legislature, as the case may be, in order to guarantee that accountability is maintained.

**Functions of the Regulatory Authority:** Under the bill, key regulatory authority functions include providing advice on real estate sector development to the appropriate government; maintaining and updating a website of all registered projects; entering the names of promoters as defaulters, including project details, on the website of the regulatory authority; and, to maintain a database, on the website of the regulatory authority, and enter the names of promoters as defaulters. Real estate developers and allottees need to be protected, as well as the developers and allottees themselves. The regulatory agency should make recommendations for government/competent authorities to improve the processes, procedures, and approval processes for clearance, approval, and development of plans, as well as the construction of environmentally sustainable, affordable housing.

**Regulatory Authority's Powers:** There are a number of specific powers granted to the authority, such as the ability to call for information and conduct investigations; the ability to issue instructions to the promoter or allottee or their agents; and the ability to impose penalties or interest on the promoters, allottees, or their agents.

**The mechanism for a Rapid Resolution of Disputes:** It calls for the appointment by the authority of adjudicating officers (an officer not lower than the level of joint secretary to the state government) and the creation of an appeals tribunal to consider appeals from the authority's and the adjudicating officer's orders in the case of disagreements.

For the purpose of determining compensation, an adjudicating officer has been given the authority to rule on issues such as the veracity of the advertisement or prospectus; the promoter's adherence to approved plans and project specifications; and the homebuyer's possession of the apartment as stipulated in the agreement, among other things.

In order to determine the amount of compensation, the adjudicating officer must take into account the following factors: the amount of disproportionate gain or unfair advantage made by the defendant due to the default; the amount of loss caused as a result; and the repeated nature of the defendant's actions.

**Establishment of Real Estate Tribunals:** Under the bill, an appellate tribunal will be established to hear appeals from the authority and the adjudicating officer. With one judicial and one

administrative/technical member to be selected based on recommendations made by the selection committee established by regulations, the appellate tribunal will be presided over by a sitting or retired judge of the high court (HC). The HC may hear appeals from appellate court decisions.

**Punitive Provisions:** For disobedience with the requirements or the rules and regulations imposed and laid down by the bill, it provides numerous consequences, such as deregistration of a project and penalties if the authority or the tribunal finds it against. The bill's core provision is the need that real estate projects be registered with the regulatory authorities before they may be sold, and if they are not, the promoter faces a penalty of up to 10% of the project's anticipated cost. Punishment of 10% of the projected cost of the real estate project may be imposed on a promoter who fails to comply with the instructions or directions of the regulatory body, requiring registration of the project, if he or she fails to do so.

"The Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, the Uttar Pradesh Apartment (Promotion of Construction, Ownership, and Maintenance) Act, 2010, and the Punjab Apartment & Property (Promotion of Construction, Ownership, and Maintenance) Act, 2013 all have minimum and maximum prison terms for default." There are no exceptions to this rule under the Real Estate Bill, which doesn't include the use of jail time as a kind of deterrence. Rather, it has reduced the maximum sentence that may be imposed under state law. Homebuyers and realtors may both be framed if they violate the law or the directives of a government body or appeals tribunal, as well. As a result, it tries to regulate all three parties involved in the real estate transaction the promoter, buyer, and real estate agent.

**Real Estate Fund:** There will be a "Real estate fund" set up under the Consumer Protection Act, 1992, Securities and Exchange Board of India Act, 1997 and the Telecom Regulatory Authority of India Act, 2003, as well as the Electricity Act, 2003, and the Competition Act, 2002, as part of the legislation outlined above. Including interest, all grants and fees received by the regulating body must be credited to the account. However, the Consolidated Fund of India will get all fines collected in the union territories, while the state governments would receive penalties collected in whichever account they choose.

**Establishment of Central Advisory Council:** An advisory council chaired by the head of the housing ministry, with members drawn from other federal departments and state governments, as well as regulatory agencies, is proposed in the bill to provide guidance to the federal government on the implementation of new laws and regulations; make policy recommendations; and ensure consumer rights.

**The roles and responsibilities of the state/union territory government:** For the sake of federalism, the state/union territory government has been given wide powers to implement the provisions of the Act, including the power to establish the regulatory authority, the power to supersede authority if the agency fails in its functions or responsibilities or if circumstances exist in the public interest *io* do so, and the power to issue directions on policy or obtain information from authorities.

**Act having an overriding effect:** The law allows for an overriding clause, but one new provision grants the states precedence. According to this bill, they have the ability to draught their own real estate regulation law if it does not conflict with it, as the ambit of state powers extends to "land and colonization" and "local authority," including those related to Entries 6, 7 and 46 of the Seventh Schedule of the Constitution.

According to the Real Estate Bill 2013, the concept of symmetry of information was to be introduced on an industry-wide basis in order to facilitate the consumer's informed choice and to create consistent

standards across the nation. The absence of a robust enforcement system in the real estate industry contributes to India's poor ranking on the regulatory index. Property sales are subject to certain requirements that are specified in a purchase agreement, and if those terms are not met, the buyer has the option of taking legal action, which may be a costly and time-consuming procedure. In order to address conflicts between the promoter and the buyer or the buyer and the real estate agent, a fast-track adjudicatory process, such as the one provided in the bill, is urgently needed. Nonetheless, any regulation for the real estate industry, like any other regulatory law, would need to adapt in response to changes in the economy on a constant basis, just as any other regulatory law does. It is envisaged that the states would complement the efforts made via the 2013 legislation and that the regulatory framework in the industry will be strengthened as a result. The real estate business in India was in desperate need of comprehensive consumer protection regulations, and the constitutional restrictions within which the Real Estate Bill, 2013 was envisaged provide a suitable starting point for bringing about reform in the industry and eventually the Real Estate (Regulations and Development) Act, 2016 was passed.

### ***INSOLVENCY AND BANKRUPTCY CODE, 2016***

The Insolvency and Bankruptcy Code of 2016 (IBC) is a historic piece of legislation passed by the Government of India in 2016. The National Company Law Tribunal (NCLT) is the adjudicating authority under the me. This rule has turned into a nightmare for unethical builders while being a blessing for home buyers. The amended me recognises homebuyers as financial creditors, which is a significant step forward. Because of this, homebuyers are now authorised to commence the Corporate Insolvency Resolution Process (CIRP) against the building business, as provided for under Section 7 of the Insolvency and Bankruptcy Code, 2016. As Financial Creditors, Home-Buyers are also given the chance to participate in the CIRP by serving on the Committee of Creditors and cast their votes. What distinguishes IBC from other bankruptcy codes is that, once a CIRP process has been initiated by an order of the concerned bench of National Company Law Tribunal, the former directors are stripped of their powers to manage the company and the entire responsibility is transferred to Insolvency Resolution Professionals (IRPs)<sup>8</sup>, who work under the supervision of the Committee of Creditors. The International Business Court is a very time-bound procedure, and the scope of dispute resolution under the me is quite limited.

### ***ARBITRATION & CONCILIATION ACT, 1996***

As long as the Builder-Buyer Agreement or any other agreement between a home buyer and a builder contains a provision for arbitration, the home buyer may bring an arbitration action under the Arbitration and Conciliation Act, 1996, which is governed by the United States Federal Arbitration and Conciliation Act. When compared to a Civil Remedy, it takes less time to get the Award under the technical procedure. It is possible that the Arbitrator will be nominated by the builder, in which case the Arbitral procedures may be handled in a biased way. Alternatively, the home purchasers may file an appeal against the Arbitral Award in such scenario to the appropriate judicial forum.

### ***COMPETITION COMMISSION OF INDIA (CCI)***

Conforming to the Competition and Consumer Protection Act 2002, if the builder is in a dominating position and has abused his dominant position to the detriment of his or her customers, the customers may submit a complaint with CCI against the builder for abuse of dominant position. If, during the

inquiry, it is discovered that the builder was guilty of any anticompetitive behaviour, he would be subjected to severe penalties by the CCI, including imprisonment.

#### ***CIVIL ACTION FOR THE RECOVERY OF FUNDS***

According to the Code of Civil Procedure, 1908, in the event of a breach of the Agreement, i.e., if the builder fails to fulfil his agreed obligations, the buyer may proceed to the Civil Court and file a Civil Suit for the recovery of his money as well as the recovery of the interest accrued thereon. In addition, if the builder fails to fulfil any duty or makes any changes to the terms of the agreement, the buyer may be entitled to a return of the money that has already been paid to the builder by the buyer.

#### ***CIVIL ACTION FOR THE RECOVERY OF FUNDS***

According to the Code of Civil Procedure, 1908, in the event of a breach of the Agreement, i.e., if the builder fails to fulfil his agreed obligations, the buyer may proceed to the Civil Court and file a Civil Suit for the recovery of his money as well as the recovery of the interest accrued thereon. In addition, if the builder fails to fulfil any duty or makes any changes to the terms of the agreement, the buyer may be entitled to a return of the money that has already been paid to the builder by the buyer.

#### ***INITIATION OF CRIMINAL PROCEEDINGS***

According to the Indian Penal Code, 1860, a customer may launch a criminal complaint against a builder for deception, fraud, and other offences under relevant provisions of Indian Penal Code, 1860 or any other statutory legislations existing at that point of time within the territory of India. The buyer has the option of filing a police complaint with the Economic Offences Wing (EOW). The buyer may also file a complaint with the Criminal Court against the builder and its directors, alleging deceit, fraud, money laundering, and other offences. A Non Bailable Warrant (NBW) may also be issued against the builder if they fail to appear in court over the course of the trial.

#### ***POSITION OF HOME-BUYERS AS CREDITORS BEFORE THE ORDINANCE***

Prior to the Ordinance, there was little clarification about home-buyers' rights under the me, whether they were financial or operational creditors under the statute. Because of this, homebuyers were being prevented from enforcing their rights to initiate an insolvency resolution procedure and participate in CoC. Because of this uncertainty, real estate developers were able to push homebuyers' claims to the sidelines. For example, in Chitra Sharma vs. Union of India case now pending before the Supreme Court, home-buyers have sought a return of INR 100 billion (USD 1.5 billion) from Jaypee Infratech Limited ("JIL") owing to the non-allotment of 24,125 flats. In this case, the aggregated claim value of home buyers was almost equal to the aggregated claim value of financial creditors. In spite of this, the Supreme Court was forced to use its inherent powers to issue temporary protective measures against JIL owing to a lack of protections provided by the me. 10 In addition, the Supreme Court ruled that homebuyers be included in the CoC and that JIL provide security of INR 20 billion with the government (USD 295 million).

As a result, it becomes necessary to examine the pre-Ordinance situation of home-buyers in order to develop a realistic and legal interpretation of the Ordinance's revisions in relation to home-buyers' entitlements.

### ***HOME-BUYERS NOT OPERATIONAL CREDITORS***

An operational creditor is a person who is owed money for the performance of a service. In the context of providing products or services, operational debt is a debt incurred. 11 According to the concept of operational debt, it would not be illogical to view Allotment Debt to be a debt emerging from the provision of real estate development services to homebuyers, and to treat home buyers as operational creditors as a result of this consideration. But in a number of cases involving home buyers<sup>12</sup>, the National Company Law Appellate Tribunal ("NCLAT")<sup>13</sup> misinterpreted the definition of "operational debt," concluding that because home buyers themselves do not provide any goods or services to a company, they cannot be considered operational creditors under the law. In order to reach this conclusion, the NCLAT carefully interpreted the examples of operational creditors offered in the committee report that initially recommended the IBC and noted that operational debt may only exist as a result of a supply made to the firm and not the other way around. The NCLAT also rejected to broaden the scope of the concept of operational debt, adding that it would jeopardise the time frames of the me if homebuyers were permitted to file claims against real estate businesses in the role of operational creditors.<sup>15</sup> A mistaken interpretation is inevitable for the following three primary reasons, which are further explained below:

- As a starting point, there is no specification in the concept of operational debt as to who should be the provider of products or services. Aside from that, it only specifies the kind of debt, which must be "in consideration of the supply of commodities or services." The committee report on which the NCLAT relied described operational creditors as "creditors on account of transactions in operations," which is an interesting distinction. 16 In effect, NCLAT imposed a limitation on the extent of operational debt and, as a result, on the class of operational creditors that was not included in the International Business Code of Conduct.
- Second, since operational creditors are not members of the CoC and are thus unable to participate in its decision-making process, the NCLAT's conclusion that including home-buyers as operational creditors would cause the IBC's timetables to be delayed is without legal foundation.
- Thirdly, the definition of operational creditor should have included home-buyers, who are important stakeholders in real estate firms in order to achieve the IBC's goal of achieving a fair balance between the interests of all stakeholders in the bankruptcy resolution process.

### ***INCLUSION OF HOME-BUYERS AS FINANCIAL CREDITORS IN CERTAIN SITUATIONS***

In the context of financial debt, money borrowed against the payment of interest, monies raised under a credit facility, and any other transaction with the commercial impact of a loan are included. For a debt to qualify as a financial debt, it must meet the following criteria:

- There must be a liability or an obligation in respect of a claim that is due from any person;
- The debt must be disbursed against the consideration for the time value of money; and
- It must be included in the illustrative list of financial debts, or it must arise from a transaction that has the commercial effect of borrowing in some way

As a general rule, the NCLAT has concluded that transactions in which funds are released in anticipation of the sale of real estate in the future do not have the commercial impact of a loan and, as a result, do not constitute financial obligations.<sup>18</sup> Nevertheless, in specific cases, the NCLAT has listed home-buyers as financial creditors in the case of foreclosure.

In the case of *Anil Mahindroo and Ors. vs. Earth Iconic Infrastructure (P) Ltd.* 19, the petitioner had contributed practically the whole payment for an apartment to the respondent according to a "commitment plan," which had been agreed upon by both parties. According to the commitment plan, which was similar to a collective investment scheme, the respondent was committed to give guaranteed monthly returns until the flat was handed over to the respondent. Taking advantage of this monthly payback provided an incentive for the respondent to make an upfront payment of total unit consideration, which was then utilised to collect funds for the respondent's real estate development efforts. In spite of this, the respondent failed to make the required monthly payments and failed to deliver the unit on time. The NCLAT was asked to determine whether the upfront sum paid under the commitment plan comprised all of the components of a "financial debt," such that the petitioner should be classified as a financial creditor.

As the NCLAT pointed out, the respondent had borrowed the money for the business purpose of supporting its real estate development operations, and so the Allotment Debt was equivalent with a loan that resulted from a transaction that had the commercial consequence of borrowing. In addition, the NCLAT examined whether the Allotment Debt had been "disbursed against the consideration for time worth of money" as required by law. As noted by the forum, the aforementioned requirement is met when there is (i) a time lapse between the input and outflow of money, and (ii) compensation is provided for the period of time that elapses between the deposit of consideration and realisation of the investment. The NCLAT found that the Allotment Debt met the criteria for time value of money since there was a period of time between the inflow of Allotment Debt and the handing over of the flat, which was paired with compensation in the form of guaranteed monthly repayments, established by the court. Because the NCLAT determined that the Allotment Debt constituted a financial debt and that the petitioner qualified as a financial creditor, the NCLAT determined that the petitioner qualified as a financial creditor. Additionally, the NCLAT ruled that forward sale real estate transactions, in which money is paid by homebuyers in exchange for the transfer of property in the future, are not deemed financial obligations. As previously stated, Allotment Debt can qualify as financial debt in certain circumstances, and homebuyers can qualify as financial creditors in those circumstances. Simple real estate purchase-and-hold arrangements, in which there is no repayment or consideration for the time worth of money, do not fall into this category, and so cannot be considered. As a result, the Nikhil Mehta decision cannot be applied to all types of home-buyer claims against real estate corporations because the facts in each case are different.

### ***POSITION OF HOME-BUYERS AS CREDITORS AFTER THE ORDINANCE***

Allotment Debts are defined as debts emerging from transactions that have the commercial impact of borrowing under the terms of the Ordinance. Although the amendment makes wide generalisations about all types of Allotment Debt, it may fall short of determining the position of home-buyers as financial or operational creditors, as a result of the broad generalisations. However, in order to be classified as financial obligations, claimants must still demonstrate that their Allotment Debt was "disbursed against the expectation of a future return on the principal amount borrowed." In the case of allocation debts, which do not give any compensation in consideration for the time value of money and in which there is no time lapse between the time of deposit and when the investment is finally realised, these debts are not included in the category of financial debts. As a result, such homebuyers may or may not qualify as financial creditors in certain situations.

It is also disputed whether or not it is appropriate to include all Allotment Debts as deriving from transactions "having the commercial impact of borrowing" in the calculation of the Allotment Debts. Allotment Debts should be treated as commercial borrowing, according to the Insolvency Law Committee, which proposed the Ordinance. The committee noted that common contractual terms between real estate developers and home-buyers suggest that most Allotment Debts are sought to finance the development of real estate projects, and that all Allotment Debts should be treated as commercial borrowing. 20 Such an observation is contrary to the NCLAT's position in the Nikhil Mehta case, which held that ordinary forward sale contracts of real estate do not have the commercial impact of a loan in the first instance. The uncertainty around how home-buyer claims will be handled throughout the bankruptcy resolution process persists as a result of this. It is conceivable that the Ordinance missed a chance to clarify the legal position of home buyers, and in future conflicts, opponents may be tempted to raise the pre-Ordinance misunderstanding all over again, as was the case in the previous case.

### ***HOME BUYERS ARE FINANCIAL CREDITORS-RAISON D'ETRE***

To be considered a "financial creditor" under the IBC, one must be owed a "financial debt" as well as be the person to whom the obligation has been lawfully assigned or transferred. Concerning house purchasers, the Supreme Court relied on the suggestions made by the Insolvency Law Committee Report<sup>22</sup> and emphasised the fact that money obtained from home buyers helps greatly to the financing of new flats/apartments being built in the country's cities.

In light of the foregoing, the legislature determined that it was necessary to include an explanation in Section 5(8)(f) of the me, which was accomplished through the Amendment Act, trying to clarify that home buyers are to be treated as financial creditors in order for them to be able to initiate the insolvency process under Section 7 of the IBC.

In addition, since they are financial creditors, the house purchasers have the right to be represented in the Committee of Creditors (CoC) by an authorised representative. In the Pioneer Judgment, the Supreme Court said that there is no compelling reason to prohibit house purchasers from representation in the CoC and that, as a result, they cannot be excluded from the definition of a "financial creditor."

After conducting a thorough examination of the relevant definitions, the Supreme Court determined that the sale agreement between the developer and the home buyer had the 'commercial effect' of a borrowing, which indicates that money is paid upfront for temporary use in order to return a flat or apartment to the home buyer. The Supreme Court further highlighted that both the real estate developer and the flat/apartment purchaser had 'commercial' interests in the matter - the real estate developer desiring to profit from the sale of the unit, and the flat/apartment purchaser benefiting from the sale of the property. Accordingly, the Supreme Court reached the conclusion that the sums collected from home buyers under real estate agreements with the primary goal of profiting from the transaction are, in fact, subsumed within the definition of "financial debt" under Section 5(8)(f) of the me, even without taking into consideration the explanation provided by the Amendment Act.

As a result of this decision, the Supreme Court has taken away any doubts about the retroactive application of the Amendment Act by ruling that house purchasers were covered by the major provision of the IBC, namely Section 5(8)(f), with effect from the beginning of the me. It has also emphasised that the explanation was provided later in the year 2018 simply to clear up any questions that had developed throughout the process of putting the plan into effect.



### ***HOME BUYERS AND OPERATIONAL CREDITORS- UNIQUELY DIFFERENT!***

To be considered a "financial creditor" under the me, one must be owed a "financial debt" as well as be the person to whom the obligation has been lawfully assigned or transferred. Concerning house purchasers, the Supreme Court relied on the suggestions made by the Insolvency Law Committee Report and emphasised the fact that money obtained from home buyers helps greatly to the financing of new flats/apartments being built in the country's cities.

In light of the foregoing, the legislature determined that it was necessary to include an explanation in Section 5(8)(f) of the IBC, which was accomplished through the Amendment Act, trying to clarify that home buyers are to be treated as financial creditors in order for them to be able to initiate the insolvency process under Section 7 of the IBC.

In addition, since they are financial creditors, the house purchasers have the right to be represented in the Committee of Creditors (CoC) by an authorised representative. In the Pioneer Judgment, the Supreme Court said that there is no compelling reason to prohibit house purchasers from representation in the CoC and that, as a result, they cannot be excluded from the definition of a "financial creditor."

After conducting a thorough examination of the relevant definitions, the Supreme Court determined that the sale agreement between the developer and the home buyer had the 'commercial effect' of a borrowing, which indicates that money is paid upfront for temporary use in order to return a flat or apartment to the home buyer. The Supreme Court further highlighted that both the real estate developer and the flat/apartment purchaser had 'commercial' interests in the matter - the real estate developer desiring to profit from the sale of the unit, and the flat/apartment purchaser benefiting from the sale of the property. Accordingly, the Supreme Court reached the conclusion that the sums collected from home buyers under real estate agreements with the primary goal of profiting from the transaction are, in fact, subsumed within the definition of "financial debt" under Section 5(8)(f) of the IBC, even without taking into consideration the explanation provided by the Amendment Act.

As a result of this decision, the Supreme Court has taken away any doubts about the retroactive application of the Amendment Act by ruling that house purchasers were covered by the major provision of the IBC, namely Section 5(8)(f), with effect from the beginning of the IBC. It has also emphasised that the explanation was provided later in the year 2018 simply to clear up any questions that had developed throughout the process of putting the plan into effect.

### ***TWO-STEP SCRUTINY***

The Court has made it plain that adjudication of the Section 7 application under the Insolvency and Bankruptcy Code (IBC) is not a pointless activity, and that the National Company Law Tribunal (NCLT) must satisfy itself while keeping both eyes open. It has made the following observations in this regard:

Creation of a prima facie case under Section 7 of the IBC - In accordance with Section 4 of the RERA, every developer/promoter is expected to provide all relevant information pertaining to the real-estate project to the relevant body established under the RERA. Using this information (which is provided by the promoter or property developer itself), the home buyer can reach the NCL T under Section 7 of the IBC to initiate the corporate insolvency resolution process (CIRP). To do so, the home buyer must first establish that there is a 'default' in relation to any amount due and payable to the home buyer.

After the home buyer has established a prima facie case, the onus shifts to the promoter/real estate developer to demonstrate, on the basis of the agreement and applicable RERA Rules and Regulations, that the home buyer is himself a defaulter and would, therefore, not be entitled to any relief, including

payment of compensation and/or refund. Failure to do so will result in dismissal of the application filed under Section 7 of the Insolvency & Bankruptcy Code (ICA).

A pertinent observation made by the Supreme Court is that, in addition to the aforesaid release from the burden of proof, a real estate developer can notify the National Commercial Litigation Tribunal (NCLT) if the CIRP has been invoked fraudulently, with malevolent purposes, or for any reason other than the resolution of insolvency by a home buyer. Speculative investors (buyers who are not genuinely interested in purchasing a flat/apartment), as well as home buyers who resort to coercive measures to recover their money, are just a few examples provided by the Supreme Court of India that will fall under the purview of Section 65 of the Indian Building Code.

### ***2018 IBC AMENDMENT***

Recent changes to the status of the home buyer, also known as a "allottee" as defined in the Real Estate (Regulation and Development) Act, 2016 ("RERA"), have resulted from the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 (the "2018 Amendment Act") and the Insolvency and Bankruptcy Code (Amendment) Act, 2020 (which takes effect on December 28, 20 19) (the "2020 Amendment Act"). To the extent that an allottee seeks to recover any sum from a developer in connection with an ongoing real estate project, such amount will be regarded to have an effect equivalent to the commercial impact of a loan, according to the 2018 Amendment Act. Consequently, the monies paid by house purchasers to a builder were to be treated as financial debts, and the home buyers were to be classified as financial creditors. This has allowed the house buyer to file an insolvency petition against a defaulting building business under the Insolvency and Bankruptcy Code (IBC) and to be granted representation on the committee of creditors in the process.

Pioneer Urban Land and Infrastructure Limited v. Union of India<sup>24</sup> ("Pioneer Urban Case") on the grounds that it was in violation of Article 14, 19(1)(g) or Section 300-A of the Indian Constitution (the "Pioneer Urb Case"). Moreover, because home buyers have remedies under a variety of other statutes, sue as the Consumer Protection Act of 1986 and the Real Estate Regulation Act of 2000, permitting them to initiate corporate insolvency proceedings under the me would merely result in duplication of remedies, according to the argument. When the Supreme Court heard the Pioneer Urban case in 2013, it determined that money raised by developers from homebuyers is done with a profit-making motive; therefore, the money raised has the commercial effect of a borrowing and is therefore included within the definition of "financial debt" under Section 5(8)(t) of the Indian Contract Act, 1872.

### ***2019 IBC ORDINANCE***

The Insolvency and Bankruptcy (Amendment) Ordinance, 2019 ("2019 IBC Ordinance") (which has now been replaced by the 2020 Amendment Act) sought to impose a minimum threshold on the number of home buyers who could initiate the insolvency process against a defaulting builder, whereas the 2018 Amendment Act read with the Supreme Court's decision in the Pioneer Urban case entitles even a single homebuyer or allottee to initiate the corporate insolvency process against a default Applicants for the resolution procedure were required to make a joint application with at least 100 other allottees or with 10 percent of the total number of allottees under the project in question, whichever was lower. The 2019 IBC Ordinance has been challenged by property purchasers in a number of petitions, claiming that it is in violation of Article 14 and Article 21 of the Constitution, as well as the Supreme Court's decision in the Pioneer Urban case, among other things.

The Supreme Court had passed an order in the case of Manish Kumar vs. Union of India<sup>26</sup> ordering status quo to be maintained with respect to the applications already filed by allottees against defaulting real estate developers and had also stayed the provision under the 2019 me Ordinance which dismissed applications of home buyers if they do not fulfil the minimum threshold requirement as prescribed under the ordinance.

### ***2020 AMENDMENT ACT***

However, Section 7 of the me was amended, among other things, by the 2020 Amendment Act (which replaced the 2019 me Ordinance), to the effect that the application for initiating the resolution process must be filed jointly by at least 100 allottees or 10 percent of the total number of allottees under the said project, whichever is less. Within 30 days of the beginning of the 2020 Amendment Act, issues previously submitted by individual house purchasers but not yet acknowledged by the adjudicating body will be rejected unless they are changed to meet the minimum threshold criterion as indicated above.

After coming into effect, the Supreme Court's decision in Manish Kumar v. Union of India would have only a limited impact, since the Court has given a stay of execution on the petitions on which a stay of execution has been granted by the Supreme Court. The Supreme Court of India, in the matter of Association of Karvy Investors v. Union of India, had once again questioned the constitutional validity of the 2020 Amendment Act, and by its order dated June 16, 2020, has ordered that the status quo be maintained with respect to pending applications filed under Section 7 of the me (as amended by the 2020 Amendment Act) that do not meet the minimum threshold required a registration under the me.

The National Company Law Appellate Tribunal ("NCLAT") recently ruled in a case involving an order of admission of an application under Section 7 of the Indian Business Code ("IBC") filed by Ashok Tripathi and Saurabh Tripathi ("Allottees") that a decree issued by the real estate regulator in favour of a homebuyer cannot be used as the basis for filing an application under Section 7 of the IBC. As previously stated, the Allottees had filed a complaint with UPRERA after an unnamed developer, identified as Ansa! Properties, failed to complete the project within the timeframes stipulated in their agreement with UPRERA. Following that, the UPRERA issued a ruling in favour of the Allottees, acknowledging the developer's inability to fulfil his contractual obligations. Following that, rather than implementing the decision under civil law, the Allottees filed an insolvency action against the developer. When deciding on the legitimacy of the insolvency application submitted by the allottees, the NCLAT determined that a decree holder could not be categorised as a financial creditor under the IBC's definition of the term. For the purposes of initiating an insolvency proceeding under the me, the court determined that a decree is an adjudicated sum that does not have the commercial impact of a loan.

It also made a reference to the challenge against the legality of the 2020 Amendment Act brought by Manish Kumar and other connected topics; however, it did not offer any comment on the subject since it is now under consideration by the Supreme Court.

### **CHAPTER 3: LEGAL FRAMEWORK FOR FLAT BUYERS IN INDIA**

With the help of the real estate industry, demand for housing and infrastructure may be met throughout the nation. Even though this industry has developed dramatically in recent years, it has remained uncontrolled, lacking expertise and standards as well as a lack of consumer protection. Consumers can't get accurate information about the housing market or hold developers and builders accountable since there isn't any effective regulation in place. Due to delays in project completion, money collected from

buyers is being diverted; contracts are one-sided because there is not enough supply; buyers and developers are renegeing on their contractual commitments; the sector's long-term growth is being hindered by a lack of financing and investment options. This has been exacerbated even more by the lack of national regulation.

To some extent, real estate development and home building were mostly the responsibility of state organizations until the 1980s, with just a few private promoters and an emerging sector. With liberalization, deliberate support was given to the expansion of the private sector in building, which has been very successful and now accounts for around 11 percent of the country's gross domestic product (GDP). However, India's ranking on the Regulatory Index<sup>29</sup> is rather low, which is discouraging local and international investment in the sector, which might have resulted in increased activity and GDP development while also contributing to the solution of the country's severe housing scarcity issue. As a result, the need of regulating the industry has been emphasized on a variety of platforms, forums, and news stories. In recent months, the Ministry of Consumer Affairs, the Competition Commission, and the Tariff Commission have all reaffirmed their support for this position.

The Competition Commission of India stated categorically in the case of *Belaire Owner's Association vs. DLF Ltd.* <sup>30</sup> that "the absence of any single sectoral regulator to regulate the real estate sector in its entirety, in order to ensure adoption of transparent and ethical business practices and protect consumers, has only made the situation in the real estate sector worse." <sup>31</sup> Various sector-specific studies have also shown that the mere formation of a regulatory system is likely to attract greater investment into the industry since the lack of such a mechanism has deterred potential investors from entering the market. This suggests that a real estate regulator along the lines of those in the telecommunications, securities, insurance, pensions, energy, airports, and food safety industries is urgently required in order to guarantee openness and accountability in the real estate sector.

### ***Existing Regulatory Architecture in States***

Despite the fact that "land and colonization" is listed as a state subject in the Constitution's Seventh Schedule, most states in the country have made no serious attempt to establish a monitoring mechanism to ensure the timely completion of development works of real estate projects, particularly housing projects developed by projects in metropolitan cities. In the past few years, a handful of states including Maharashtra, Punjab, Uttar Pradesh, West Bengal, Karnataka, and Andhra Pradesh have enacted legislation to establish accountability, mechanisms for developers and buyers, as well as provisions to ensure the timely completion of real estate projects. However, the requirements are incomplete and fall short of comprehensive regulation, resulting in little or no relief for homebuyers in these states. These state statutes<sup>32</sup> outline a slew of requirements that the promoter is required to meet in order to be successful. Before receiving any advance payment or deposit, the promoter is obliged to enter into a legally binding agreement with the purchasers, which must be registered with the appropriate government agency. They impose an obligation on the promoter to keep a separate account of any money received as an advance or deposit and to serve as a trustee by disbursing the funds for the reasons for which they were received. In accordance with the legislation, the builder is accountable for all outgoings until the property is transferred, and he is prohibited from modifying the construction once plans and specifications have been provided to the purchasers without their prior approval unless the homebuyers consent in writing. Additionally, the promoter is required to correct faults within a set amount of time (which may range from a minimum of one year to a maximum of five years, depending on the state), without charging the homebuyer any additional fees.

For failure to provide possession of the apartment/flat within the given time frame (or within the additional time permitted), the promoter is responsible for refunding the money paid, including with interest.

In particular, promoters' responsibilities to take steps for the formation of a cooperative society or company, to convey title, etc., and to execute documents in accordance with the agreement, and promoters' responsibilities not to cut off, withhold, curtail, or reduce essential supplies or services are outlined in these state laws and reinforced in the central bill. These state regulations, like other regulatory laws, allow for the penalty in the form of imprisonment if the promoter violates the law, as well as for general obligations on the part of the purchaser of a condominium unit. However, neither the formation of a full-time regulatory body to implement its rules nor the establishment of an appeal tribunal to expedite the settlement of disputes is provided for by these state laws. As a matter of fact, any conflicts are to be addressed to a court for settlement or to an official appointed by the state government to handle them. Furthermore, these rules distinguish between projects built by a private developer and those developed by a government agency, resulting in the legislation being inapplicable to the state government, the housing board, and the development authority, among other entities. In that regard, the present regulatory architecture, as it is now practiced in these states, is insufficient and falls short of the regulatory framework that is necessary to effectively regulate. As a result, it is imperative that existing laws be strengthened and that a standard law governing the real estate industry be enacted across the nation.

### ***Need for a Sector Regulator***

Any new regulatory rule must satisfy the necessity test in order to guarantee that the proposed law will not result in overregulation or the creation of entry barriers to the market. At the same time, it is essential that the proposed legislation be scrutinized through the lens of public welfare. The regulatory balance is thus quite important, especially given the severe scarcity of housing in the nation at this time. In this sense, it is vital to be convinced that the current legal redress accessible to a homebuyer is inadequate and that the new legislation would contribute to filling the existing hole, before moving further. An overview of current laws, the legal remedies available under them, and their inherent flaws would aid in determining the necessity for sector-specific legislation, specifically designed to protect homebuyers, in the real estate industry.

### ***CONSUMER PROTECTION ACT, 1986***

The Consumer Protection Act of 1986 is a federal law that protects consumers. The term "service" is defined under the Consumer Protection Act, which covers, among other things, "home development." However, the option accessible to an aggrieved homebuyer under the consumer protection legislation is solely curative in nature, rather than preventative, since the adjudication mechanism does not allow for a particular performance, but only for monetary damages.

### ***INDIAN CONTRACT ACT, 1872***

Under the Indian Contract Act, 1872, a homebuyer who has been wronged has only curative, not preventative, remedies open to him or her. The Act does not allow for particular performance in the event of a violation of contractual commitments, but rather only for monetary compensation for the loss or harm that has been suffered. Despite the fact that the Specific Relief Act, 1963 specifies "specific performance" as a remedy available to an aggrieved party, it is only applicable in situations where "there

is no standard for determining actual damage caused by the non-performance of the act agreed to be done" or "when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief." However, since compensation for violation of contract provisions in a contract for the sale of a dwelling unit is not ascertainable. 33

### ***INDIAN PENAL CODE, 1860***

Under criminal law, namely the Indian Penal Code, the only option accessible to an aggrieved homebuyer is to submit a criminal complaint about a criminal violation, which, if proven, results in punishment but does not include any preventative measures. As a result, the rule of law does not require the precise fulfilment of contractual commitments in criminal cases.

### ***THE COMPETITION ACT OF 2002***

While the Competition Commission has recently been a more active venue for those who have been wronged in the residential real estate industry, the Commission's authority is restricted by competition law. A number of provisions in the Competition Act are designed to prevent acts that have an unfavourable impact on competition as well as to encourage and maintain competition in markets. However, it does not provide for the compensation of individual homebuyers for any losses suffered as a result of abuse of dominant position, monopoly, or power, nor does it provide for preventative provisions or specific performance by promoters in the residential real estate sector, among other things.

### ***MUNICIPAL LAWS***

Cities and towns have municipal or town planning or urban development laws, which govern the tangible features of real estate, namely the development and construction of buildings and land. The federal government has no such laws. These rules regulate the interaction between the responsible authority and the developer/promoter, but they do not address consumer protection as a matter of principle. These regulations govern the development of projects rather than the contract entered into between the promoter and the customer, resulting in a void in the legal framework.

### ***APARTMENT OWNERSHIP ACT***

The Apartment Ownership Act establishes ownership of individual apartments inside a building, as well as the ability to heritably and transfer ownership of such apartments. It governs the connection between allottees/apartment owners, including the use of common spaces and facilities, adherence to by-laws and covenants, distribution of common earnings and costs, and administration of the society/association of allottees, amongst other things. As a result, the scope of the Apartment Ownership Act is limited to regulating the relationship between the allottees themselves. 34 Some of the apartment ownership acts prevailing in different states within the territory of India are:

#### **Maharashtra Apartment Ownership Act, 1970**

In the year 1971, the Maharashtra Apartment Ownership Act, 1970 came into force with the purpose of providing ownership to people of an individual apartment in a multi storied apartment building and also to make such ownership of apartment heritable and transferable along with all the incidental rights. However, it is mandatory under this act to provide for a declaration by the sole owner or owners of the apartment for the application of the provisions of this act. It is pertinent to mention that the abovementioned act is different from the Maharashtra Apartment Flat Ownership Act, 1963. In the

Maharashtra Apartment Flat Ownership Act, 1963, a minimum of ten members shall form a co-operative society whereas on the other hand the Maharashtra Apartment Ownership Act, 1970, requires five apartments in one or more building.

### **Karnataka Apartment Ownership Act, 1972**

In the year 1973, the Karnataka Apartment Ownership Act, 1972 came into force with the purpose of providing ownership to people of an individual apartment in a multi storied apartment building and also to make such ownership of apartment heritable and transferable along with all the incidental rights. However, it is mandatory under this act to provide for a declaration by the sole owner or owners of the apartment for the application of the provisions of this act and the property is mainly used for residential purposes. Eventually, in exercise of power conferred under Section 25(1) r/w Section 13 (3) and (4) of Karnataka Apartment Ownership Act, 1972, in the year 1975, the Karnataka Apartment Ownership Rules, 1975 came into force to facilitate the operation of the aforementioned act.

### **Haryana Apartment Ownership Act, 1983**

It was in the year 1983 when the Haryana Apartment Ownership Act, 1983 came into force with the purpose of providing ownership to people of an individual apartment in a multi storied apartment building and also to make such ownership of apartment heritable and transferable along with all the incidental rights. Eventually, in exercise of power conferred under Section 25(1) of Haryana Apartment Ownership Act, 1983, in the year 1987, the Haryana Apartment Ownership Rules, 1987 came into force to facilitate the operation of the aforementioned act.

### **Delhi Apartment Ownership Act, 1986**

Before the year 1986, the construction of multi storied apartment buildings used to result in unavoidable litigation and harassment to home buyers as both the builders and home buyers were not aware about their rights and obligations as these were not set in stone. As a result of which in 1986, the Delhi Apartment Ownership Act, 1986 came into force. Eventually, in exercise of power conferred under Section 27(1) of Delhi Apartment Ownership Act, 1986, in the year 1987, the Delhi Apartment Ownership Rules, 1987 came into force to facilitate the operation of the aforementioned act. It is submitted that there are various other apartment ownership acts prevailing in different states governing the apartment ownership in different states.

### ***REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016***

The Real Estate (Regulation and Development) Act, 2016 is regarded to be one of the specialised pieces of legislation enacted by the Indian Parliament for the real estate sector. Its goal is to solve the problems of consumers while also increasing transparency and responsibility among developers. As the real estate industry continues to increase in size and complexity, it is becoming more important to simplify operations and balance the interests of home buyers and builders. RERA envisions the establishment of Real Estate Regulatory Authorities in each state, which would be responsible for not only advancing the interests of all stakeholders covered by RERA, but also for resolving any concerns that may arise. Significantly, under the RERA, aggrieved home buyers are entitled to claim a refund of the amount paid for the purchase of a property, as well as interest at the rate prescribed by the states or union territories, in the event that builders or developers fail to deliver possession of the property in accordance with the terms of the builder buyer agreement, as agreed. A penalty clause in RERA stipulates that he/she shall be responsible for a penalty that may amount to up to 5 percent of the projected cost of the real estate project as assessed by the relevant Real Estate Regulation Authority if he/she violates the law.<sup>35</sup> For

those who violate the orders or directions of the Real Estate Appellate Tribunal, the punishment may now be as much as 10 percent of the estimated worth of the property or three years in jail, or both, if they do not comply with the court's orders or instructions. The legislation makes certain that real estate projects are finished as per the stipulated time schedule. If the developer fails to complete the project on time, the property buyer will be entitled to interest on the amount paid. Buyers of real estate have the option of filing a complaint with the relevant Real Estate Regulation Authority in the event that the developer(s) fails to deliver possession on time, or otherwise violates any provisions of the Real Estate Regulation Act (RERA) or the Rules and Regulations promulgated thereunder. An Association of Home Buyers may submit a complaint against a real estate agent. A person may file an appeal against a decision of a Real Estate Regulation Authority to the Appellate Authority, and then to the High Court, and finally to the Supreme Court, all within a certain time period stipulated under the Real Estate Regulation Act. Due to the fact that the processes must be completed within a certain time limit, the adjudication mechanism may be considered to be speedier when compared to the adjudication method offered in the previous grievance redressal systems. According to the RERA, the developer will be required to hold onto 70% of the money received from the purchasers in a separate Escrow Account in order to cover the costs of the project's construction and development. This will maintain control over developers who have a tendency to redirect buyer's funds away from the completion of the project for which the money was gathered, as well as ensuring that the particular project is finished on time and within budget.

#### **CHAPTER 4: THE RIGHTS AND LEGAL FRAMEWORKS OF FLAT BUYERS IN THE UK AND THE US IN COMPARISON WITH THOSE IN INDIA.**

Flat buying broadly is covered under the property law (and real estate laws with whatever name they go) under different countries. This essay would make comparisons between the legal systems of UK, US (specifically California chosen as a representative example), and India, and how a flat buyer's experience would differ across the jurisdictions. For the same, this essay would first delve into the respective country's legal system, discussing the major laws, regulations, and their justifications and would then move to analyse them together at the latter half of the dissertation which would also serve as the conclusion.

##### ***Legal framework in the UK***

Two factors underpin the English and Welsh property markets-A 1925 statute and a 1937law. The 1925 Act drastically changed current real estate regulations, making inheritance law more efficient and modern. Real estate ownership includes many obligations and rewards. It must be registered with the Land Registry, a government agency, to be lawful. agency. The Land Registry Act governs land registration. Registration Act of 2002 These two pieces of legislation may not be sufficient. This law controls all areas of real estate law. contract and deed execution procedures England and Wales have a legislative and common law system. The body of legislation that has resulted from legislative action. As a consequence, precedent - the judicial example - is vital. present real estate legislation situation Adapts to our changing demands. A vital factor in interpreting and applying the law All real estate transactions are controlled by the local legislation. a person It has less formality and legal procedures.

Current treaties and accords do not address this. Indeed, a legislative power boost Some UK people are more impacted than others UK by devolution. The most serious is international law. However, real estate transactions are not ring-fenced and hence do not come within federal authority. Aside from these, the



following legal aspects affect real estate: element. Some environmental standards and principles are: The influence of EU laws and British case law is considerable on British policy. The global impact of diplomacy Passing regulations in these critical areas will have a long-term effect. estate sales and purchases anybody over 18 regardless of race, gender, or ethnicity Anyone may buy or sell freehold property, regardless of nationality. Any corporate entity, regardless of location, may hold shares. a corporation's entitlement to freehold property ability to do this job No exceptions exist to any UK, EU, or UN regulations. Anyone may be penalised. The administration released a draught law. This law will oblige every foreign corporation that has or intends to own UK assets to do so. A new landowner registration is required. If you've ever travelled, The company cannot register if it does not meet the requirements. The Registrar of Deeds records ownership of land. The land cannot be sold, taxed, or leased for now. a period of seven years. A draught of the law was made public in 2018. Meanwhile, we eagerly await any further developments. Non-British nationals may also apply. The new rules apply to trusts that buy land in the UK after October 6, 2020. need a Trust Registration Service Account There are several land ownership rights in England & UK. 36 First, the right to own property. Ownership may be classified into three types: The most prevalent types of interest are leasehold, commonhold, and freehold. Among them are: Commonhold has lost appeal. derived rights, such as land ownership. court proceedings c) The right to be treated equally. An example of this kind of contract is in question.

Also included are leases and options. Some rights, like anonymity, may exist without a record. Prescriptive rights exist for a long time. Unreserved use. Property leased from a landowner differs from property held by a landowner. a building on the ground ownership of both Lessors and lessees would cohabit during the lease duration. In England and Wales, all land, regardless of ownership, must be registered. Triggers, like an event, may happen at any moment. A property for more than seven years. a loan is made By then, the Land Registry hopes to have all properties registered (in the year 2030). The state currently owns about one-fifth of the country's territory. Generally, yes. To protect everyone, the Land Registry must offer insurance. register clerical errors (or in the results of an online search) even if the problem was created by misinformation. Legally, the Land Registry may return any money made to them. or indirectly from those who made the error. Land buying and selling are two of the most prevalent real estate operations. The first step ends with a land sale contract. It A future commitment rather than an immediate ownership transfer. a mutually beneficial connection. As result, the buyer is more unsure. The second project stage includes the purchase money is delivered and paid if the registration procedure is finished. The two phases don't usually conclude together simultaneously.<sup>37</sup> The order of right assertion is controlled by the creation date but there are precise criteria to register a product. land deals that have been formally recorded Is this possible? If registered, only "overriding" interests get precedence also those bound by a law or regulation If you acquire a chargeable interest in property, you must pay the SDLT notice. "Acquisition" and "chargeable interest" a term that covers everything from property sales to lease surrenders. any re-granted real estate, interests, or privileges Unless specific limits apply. SDLT is an English and Welsh property acquisition tax. a European state Land and construction transactions are taxed. Buying a house in Scotland and avoiding Land Transaction Tax Wales property. Despite their similarities, the two regimes are not identical. Use this SDLT. The SDLT rate will be changed based on the topic. Non-residential or a mix. However, residential property is a different story. The price will be affected as well as the buyer's personality. Is it possible for them to stay permanently? Taxes are due and payable by the customer. Rate The landlord's authority to terminate long-term contracts is broad. limited. While forfeiture clauses are common in

leases, they are not always included. The tenant is violating the norms and restrictions set down for him or her. to exploit such power. In certain cases, the landlord may evict the renter. To collect rent, you must know when the lease was issued and this is the protection regime.

The Rent-controlled leases are expected after 1997. "guaranteed short-term" (ASTs). Usually, recovering an AST from its landlord requires legal action. in exchange for a two-month lease extension notice. If a renter refuses to leave, the lease is terminated. With a lease that ends, the landlord may have easy possession. No-fault approach if specific criteria are satisfied. met. Also, there are restrictions to how quickly you may recover. Who owns what, according to 14.1. The government may abolish ASTs. Several prerequisites must be met before regaining control. A lengthy legal process procedure. 1990's urban and rural development regulations In 2008, a planning framework was created, providing managers some power. Britain's construction utilising vital national infrastructures projects). Listed structures and conservation zones have certain requirements. Built-in 1990 standards for structures and sites It will fascinate architectural and history buffs. demolish or modify)). The 2016 Housing and Planning Act included new planning rules. Making it easier for residents to remain regional or local It is required under the 1990 Environmental Protection Act. Maintaining waste and the legal duties that come with it polluted groundwater EPA Permitting Program (England and Wales) Certain activities now need approval. permit. Each property must have an EPC (residential or commercial) Property leasing or sales They are in use and issued. commercial energy assessment experts describing the building's energy-saving capabilities Raising the score and quality are both possible. energy-saving ability of a structure The EPC has a ten-year grace period. Non-adjustment may take years.

### ***Legal framework in US***

Many immigrants to the United States have long wished to buy "real estate." Buying a house is frequently the greatest purchase made by the average individual and may be an excellent way to develop wealth.<sup>39</sup> The present tax code permits homeowners to deduct full mortgage payments and defer or eliminate capital gains when selling their property, making home ownership even more lucrative. In the last five years, buying real estate in California has been one of the finest big investments for the typical American. There are no limits on legal entities owning real estate in the US, whether or not the owner is a US citizen (whether a person, partnership, company, or limited liability organisation). Because most real estate transactions must be in writing to be enforceable, written property papers are vital. Building codes, zoning limitations, penalties for code violations, and complex procedures for exchanging property information have all evolved significantly in the last century. Those who overlook the government's quiet participation in every real estate transaction do so at their peril. A million-dollar asset with a 30-year duty requires a lawyer to draught a simple will or sue for car bumper damage. Contrarily, most do not seek legal guidance while purchasing a long-term possession. Everyone signs contracts without reading the hundreds of pages of legalese, and they only seek legal advice when something goes wrong ... and by then, it's typically too late.

### ***Legal framework in India***

Many factors affect the Indian real estate market mainly federal and state laws. Article 246 of India's Constitution defines land in list-II of the eighth Schedule The Indian Constitution's Schedule, which provides only states may control non-will property transfers. Besides registering property titles and other legal papers, It says "Contracts other than agricultural lands. "<sup>43</sup> Both the federal and state governments may make laws. Additionally, India's laws are complicated, reflecting its many religious traditions. These include devolution, inheritance, events, practises, and cultures. Besides the established

conventions, there are other religious groups. The impact becomes stronger with time. The Indian judiciary has also made judicial observations, precedents in real estate law and the application of laws. Some of the prominent property laws in India are:

**The Transfer of Property Act, 1882:** It governs and provides principles for sale, exchange, mortgage, gift and lease of moveable and immovable property including property liens, and part performance.

**The Indian Easement Act of 1882** provides for the legal foundation of easementary rights to immovable property.

**The Indian Stamp Act, 1899 and The Registration Act, 1908:** It provides for Stamp duty legislation and included the criteria for recording certain documents interest-transfer paperwork and tools in both moveable and immovable property.

**The Indian Contract Act 1872:** It provides for ability to contract in India, finalised and implemented in accordance with the contract. In the case of a contract violation, the parties' remedies Landowners have a right to compensation and openness.

**Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013:** This act provides for acquisition of privately owned lands by the government for specified public purposes and the eventual compensatory and rehabilitative measures undertaken by the government of India.

**Land Revenue Codes:** Several States have codified their own land revenue codes, which govern laws relating to agricultural land-holding, land revenue, types of tenancy and matters connected thereto. The said codes provides for classification and division of immovable property in the particular state, restrictions on transfer thereto, powers and duties of revenue officers, rules, regulations and penalties for acting in contravention of these codes.

**Real Estate (Regulation and Development Act), 2016:** This Act was enacted to provide for development, marketing and sale of real estate projects to protect the interests of consumers in the real estate sector. The Act was established with the purpose for creating a mechanism for speedy redressal through the establishment of the Real Estate Regulatory Authority and the Appellate Tribunal and also made compulsory registration of projects and other players in the real estate sector. Correlating RERA Rules and regulations have also been adopted to ensure effective implementation at the local level as well. Historically, the Constitution guaranteed everyone the freedom to own property. However, the Situation now has changed as the right to property is a constitutional right, not a fundamental right. Article 300-A of the Indian Constitution says: Taking someone's property without permission is illegal. "Eminent domain" is a legal term that allows the federal government to buy privately held property when it benefits everyone States also establish and enforce laws. limits on property ownership by individuals or groups personal rights that can't be transferred (landowners) Mortgagees, lessees, and proprietors have distinct rights. Scheduled Tribe/Scheduled Caste ownership of land above the land ceiling So, most states currently have laws limiting real estate ownership. Non-farmers cannot buy agricultural commodities. They have land. Also, current states laws allow for: Non-Indians are not permitted to buy real estate. Owning property in India is unlawful unless specifically approved. Non-residents are classified as follows to see whether they qualify to buy property. Buying a property in India by Indians living abroad; Indians outside India neither an Indian nor of Indian ethnicity the original development location (such as foreign nationals and foreign entities). An Indian citizen living outside of India. an Indian citizen living abroad Everyone can buy a property in India. Plantations and farms are not agricultural land. if there is a purchase price ad hoc Traditional banking procedures are used in India

as money transfers from outside India; a bank's non-resident account Indian rupees are exchanged according to FX market regulations. Non-Indian citizens those of Indian descent are barred from entering. to buy property in India. Nevertheless, a foreigner who lives or works in India Those who start companies or professions in India and migrate permanently may buy personal real estate. take advantage of without permission. Being a human is the first step. Indians deserve the same treatment as everyone else. For non-Indians. Assuming this, Non-Indians cannot be termed Indian residents. Afghanistan, China, Iran, Nepal, Bhutan He requires authorization from Pakistan and Sri Lanka to visit. real estate buy or sale a region of India As a consequence, a forfeiture setting up a corporation in India The exchange rate determines Indian currencies. a company's satellite offices or other places Businesses by non-Indian companies are prohibited. Except for liaison offices, any activity may acquire moveable property. It is either important or auxiliary to the company's Indian operations. Continued engagement in such activities. Non-US residents and foreign companies possible cooperation with an Indian firm. various sorts of real estate (or a subsidiary) Projects include housing, infrastructure, and building. the SEZs and development projects. Yes, in part. constructing new structures and investing in real estate.

### ***Analysis***

Real estate and property law focuses on the many types of real estate and property. Owners of their own houses. Intellectual property is protected by law. property, which comprises both real estate and personal property. If property rights are breached, they may be protected through contract or tort law. Several state and federal laws govern property in India. Why? Land is one of the few constitutional problems that the federal government may address under Article 246's State List II. Concurrent or list III of India's 7th Schedule covers non-agricultural transfers. List III comprises non-agricultural papers and contracts. The country's different legislation on devolution, inheritance, and other things impact a wide range of traditions and behaviours. Depending on the forum/court, judicial precedents have defined different facets of real estate law. In every case, precedents may impact the result of a lawsuit. Every state in the USA has a symbiotic connection between legislation and common law. In America, it's like this: Federal State Local the Common Law system accords equal weight to legal developments. new judicial and legislative precedents Unless the parties' purpose is uncertain, courts rely on the document's specific words. If the agreement is vague, the parties' actions may be investigated by US courts. Use written agreements to sell or transfer property. England and Wales' property laws are separated into t.vo categories: 1925 Property Laws Act revision 2002 Land Registration Act The 1925 Act changed several aspects of English and Welsh property law. The existing real estate laws have been extensively revised.<sup>45</sup> This essay lays forth the basics. A government's land register must record land ownership, rights, and duties, such as property and land interests. These two acts address different aspects of real estate law and differ from one another. Other laws govern contract and deed execution procedures. Certain rules prevent foreigners from buying property in the US. investment. The only unresolved issue is the US agricultural and natural resource development. Before a foreign national can invest in real estate, they must follow the procedures given in the law.

Any direct US real estate investment worth \$50,000 or more in the previous calendar year must be reported. Whether headquartered in the US or not, a corporation must file an annual information return with the IRS. It may be necessary to provide additional information in accordance with HSR Act of 1976 and FIRA Modernization Act of 2018. India the right to own property was not previously recognised as a fundamental right in India's constitution.

Article 300A of the Indian Constitution allows the government to take private property for public benefit. Most states have enacted and implemented legislation restricting the ownership of property by certain groups or ownership over land ceilings. Foreigners who wish to buy property in India must follow the same procedures as Indians. You fall into one of three categories if you can't buy property in India: a dual national living in India A non-Indian descendant of an Indian family. a non-Indian or non-Indian UK Anyone over the age of 18 can participate in the real estate market. A company that buys land can do whatever it wants with it if it has the legal authority. The UK, EU, or UN may impose sanctions. Any foreign entity that owns or wishes to own property in the UK must identify its beneficial owners on a new register. Any foreign corporation that does not follow this rule for seven years or more will be barred from selling or leasing property. That changes in 2021. The state does not guarantee ownership. What are the benefits of doing this? USA The US does not guarantee ownership. Basically customers who buy title insurance from a company ensure a clear title. Firms that investigate a property's legal status India, a state may not issue a title certificate. The title is protected by priority law. Due to the inherent issues associated with Indian land title, no state has yet devised a method for selling Indian property. In certain circumstances, the state has used it to purchase property, giving the buyer contractual rights. UK, A registered title is guaranteed in the UK. Recognized as liable for paying victims of register mistakes, even if such errors were caused by forgeries. Third parties that contributed to or caused the inaccuracy must compensate the land registry. When does the buyer become the legal owner? USA Many nations transfer ownership when a deed is given. The transportation instrument is documented to safeguard everyone's interests. Many countries employ insurance to protect against "loophole" interests or claims that may arise between the signing and registration of the deed. India A price paid or promised, or a price half paid and partially promised, must be exchanged when a transaction is made. Except for transfers of tangible immovable property valued at less than Rs. 100, which must be executed via a registered document, or transfers of ownership. Any property worth more than Rs 100 must be registered, even intangibles like reversal. However, property valued under Rs 100 may be transferred either by recorded instrument or by physical transfer. When the new owner takes possession, the transfer is complete.

For example, to register the transfer must first be registered with Transfer. UK, Land buying and selling are two of the most prevalent real estate operations. In the first step, a real estate contract is signed. Even if ownership does not shift immediately, an obligation will be developed between all parties. The second phase concludes when the purchase price is paid and legal ownership is transferred. It is feasible if both procedures are performed at the same time, although this is rare. Buying and selling real estate requires following the regulations. USA In most circumstances, a sales contract specifies the requirements that must be satisfied between signing and closing. When we say anything like this, we mean sales agreements. This level of protection for both parties is only possible without a contract. To transfer ownership, the deed must be prepared according to the state's laws. Customers must be able to understand insurance policies before they may be issued. The information you offer a family buyer on water quality, occupancy certificates, and other items is important. Examining leases is a basic duty of care for business assets like office buildings. If you want a loan to purchase anything, you must meet the lender's criteria. India The Transfer Act of 1882 states in Section 54: A transfer of tangible immovable property valued at Rs. 100 or more may be documented. A registered document or physical delivery of tangible immovable property valued less than Rs 100 may be used. The seller delivers the tangible immovable property to the buyer or another person designated by the seller. Each party should be able to

advertise their own items. The Indian contract law requirements for a valid contract will also be considered. before everything else. The Indian Stamp Act of 1899 and other state laws impose different stamp duty consequences based on property location. Stamp duty is based on a property's current contractual value or market value. UK English law requires that any agreement to sell real estate be in writing and include all relevant provisions. Each party must sign a formal agreement. An agreement between the buyer and seller that defines the form and is documented in the land registry is required. As it would be clear, the Indian system, despite similar to the English system has made many divergences as and when the local contexts required. Whereas, when compared with the US standards, they look like aspirational standards that we seem to heading towards with a larger market economy at play.

## CASE LAWS

### 1. **Aftab Singh v. Emaar MGF Land Limited & Anr** (Consumer Case No. 701 of 2015)

In this particular instance, there arose a disagreement about whether or not a consumer complaint against the builder could be filed whether. the lawsuit fell within the RERA. The circumstances of the case are as follows: in this instance, the builder made a commitment to construct villas and have them ready for delivery within a certain time frame, but he did not follow through on this promise.

Following that, the complainant filed an appropriate application under the Arbitration and Conciliation Act, 1996, requesting to refer the parties to arbitration because the agreement between the buyers and the builders contained an arbitration clause in the main agreement, which was later dismissed.

Following that, a consumer complaint was filed in the concerned forum against the builder, who claimed that the particular forum had jurisdiction to hear the case since the subject was already ongoing under a different statute and under a separate authority.

The Supreme Court of India concluded that the Consumer Protection Act serves as a complement to another legislation rather than as a means of suppressing a privilege conferred by a different statute.

The forum established by the statute is not to be regarded as a civil court of law. The fact that a consumer has an alternative remedy available to him under a legislation does not preclude him from bringing his case to the forum. Although there are provisions in RERA that are specifically designed to safeguard developers and builders, as well as to protect the rights of purchasers in terms of considerable compensation, none of this curtails or limits the ability to, for example, construct a house on a plot of land.

The fact that Section 71 of RERA provides for adjudicatory powers does not preclude a person from exercising their rights under the CPA in any manner. In the same matter before the NCDRC, it was determined that the agreement did not preclude the parties from seeking remedy in a forum of their choosing.

Because of this, it has become a well-established principle that customers may seek resolution for their grievances by approaching the RERA forum as well as the Consumer Protection forum.

### 2. **Geetanjali Aman Construction Vs Hrishikesh Ramesh Paranjpe** (Complaint Number 0000691) [Maha RERA]

In this particular instance, the issue at hand was the registration of a project, and the subject matter of the disagreement was Section 3 of the RERA. Importantly, Section 3(2) made it clear that projects did not need to be registered if they did not exceed 500 sq. mtr in size or did not have more than 8 stories, which was the case in this case. The defendant was fined Rs. 30 lakh, which was the maximum amount that could be levied. Even after settling on the fact that it is a "or" condition rather than a "and"

condition, the defendant was unable to get the intended outcome. The argument put up said that the first criteria, which states that it must be within 500 sq mtr., is met, however the allottees have claimed that the presence of about 22 apartments and 9 stores breaches the second condition, which states that it must be within 500 sq. mtr. The matter before the court was how to interpret 3(2), and the court determined that 3(2) would be construed in its most literal meaning going forward, and that the developer must meet both of the standards in order to get permission. A decision has been reached that the developer must pay 30 lakhs and register the project within one month of being awarded the contract.

### **3. Mr. Jatin Mavani vs. M/s. Rare Township Pvt. Ltd [Maha RERA]( LQ/RERA/2018/78)**

The problem in this case is the filing of several RERA proceedings on the same subject matter, which is a common occurrence. According to the complainant, after booking of a flat and paying the required consideration as demanded, the apartment was not delivered as per the time schedule given. In addition, the other flat buyers seek relief from the Maha RERA, which was to issue a directive for non-payment of the cancellation fee and refund of any money already paid to the seller.

The builder's claim was that the first complaint failed to get the agreement registered, and as a result, it was never able to proceed with its implementation. However, even after that, the respondent continued to press him to sign into another agreement, which he refused to do. Now, with his plea, he is bringing in more purchasers, which should not be allowed since it would amount to numerous proceedings under the same authority.

A further contested fact was that was also a member of the growing association and was therefore a party to an earlier process, and as a result, he is not eligible to be included as a party to this lawsuit.

Following this observation and coming to the conclusion that the complainant had exhausted his remedies and that he had no locus standi to approach the court, because if he is considered as an allottee, it will result in multiple proceedings before the same court, which cannot be allowed under Maha RERA rules.

### **4. Sanjeev Dhakar vs. M/s. Arkanade Realty [MahaRERA Mumbai] (Complaint No: CC00600000001135)**

In this case the complainant purchased a flat in the respondent's building for a reasonable sum of money, an important question arose following the delivery of the house regarding the parking space that has to be provided to any person purchasing a specific area.

According to the RERA, the owner or developer is obligated to offer parking space for all of the tenants of the area in which he or she owns or develops a property. Another point of dispute was the fact that the respondent was attempting to show the parking place to other individuals, which was argued to be a violation of the principle in and of itself.

A decision was reached by the court after hearing arguments from both parties, which concluded that the developer, who is the respondent, is responsible to provide the requisite parking space for all of the residents who have purchased apartments in the project. He is not allowed to sell the property to anybody else under any circumstances.

### **5. Avinash Saraf, Neha Saraf vs. Runwal Homes Pvt. Ltd. (2017 SCC OnLine RERA (Mah) 5)**

When it comes to failing to deliver on the promised space, the issue is how much compensation should be paid out as a result of the failure to do so. The respondent Runwal Homes pledged that the apartments would be delivered by August 2016, and agreements were made and due consideration was paid in relation to the same, with the agreement being signed in November 2014 and the required consideration being paid in December 2014.

The complainant in this case asserted that they had paid nearly 97 percent of the consideration but had not yet received their apartment, prompting them to file a complaint with the tribunal in order to determine whether the respondent company should be held liable and required to pay the amount of the consideration plus interest for the period during which they had failed to provide possession. The respondent corporation argued that the RERA body had jurisdiction in this case since the agreement was signed long before the RERA was established, and as a result, they could not be held accountable under the terms of the Act.

The judgement stated since the cause of action pertains to the failure to make delivery of apartments, it entails the retroactive application of the law, and as a result, the court has jurisdiction under Section 79 of the Real Estate Regulation Act (RERA). As the issue of jurisdiction has been resolved, the court came to the finding that the respondent developer is obligated to pay compensation along with interest for the costs of registering the property and subsequent stamp duty.

#### **6. Suresh V. Swamy Vs. L&T Limited (2018(4) ADJ 406)**

The facts of the case were that the complainant had paid entire consideration of the flat and after the failure on the part of the promoter, the promoter has the liability to pay interest on the payment. An agreement of sale was signed between the parties and the delivery was made in September, 2017.

Subsequently the project acquired its occupancy certificate and 31st December, 2018 was verified as the new deadline for completion of the project. This case addressed some extremely critical concerns with relation to the Act.

- **Is it possible to understand that the Act's authority is co-extensive with the registration of a project under its provisions?**

According to the court's interpretation of Section 5(3), it conclude that the requirements of the act are applicable even after the issuance of an occupancy certificate is obtained. It might be interpreted as meaning that the licence given is subject to the time period specified in Section 4(2)(1). (c).

- **In the case of an occupancy certificate, for example, is it recognised that after a certain period of time the registration expires? Does this indicate that authority has no jurisdiction until the project is completed?**

In this case, the court considered a number of the Act's most essential clauses. In the first place, it is the responsibility of the responsible authority to ensure that they have the necessary resources to supervise the remaining work until it is finished, as specified in Section 8. Second, it is the promoter's responsibility to correct any structural abnormality that may arise within 5 years after the event, and this must be done within a 30-day time frame. If the promoter fails to fulfil this obligation, he will be required to compensate the victims of the failure. Third, specific papers, such as a registered transfer deed and blueprints, are needed to be provided by the promoter within a 30-day period, and these documents include: If this is not completed within a certain time period, he will be held accountable. Fourth, Section 33 imposes a responsibility on the Authority to ensure that the promoter fulfils his obligations, as well as a jurisdictional requirement on the Authority in the event that an obligation is not met by the promoter. Fifth, any complainant who feels they have been wronged by the promoter's actions may make a complaint under Section 31 of the Act, and if a legitimate cause of action develops, the authority maintains its right of jurisdiction under Section 79 of the Act. That brings us to the end of the question and it has been clarified that the jurisdiction continues even after receiving an occupancy certificate or even after possession has been offered and accepted. It is not clear whether or not the provisions of this Act may be applied to agreements that were executed previous to its adoption. - In



response to this question, the court referred to the case of Neelkamal Realtors Suburban Pvt. Ltd v/s Union of India, in which they said that the applicability of Section 18 would be applicable even in circumstances where the agreements were executed before to the passage of this Act. The Supreme Court of India has recommended that the application of sections 3, 6, 8, and 18 has retroactive powers and that they may be used. Suppose that an arbitration clause in the agreement contains a provision prohibiting the authority from exercising its jurisdiction, can such an arbitration clause be enforced? It was decided in HDFC Bank Ltd versus Satpal Singh Baxi that special enactments cannot be overridden and that arbitral processes cannot be used to overturn such special enactments. This was the case that was used to resolve this issue. Due to a disagreement arising out of Section 18, which allows for specific powers to the RERA forum to decide on the matter, and since such a dispute cannot be transferred to an Arbitral tribunal, we are using the same principles in this instance as well. Is it necessary to comply with Section 18 of the RERA or is it optional? So, once the subject is brought before the committee, the allottee has two options: either he may remain until the project is completed and get interest on the amount of consideration he paid for the space, or he can request a refund of his money. Section 18 contains the word 'shall,' which designates it as an obligatory condition, and it imposes a duty to pay on the promoter in the event of a breach of his contractual obligations. If, for example, the promoter decides to postpone the project's completion date, would he still be required to make interest payments? Although the promoter has the power to adjust the completion date, the court found that this does not imply a rewriting of the contract in any manner. Once a delivery date has been set, it cannot be modified, and if the promoter fails to meet his or her end of the bargain, he or she will be liable for payment.

#### **7. Vishal Arya vs. Unitech Limited (2017 SCC OnLine NCDRC 619)**

The idea of 'force majeure' is used in this instance to explain the situation. Force Majeure refers to the occurrence of an unforeseeable event that makes it difficult or impossible for the parties to fulfil their contractual obligations in their normal course of business. This case included the fact that the complainant had previously paid the whole amount of consideration required for possession of the apartment and had been assigned a certain delivery date; nevertheless, the promoter had failed to deliver the apartment on time as a result of this failure.

However, the building work has not yet begun, and as a result, the complaint has addressed the forum, requesting that either delivery be made to him or that the sum he has paid, plus interest, be reimbursed to him for all of the months that have passed. In their defence, Unitech said that the delay was caused by unanticipated circumstances and that it was ascribed to force majeure, which means that it was beyond his control, and hence the issue of compensation was not raised.

The forum held that Unitech is not entitled to the benefits of the clause because there are certain requirements that must be met before the force majeure clause can be invoked, and the present case does not meet those requirements, and as a result, they must refund the entire amount, plus interest, as well as an amount to compensate for the mental distress that they caused.

#### **8. Sushil Ansal vs. Ashok Tripathi, Suarabh Tripathi ((2020) 43 NCLAT)**

The Respondents booked a unit, and entered into a "Builder Buyer Agreement" with the Corporate Debtor (hereinafter referred to as "CD"). The Respondent No. 2 also booked a separate unit and entered into a similar agreement with the CD. The respondents paid the amount as per the payment schedule and the CD ensured that the possession would be given within 2 years of the date of allotment. The CD neither completed the construction nor refunded the monies paid by the respondents. Eventually they approached the Uttar Pradesh RERA. The RERA granted a Recovery Certificate to the Respondents,

however, despite the issuance of Recovery Certificate, CD committed default and failed to repay the due amounts to the Respondents. As a result of this, the Respondents approached NCL T and filed a Corporate Insolvency application against the Corporate Debtor, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) and prayed for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

The NCLT was pleased to pass an order for admission of the application in favour of Respondents and declared a moratorium and appointed Respondent No. 3 as an Interim Resolution Professional (IRP) for the CD.

The Ld. Tribunal while rejecting the prayer held that the allowing prayer for withdrawal CIRP application pursuant to the settlement between the parties would cause injustice to the interest of other stakeholders.

### **9. Vinod Kumar Agarwal vs. Jaipur Development Authority [Rajasthan RERA) (RAJRERA- C-2020-3622)**

The point that was raised here was whether the requirements of RERA would take precedence over the provisions of municipal legislation in certain circumstances. It was also a legal concern whether Section 13 of the Real Estate Regulation Act should be used in this case. The provision stipulates that the promoter of the project will not take any sum that is more than 10% of the total amount unless and until the agreement for sale and other requirements have been satisfied.

On the circumstances of the case, it was determined that the authority desired greater consideration than the ten percent norm, and it claimed that the rationale for this was provided by a local legislation of the state known as the Rajasthan Improvement Trust Rules, 1974, which provided for additional consideration.

Furthermore, they argued that the respondent was not compelled to carry out specified development in the surrounding area of the property. When it comes to the RERA, the petitioner claims that the contents of the Act indicate that it was enacted by the Central Legislature and that it thus has precedence over any provisions of state statutes. Following Section 13 of the RERA, the authority shall be directed to finalise and finish the sale deed and agreement before requesting any more funds from the buyer. The tribunal in this case recognised the reasons and said that it is correct that Central Law would apply in this case, as well as the fact that the above-mentioned provision is necessary in nature, and as a result, the authority is compelled to sign the aforementioned purchase and sale agreement.

### **10. Pioneer Urban Land and Infrastructure Limited vs. Union of India ( (2019) 8 SCC 416)**

Background: The explanation was added to section 5(8)(f) of the Insolvency and Bankruptcy Code 2016 ("IBC") as a result of the Insolvency Amendment 2018, which clarified that real estate allottees ("home buyers") as defined under section 2(d) of RERA were to be included as financial creditors under the me. This modification provided the house buyer with the ability to file insolvency proceedings against defaulting Promoters under Section 7 of the me, if the Promoters were in default. The Insolvency Amendment 2018 was, on the other hand, contested in the Supreme Court of India by around 200 realtors.

Observation by the Supreme Court: With respect to the house buyer, the Supreme Court relied on the suggestion provided by the Insolvency Law Committee Report that the sum paid by the home buyer is a way of obtaining money for the Project, which was upheld by the Court. It was recognised by the Supreme Court that the sum raised via a selling agreement between a house buyer and a developer has

the commercial effect of borrowing since the money paid in advance for temporary usage so that the apartment is returned to the lender has the commercial effect of borrowing.

Decision of the Supreme Court: The Supreme Court held that the Insolvency Amendment 2018 does not violate Article 14, Section 19, paragraph 1 (g), read along with Section 300A of the Indian Constitution. The remedies available to a house buyer under several statutes, such as the RERA, the Consumer Protection Act of 1986, and the me are concurrent. The RERA is to be read in conjunction with the me, and in the event of a disagreement, the me will take precedence over the RERA and the Consumer Protection Act of 1986. Home buyers are always included in the meaning of section 5(8)(f), and the explanation and deeming fiction inserted by the Amendment Act were simply for the purpose of clarification. This decision given by the Apex Court had a huge impact as a large number of bankruptcy actions against real estate businesses have been started as a result of the decision. However, in a number of these instances, projects that were on the verge of completion have been pulled into bankruptcy by the financial crisis. In order to address these issues, the Insolvency and Bankruptcy (Second Amendment) Bill 2019 is currently being considered by the Insolvency Law Committee.

#### **11. Keystone Realtors Pvt. Ltd. vs. Anil V. Tharthare & Ors. ((2020) 2 SCC 66)**

Background: Although the construction area of the Project was increased from 32,395.17 square metres to 40,480.88y quare metres, the Developer did not comply with the procedure set forth in paragraph 7(ii) of the Environmental Impact Assessment ("EIA") Notification, instead requesting an amendment to the earlier environmental clearance that was granted.

Observation by the Supreme Court: The Amendment made no mention of the possible environmental consequences of the increase in construction area, and instead simply recorded the rise in construction area. The Environmental Impact Assessment (EIA) Notification contains a procedure to ensure that when a project's size is increased, the environmental impact on the surrounding area is evaluated holistically, taking into account all relevant factors such as air and water availability and pollution, waste management (both solid and wet waste), as well as the urban carrying capacity of the area. Because the building had already been finished, the Supreme Court confirmed the directives of the National Green Buildings Tribunal, and asked the committee to continue its review of such remedial measures. The court also indicated that the developer be subjected to a compensating exaction.

Impact: This judgement requires all currently active projects to submit a new application for environmental clearance if the project has grown beyond the scope of the previous EC, even if the increase is within the higher limit specified in the EIA Notification.

#### **12. Mumbai Grahak Panchayat, Magicbricks, 99acres.com, Makkan.com, Housing .com and others (MahaRera Order dated October 3, 2019, in the Suo Moto Enquiry No.17 /20 18)**

Background: According to the application filed with the Maha RERA by the Mumbai Grahak Panchayat, websites that deal with real estate projects and facilitate the sale or purchase of real estate plots or apartments are considered 'real estate agents' under the RERA and, in order to hold them accountable, they must be RERA registered. Maha RERA Findings on the below issues:

**Issue 1:** Whether digital portals "introduce" seller with buyer in sale of real estate?

When portals gather the personal information of viewers and share it with advertisers/sellers, as well as when they expose the information of promoters to purchasers, they are introducing the parties involved in the sale transaction.

**Issue 2:** Whether digital portals "negotiate" in sale of real estate?

The tribunal held that providing information about a real estate project and its availability for sale to the general public falls under the general definition of advertisement. It was further stated that where an individual is targeted by way of these portals for the sale and purchase of listed properties, such persuading falls under the definition of negotiation.

**Issue 3:** Whether digital portals "facilitate" sale of real estate sale?

Web portals serve to introduce buyers and sellers to one another, to supply the buyer with project information, to organise a virtual tour of the project, and to offer additional information that is important in making an informed purchasing choice. As a result, they make the selling of the real estate project easier.

**Issue 4:** Whether digital portals collect charges/fees/renumerations/commission?

Once any monetary benefit is derived for the purpose of completing any function of a real estate agent, by whatever name it may be known, it is deemed to be the receipt of the fees under the Real Estate Regulatory Act (RERA).

**Issue 5:** Whether digital portals can be exempted from the definition of real estate agent, they being intermediary under the IT Act. Because the Parliament has not provided for any exceptions to the application of the provisions of RERA, we conclude that RERA supersedes section 79 of the Information Technology Act (IT Act).

**Maha RERA Conclusion:** Section 2 (b) of the RERA states that portals whose activities are simply limited to advertisement are not required to register as real estate agents, provided that they disclose in their disclaimer that they are merely advertising agencies and advise viewers to cross-check the information with other sources, including the RERA website.

As previously stated, registration is required for any other sites that perform the job of a real estate agent. If their operations are extended over the territory within the authority of MahaRera, such portals are required to register with the organisation within two months.

To ensure that their activities are properly regulated, portals will need to register with the real estate regulatory authority of the state in which their operations are taking place until the registration at the national level becomes possible.

**Impact:** When there are actions that are more than a simple advertising, RERA authorities in other states, such as Karnataka, have also given instructions along the same lines as the online portals to register as real estate agents under RERA.

### **13. Ravinder Kaur Grewal vs. Manjit Kaur [(2019 8 SCC 729)]**

The main issues in this case were:

- Whether a person claiming the title by virtue of adverse possession can maintain a suit under Article 65 of Limitation Act for declaration and permanent injunction.
- Whether Article 65 of the Limitation Act only enables a person to set up a plea of adverse possession as a defendant and cannot protect possession as a plaintiff?

### **DECISION OF SUPREME COURT:**

The Apex Court observed that person in possession can only be ejected by another person following the proper legal procedure, and once the 12 year period of adverse possession has passed, then even the owner has lost the right to eject the tenant, and the possessory owner acquires the right, title, and interest vested in the erstwhile owner, as the case may be, against whom he has prescribed. It was also stated that once the right, title, or interest is acquired, it can be used as a sword by the plaintiff and as a shield.

**Impact:** In the event of dispossession, any individual who has perfected title by virtue of adverse possession may initiate an action for the restoration of their possession rights.

**14. Bikram Chatterji & Ors. vs. Union of India & Ors. (Judgment dated July 23,2019 in Writ Petition Civil No.940/2017).**

**Background:** The Amrapali Group of Companies offered to develop 42,000 apartments on land that had been granted on lease by the Noida/Greater NOIDA Authority ("Authorities"), promising property purchasers that they would have possession of their new homes in 36 months or less. As a result, the Amrapali group was found to have committed a major violation of their contractual obligations to execute projects and make payments owed to the authorities and banks.

**Supreme Court Observation:** The Amrapali Group's financial issues will be investigated by a forensic audit, as directed by the Supreme Court. The forensic report confirmed that

1. the Group had diverted funds by incorporating dummy companies;
2. the promoters had set up a web of more than 150 companies for the purpose of routing funds and creating assets; and
3. the homebuyer's funds, as well as the loans from the banks, had been diverted to other companies/directors, and that these funds had been used by the promoters to acquire personal assets, properties, and apply them towards other business venture

It was also highlighted by the Supreme Court that the mortgage generated in favour of lenders necessitated the issuance of a NOC from the authorities, which was only provided subject to specific requirements, such as the timely and complete payment of lease rents/premiums to the authorities. As a result of not fulfilling the conditions of the conditional NOC, the Court determined that no legitimate mortgage had been issued in favour of the banks in the sense of the law.

**Supreme Court Decision:** Based on the observations made and results of the forensic investigation, the Supreme Court delivered the following rulings. The RERA registrations of the Group's numerous projects were revoked, and the National Building Construction Corporation (NBC C) was tasked with the responsibility of finishing the projects in question. It has been granted to the Court Receiver the right of the lessee and authority to sign the tripartite agreement in order to guarantee that the title is transferred to the property purchasers free of any encumbrances.

The homebuyers were ordered to deposit the outstanding amount as per the payment schedule under the builder buyer agreement with the promoters/developers in a court administered bank account within three months, as directed by the Supreme Court.

The authorities and the banks were ordered to recover their debts from other properties and assets of the Group that were attached. It was also recommended to take appropriate action against leaseholders of comparable developments not just in Noida and Greater Noida but also in other cities, according to the Court ruling.

Lastly, the Noida and Greater Noida Authorities were directed to issue completion certificates and registered conveyance deeds to be executed within one month in respect of projects where homebuyers were already residing, in accordance with the provisions of RERA, and to ensure that the homebuyers were not defrauded in the process.

**Impact:** This is a watershed moment in the history of defending the rights of house purchasers. The bank and the authorities were both held jointly and severally liable for gross negligence in the project's development and monitoring the money's use throughout its construction. Due to the fact that the

lender's responsibility does not end with the funding of a loan, lenders must now exercise extreme caution and ensure that the security provided against loans is clear beyond any reasonable doubt. In addition, lenders are required to monitor the end use of such funds on a regular basis.

## **CONCLUSION**

Although it has been plagued by several issues, the Transfer of Property Act remains to be the primary source of legislation governing property transactions in India. Over the course of its 130-year existence, it has undergone revision majority on two occasions, with the consequence that its basic framework continues to influence Indian property transfer legislation, practise, interpretation, and structure to this day. It is also a testament to the drafters' vision of producing a simplified and practical code of property rules for India. There's another striking fact here: courts have had (and continue to have) little impact on Indian property law's core structure and foundations, both before and after the country's independence in 1947. This is true even though India is a common-law jurisdiction.

The numerous clauses, principles and the associated concept of standardisation, which have their roots in the notion of limiting the informational costs on third parties, are also seen to represent a significant institutional component by acting as rules of judicial restraint. They are said to function in the common law as "canon of interpretation," which means that they force courts to accept the current and established categories of property forms and arrangements as a closed set that cannot be modified without legislative intervention. By reining in their own inventiveness and limiting parties' right to do so via contractual methods, courts must recognise the costs to parties of being able to freely customise property arrangements and enforce them against other parties, if necessary.

Ironically, the India's property law is governed by the common law inextricably linked to the legislative framework that established it. This occurrence was far from an unforeseen consequence; rather, Because of the intricacy of Indian property laws and arrangements, the British employed this design aspect to great advantage in their control of the Indian subcontinent. Codification in property law was given particular attention because of the British government's dependence on land settlement regulations, taxation policies, as well as tenant reform programmes to solidify their social and political influence. We cannot stress the significance of making sure the basic (or abstract) legal framework was working alongside these goals. The Codifiers had to make sure that Indian courts of law, where any law of property was applied on a daily basis, could be relied upon, would accord significant respect to the codifiers' aim and institutional supremacy. As a result, the use of precision drafting and standardisation by codifiers as significant methods for constraining judicial law making, as well as the progressive growth of property law by courts to suit the needs of a fast-expanding Indian society, arose.

In the delicacy with which they were integrated into the workings of the TP Act and afterwards seen as arising from the needs of property as a subject, rather than any external reason, these techniques revealed their true brilliance. As a result, the unstated goals of codification were ossification of the system, removal of the most complex arrangements, and restrictions on court receptivity to regional customs and private agreements. As a method of formalising custom (and so allowing courts to legitimise custom use in real estate transactions), and as a means of ensuring initial commitment to certainty, the effort was justified.

It is clear that these methods have been successful, as seen by the continued relevance of India's Transfer of Property Act to the law of property in the country and the extent to which courts continue to consider themselves as restricted by this framework in a plethora of settings to this day. However,

notwithstanding the uncertain political legitimacy of its colonial founders, the Act is regarded as a model of property law wisdom for the whole nation. The Act is made up of legal transplants that are "externally dictate" in nature. The Act's relevance and the effectiveness of these transplants are owing in large part to the authority of the legal system as a whole, rather than to anything special to Indian property law or the legal system in general.

Because of this, reliance and the fear of upsetting established expectations may be the key reasons for the continued existence of the Act in post-Independence India today, according to certain theories. While it may be time to remove some of the Act's limitations, courts should be allowed to explore the range of property forms, ethics, and normative commitments that Indian law can produce-in a true common law fashion-in the wake of the country's former British rulers' artificial and Orientalist appreciation of Indian law, custom, and organisation forms.

Flat Purchaser was defined as neither a financial creditor nor an operational creditor in the matter of "Col. Vinod Awasthy v. AMR Infrastructure Ltd."<sup>46</sup>, according to the National Company Law Tribunal. The Court opined that the writers of the me did not intend to include an obligation other than a financial debt under the definition of a "operation debt." As a result, an operational debt would be limited to just four categories, as stipulated in Section 5(21) of the IDC, namely, products, services, employment, and government obligations. The Tribunal determined that the obligation owing to the flat purchaser did not originate as a result of any products, services, employment, or dues that were owed to the federal, state, or municipal governments under any legislation or by local governments. Rather, the return requested by the Petitioner was related with the holding of immovable property, which constituted the basis for the claim. This was further underlined by the fact that the petitioner had not delivered commodities nor given any services in order to qualify for the status of "Operational Creditor." It also held that it was not possible to construe Section 9 of the IBC in conjunction with Sections 5(20) and 5(21) of the IBC so broadly as to include the petitioner within its scope because the petitioner had an alternative remedy available under the Consumer Protection Act and the General Law of the land. The Hon'ble Tribunal has also made identical rulings in two other matters that have come before it, namely "Mukesh Kumar v. AMR Infrastructure Ltd"<sup>47</sup> and "Pawan Dubey v. J.B.K. Developers Pvt. Ltd.", all of which were brought before it.

According to the Allahabad bench of the National Company Law Tribunal, in the case of "IDDI Bank Ltd. v. Jaypee Infratech. Ltd.", the court deviated from all other previous judgments and answered the question as to whether the home buyers or allottees should be classified a Financial Creditors or Operation Creditors, respectively. As determined by the court, the amount paid to the builder by the Buyer is the amount that funds the Builders to complete the construction work, and as a result, the amount falls within the scope of the Financial Debt, which finances the construction of the work, the Builders are considered financial creditors by the court.

"Pioneer Urban Land and Infrastructure Ltd. v. Union of India"<sup>50</sup>, Following RERA's amendments to the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, the Supreme Court affirmed it in a challenge to the IBC. In accordance with the IBC's classification of Financial Creditor, Section 18 of the RERA provided the allottees with the right to demand a refund of the entire amount paid by the allottees, as well as the interest and penalties to be claimed for any delayed possession. However, the defect in the RERA was that the interpretation of the provision led to confusion as to whether the allottees were Secured/Unsecured Financial Creditors or an Operational Creditor, resulting in a conflict This arrangement between the developer and house buyer was found to have a "commercial impact" of a

borrowing, meaning that money is paid in advance for a temporary usage in order to return a flat or apartment to the home buyer. The Supreme Court agreed with this conclusion. As a result, both parties had 'commercial' interests in the case, the Supreme Court emphasised. The real estate developer wanted to profit from the unit's sale, and the flat/apartment purchaser benefited financially from the transaction. That's why the Supreme Court ruled that the sums collected from homebuyers under real estate contracts with the primary goal of profiting from the transaction are included in the definition of "financial debt" under Section 5(8)(f) of the me, regardless of whether or not they are explained by Section 5(8)(a) of Amendment Act. The me is a "beneficial law" that may be invoked by unsecured financial creditors like as property purchasers, the Supreme Court has made a big step forward. As a result of the IBC's emphasis on expeditious processing, in addition, the Supreme Court has reminded the government that it must give appropriate infrastructure to National Company Law Tribunals (NCLTs) and the National Company Law Appellate Tribunal (NCLAT) so that homebuyers' me petitions may be processed to be processed as quickly as possible. Aside from that, it has requested that the government establish permanent adjudicating officials, within three months of the date of the Pioneer Judgment, a real estate regulating organisation and an Appellate Tribunal must be established. To put it another way, the ruling reaffirms the rights of house purchasers as financial debtors under the me. While this is a watershed moment for legitimate house purchasers because of severe liquidity concerns and other operational issues in the real estate sector. challenges, faces a long and difficult road ahead. In addition, the Supreme Court ruled that the RERA must be read in conjunction with the me and that, in the case of a disagreement, the me shall take precedence over the RERA. As a result, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, which ultimately placed them under the jurisdiction of Financial Creditors, put an end to the ambiguous categorization that had existed regarding the classification of Home Buyers.

### **Other requirements have been established by the courts**

Various courts of law have imposed specific requirements on house purchasers in order to bring them within the jurisdiction of the me, including the following:

In the case of "Nikhil Mehta & Sons v. AMR Infra Ltd."<sup>51</sup>, the NCLT held that if there is an agreement between the Buyer and the Builder, in which a clause explicitly states about the return of money, then the buyers are classified as Financial Creditors, which was also supplemented by "Anil Mohndroo v. Earth Organics Infra"<sup>52</sup>. In this case, the individual is neither a financial creditor nor an operational creditor, and as such, he is barred from initiating any procedures under the me.

According to the Supreme Court's Pioneer Decision, the promoter/developer is now responsible for proving that the allottee who has approached the NCL T is a speculative investor and not a real estate buyer once a prima facie default is established under Section 7 of the Code. It has been discovered that unethical or speculative purchasers are attempting to destabilise a well-run real estate firm by abusing the legal system and abusing the laws. "A single purchaser, who may be a speculative buyer, has been accused of attempting to disrupt the operations of otherwise well-run real estate enterprises, according to some reports. A large number of similar patients have been admitted to the hospital in Mumbai. As a consequence, real estate businesses account for more than half of the causes listed in the National Company Law Tribunal "On the side-lines of a conference organised by the Insolvency and Bankruptcy Board of India, Injeti Srinivas shared his thoughts • Furthermore, he emphasised that "a single or two homeowners should not be allowed to pull a whole project with hundreds of homebuyers into bankruptcy." It was also said that "While the developer should be penalised for the delay, ffiC is not the



appropriate remedy." Furthermore, he proposed. consider bringing the case before the bankruptcy law committee since the businesses act already sets a 5 percent threshold for filing a class action lawsuit 54 and a percent threshold and that these levels might be used as a guide in the future to initiate a case of mismanagement or oppression of minority shareholders. Furthermore, he said, "We may consider establishing a threshold to include such checks and balances by rules, or if required, through modification. "55 Homebuyers who approach the Although RERA and the Consumer Forum are used to settle individual issues, insolvency processes safeguard the interests of both homebuyers and other stakeholders, including banks and lending institutions, and NCLT should be made aware of this. As a result, homebuyers must seek out the most appropriate forum for their particular situation.

The IBC is a "beneficial law" that may be invoked by unsecured financial creditors like as property purchasers, the Supreme Court has made a big step forward. As a result of the IBC's emphasis on expeditious processing in addition, the Supreme Court has reminded the government that it must give appropriate infrastructure to National Company Law Tribunals (NCLTs) and the National Company Law Appellate Tribunal (NCLAT) so that homebuyers' me petitions may be processed or to be processed as quickly as possible. Aside from that, it has requested that the government establish permanent adjudicating officials, a real estate regulatory body, and an Appellate Tribunal no later than three months from the date of the Pioneer Judgment. To put it another way, the ruling reaffirms the rights of house purchasers as financial debtors under the International Business Code. While this is a watershed moment for legitimate house purchasers, the real estate sector, which is already suffering from severe liquidity concerns and other operational challenges, faces a long and difficult road ahead. Since June 2018, homebuyers have filed more than 1,800 complaints against builders under the Insolvency and Bankruptcy Code (IBC), according to information provided to the Lok Sabha by the government on Monday. At the time of writing (on September 30), the National Company Law Tribunal (NCLT) was dealing with the following number of cases. Anurag Singh Thakur, Minister of State for Corporate Affairs, said that a total of 1,821 lawsuits had been brought by homeowners against builders since June 2018 under the Code, citing information obtained from the National Consumer Law Tribunal. As he put it, "this (business affairs) ministry is now considering the subject."56 The Government is moving in accordance with the Supreme Court's decision and will shortly establish the aforementioned agencies in order to carry out the Code's objective and defend the rights of home buyers.

It seems that flat purchasers whose contracts do not include such or comparable conditions may not qualify as 'Financial' or "Operational' creditors under the Insolvency and Bankruptcy Code, and as a result, may be barred from bringing an insolvency proceeding under the IBC. However, the form of their arrangement with the builder would have a significant impact on the outcome. In spite of the foregoing, even those flat purchasers The Insolvency Resolution Professional (IRP) may nevertheless accept claims from creditors who do not qualify as either a 'Financial' or 'Operational' creditor, provided that the insolvency process has been commenced at the request of either a 'Financial' or an 'Operational' creditor. If a company is declared insolvent, the IRP and the Creditors Committee work together to decide whether the company will be resurrected or liquidated, and flat purchasers will very definitely only be entitled to a return of their money, either as Financing or a Cash Refund, if the company is revived. If the Company is liquidated, flat buyers will almost certainly be entitled only to a Cash Refund. However, the flat owners would be wise to register their claims, specifically stating that they would like to get a unit rather than a refund of their funds, and doing so with extreme prudence, inside their claim (Form For C, as the case may be). Naturally, all of this raises several issues, the most significant of which is

whether or not the Company can meet the 270-day time limit for developing and presenting a revival plan, failing which the company will be forced into liquidation. The IPR has set a deadline of 14 days for filing claims by creditors, with only seven days for the IPR to verify those claims. All of this also presents some important questions, such as the influence of the bankruptcy process on the loan agreements that flat owners have with their various banks or financial institutions, and what will happen if they continue to pay or cease making their EMI payments. Amid widespread ambiguity and void, it is anticipated that the judiciary would fill in the gaps left by these developments, as well as to explain and speed the process of bankruptcy for flat owners, without sacrificing or weakening the value of the underlying properties.

## **BIBLIOGRAPHY**

### Books:

1. Goulding, Simon Principles of Company Law, Cavendish Publishing Limited (1996)
2. FICCI - Ernst and Young (2010), "Realty Decoded Investing across Borders"
3. Wagerfield Dan, "Real Estate and Regulations 2022"
4. Thomas W Merrill and Henry E Smith, PROPERTY {NYP, 2010}.
5. Mathur Abhishek, "Real estate Report: India, 2020" ICLG,

### Statutes (Bare Acts) referred:

1. Real Estate Regulation and Development Bill, 2013
2. Punjab Apartment and Property Regulation Act, 1995
3. Maharashtra Ownership of Flats (Regulation of Promotion, Construction, Sale and Management, and Transfer), 1963
4. Haryana Urban Areas Act, 1975
5. The Constitution of India
6. Insolvency and Bankruptcy Code, 2016
7. Regulation of Ownership Flats (Regulation of Promotion of Construction, Sale, Management and Transfer) Act, 1972
8. The Maharashtra Ownership Flats (Regulation of Promotion of Construction, Sale, Management and Transfer) Act, 1963
9. The Punjab Apartment and Property Regulation Act, 1995
10. The Uttar Pradesh Apartment (Promotion of Construction, Ownership, and Maintenance) Act, 2010
11. The West Bengal Building (Regulation of Promotion of Construction and Transfer by Promoters) Act, 2010

### Sites:

1. <https://taxguru.in/corporate-law/ibc-2016-homebuyers-financial-creditors.html>
2. [https://www.ibbi.gov.in/webadmin/pdf/whatsnew/2018/Aug/The%20Insolvency%20and%20Bankruptcy%20Code%20\(Second%20Amendment\)%20Act,%202018-2018-08-18%2018:42:09.pdf](https://www.ibbi.gov.in/webadmin/pdf/whatsnew/2018/Aug/The%20Insolvency%20and%20Bankruptcy%20Code%20(Second%20Amendment)%20Act,%202018-2018-08-18%2018:42:09.pdf)
3. [https://prsindia.org/billtrack/the-insolvency-and-bankruptcy-code-amendment-ordinance-2019#:text=Subsequently%2C%20the%20IDC%20\(Amendment\).issued%20on%20December%202019](https://prsindia.org/billtrack/the-insolvency-and-bankruptcy-code-amendment-ordinance-2019#:text=Subsequently%2C%20the%20IDC%20(Amendment).issued%20on%20December%202019)

8%2C%202019.&text=Threshold%20for%20certain%20creditors%20for.at%201east%20one%20la  
kh%20rupees.

4. <https://www.ibbi.gov.in/uploads/legalframework/d36301a7973451881e00492419012542.pdf>
5. <https://indiacorplaw.in/2021/02/straining-conceptual-consistency-home-buyers-as-financial-creditors.html>
6. <https://www.businesstoday.in/current/corporate/ibc-code-are-speculative-homebuyers-misusing-insolvency-law/story/382538.html>

#### **Reports/Journals/Review:**

1. BUSINESS TODAY, IBC Code: Insolvency laws are being misused by speculative purchasers.? By Dipak Mondal (Oct 2019).
2. THE ECONOMIC TIMES, Karunjit Singh proposes that the MCA establish a minimum threshold for homebuyers who declare bankruptcy (Oct 2019),
3. INDIA TIMES, Home Buyers Have Filed Over 1,800 Cases Under IBC: Government by Economic Times (Nov 2019)
4. Report dated March 26, 2018 of Insolvency Law Committee chaired by Shri Injeti Srinivas