

Elevation of Status of Homebuyers Under the Insolvency and Bankruptcy Code, 2016: A Timeline

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Abstract

This research paper discusses the challenges faced by the homebuyers in initiating or continuing legal proceedings against the defaulting real estate companies that have been admitted to the CIRP due to the imposition of moratorium under section 14¹ of IBC, 2016, and the steps taken by the judiciary and legislature to move the homebuyers out of this state of uncertainty. For the first time, the judiciary took note of the plight of homebuyers in *Chitra Sharma v. Union of India*². The amount paid by the homebuyers as advances, in this case, was claimed to be INR 15,000 crore more than what was due to financial creditors, and yet the homebuyers were initially not included in the CIRP. Such grave anomalies compelled the parliament to amend the existing law and provide for the inclusion of homebuyers under IBC as ‘Financial Creditors.’

Keywords: Homebuyers, Financial Creditors, Real Estate Company, Insolvency.

INTRODUCTION

Often, the companies engaged in the real estate sector for construction of flats in return of heavy consideration from flat buyers fail to obey their contractual obligations, forcing homebuyers to initiate legal proceedings against the defaulting company. Under the existing legal framework, homebuyers have three concurrent remedies at their disposal to initiate legal proceedings against real estate companies. First, under the general law; second, under the Consumer Protection Act, 1986 (“CPA”); third, under the Real Estate Regulatory Authority Act, 2016 (“RERA”); and lastly, under the Insolvency & Bankruptcy Code, 2016 (“IBC”). Section 14(1) of the IBC prohibits institutions of suits, continuation of pending proceedings, including execution proceedings, recovery proceeding against the defaulting company, enforcement of security interest, or alienation of Corporate Debtor’s assets. Due to the imposition of moratorium under section 14(1), all the legal proceedings initiated by the homebuyers against the defaulting company before the consumer foras, Real Estate Authority, or any civil court are withheld till the completion of the Corporate Insolvency Resolution Process (“CIRP”) of the defaulting company leaving the homebuyers in an uncertain and distressed situation. Taking cognizance of this situation of homebuyers, the Insolvency and Bankruptcy Board of India (“IBBI”), which is vested with the authority to amend or implement rules

¹Insolvency and Bankruptcy Code, 2016, Sec. 14

²*Chitra Sharma vs. Union of India*, Writ Petition (Civil) No. 744 of 2017, (09 August, 2018), [9th Aug 2018 in the matter of Chitra Sharma and Ors. Vs. Union of India and Ors. WP \(C\) No. 744-2017 & Connected WPs & SLPs_2018-08-09 18:02:42.pdf](#)

and regulations related to *inter alia* insolvency resolution, included homebuyers as a creditor under IBC in 2017 and finally a year later homebuyers were accorded the status of financial creditor by the parliament.

Raising homebuyers to the status of “Financial Creditor”

It was observed by the NCLT in *Col. Vinod Awasthy v. AMR Infrastructure Ltd.*³, that homebuyers are neither operational creditors nor financial creditors. A Financial Creditor is a person who has a right to financial debt. Section 5(8)⁴ states that financial debt is a debt, along with interest, that is disbursed against the consideration for the time value of money. An Operational Creditor is a person to whom operational debt is owed. Section 5(21)⁵ defines ‘operational debt’ as a claim related to goods or services, including employment or a debt in payment of dues arising under any law to the Central Government, State Government, or any local authority. A few months later came the ruling of Hon’ble NCLAT in *Nikhil Mehta v. AMR Infrastructure*⁶, which classified homebuyers as ‘Financial Creditor’; it was observed that the amount raised by the Corporate Debtor by way of sale-purchase agreement had the “commercial effect of borrowing” and is therefore a financial debt. However, these cases, being fact-specific, did not cover all the contracts entered by and between project developers and the homebuyers. Further, on 16 August 2017, the IBBI amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and inserted Regulation 9A, providing creditors other than Financial and Operational Creditor to submit their claims to Insolvency Resolution Professional (“IRP”) in Form F as they could not be treated at par with financial and operational creditors.

Deeming it necessary and in view of the interpretation of the definition of ‘Financial Creditor’ by the court, the government constituted the Insolvency Law Committee in March 2018, headed by Injeti Srinivas, to investigate the problems arising from the implementation of the IBC. The committee in its report noted that amounts raised under housing contracts are a means of raising finance, and therefore, home buyers are financial creditors.⁷ It recommended that an explanation be added under the Code to clarify that home buyers would constitute financial creditors. Pursuant to this report, parliament passed the Insolvency and Bankruptcy (Second Amendment) Act on 17th August 2018 (“2018 Amendment Act”), conferring statutory recognition on Homebuyers of Financial Creditors. Hence, outstandings to allottees in real estate projects were statutorily regarded as financial debts.

In *Pioneer Urban Land and Infrastructure Limited and Ors. vs. UOI & Ors.*⁸, the constitutional validity of the 2018 Amendment Act was challenged by the real estate companies. It was held that the amendment act does not violate Art. 14, 19(1)(g) r/w Art. 19(6) or 300-A of the Constitution of India, the Hon’ble SC observed that, the RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over the RERA. Remedies that are given to

³ *Col. Vinod Awasthy Vs. AMR Infrastructures Ltd.*, Company Petition (Insolvency and Bankruptcy) No. 10 of 2017, (20 February, 2017), [Col. Vinod Awasthy Company v. Amr Infrastructures Ltd. | National Company Law Tribunal | Judgment | Law | CaseMine](#)

⁴ Insolvency and Bankruptcy Code, 2016, Sec 5(8).

⁵ Insolvency and Bankruptcy Code, 2016, Sec 5(21).

⁶ *Nikhil Mehta & Sons (Hindu Undivided Family) & Others vs. AMR Infrastructure Ltd.*, Company Appeal (AT) Insolvency No. 07 of 2017, (21 July, 2017), [Nikhil Mehta And Sons v. Amr Infrastructure Ltd. . | National Company Law Appellate Tribunal | Judgment | Law | CaseMine](#)

⁷ Report of the Insolvency Law Committee, (March, 2018), [Report of the Insolvency Law Committee](#)

⁸ *Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs. Union of India & Ors.*, Writ Petition (Civil) No. 43 of 2019, (09 August, 2019), [Pioneer Urban Land And Infrastructure ... vs Union Of India on 9 August, 2019](#)

allottees of flats/apartments are, therefore, concurrent remedies, such as allottees of flats/apartments being in a position to avail of remedies under the CPA, 1986, RERA, as well as the triggering of the Code. Section 5(8)(f)⁹, as it originally appeared in the Code, being a residuary provision, always subsumed within it allottees of flats/apartments. The explanation, together with the deeming fiction added by the Amendment Act, is only clarificatory of this position in law.

Further, securing remedy under RERA or CPA does not affect the status of Financial Creditor accredited to the Homebuyer. In Vishal Chelani and others v. Debashis Nanda¹⁰, the Hon'ble Supreme Court held that homebuyers cannot be treated differently than other "financial creditors" under the IBC 2016 simply because they obtained orders from the authority under RERA, and in Tarun Ahuja & Others Vs. Puri Construction Private Limited¹¹, NCLT Delhi ruled that if homebuyer-allottees sought remedy through RERA or NCDRC before approaching the Tribunal, their standing as 'financial creditors' under Section 5(8)(f)¹² will not change.

Further Amendments

Parliament enacted IBC Amendment Act, 2020 on 23rd September 2020 which *inter alia* added 3 provisos to Section 7¹³ in which second proviso provided for a threshold limit of allottees for initiating CIRP which is either not less than 100 of total such home allottees or not less than 10% of such allottees under the real estate project. The 2020 amendment of IBC gave homebuyers the power to launch CIRP. However, a later concern occurred for homebuyers: notwithstanding their ability to commence CIRP, if the builder or corporate debtor targeted for CIRP has many projects, a moratorium would be imposed on all of them. In the case of Flat Buyers Association Winter Hills - 77, Gurgaon v. Umang Realtech Private Limited¹⁴, the NCLAT introduced the concept of "Reverse CIRP" and stressed that CIRP initiated by allottees, financial institutions/banks, or operational creditors of a specific project should be limited to that project and not impact other projects of the same real estate company.

The IBBI recently introduced amendments to the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 03.02.2025 with the insertion of Regulation 4E which empowers the Resolution Professional to handover the flats, buildings or apartments during resolution process to Homebuyers after taking approval of the Committee of Creditors provided homebuyers have fulfilled all obligations ensuring that the distressed Homebuyers do not have to wait for a long time to get the possession of their properties.

Conclusion

Owning a home has become a luxury these days. People put in their lifelong savings to be under a roof of their own. The monies put in by the homebuyers in these projects is huge. Default by the project developers in delivering the possession of the flat cannot be deemed as a default arising out of an ordinary commercial

⁹ Insolvency and Bankruptcy Code, Sec 5(8)(f).

¹⁰ Vishal Chelani & Ors. vs. Debashis Nanda, Civil Appeal No. 3806 of 2023, (06 October, 2023), [15801_2023_8_60_47430_Judgement_06-Oct-2023.pdf](#)

¹¹ Tarun Ahuja & Others in 2024. Vs. Puri Construction Private Limited, CP IB NO. 755/PB/2020, (24 January, 2024), [Tarun+Ahuja+and+Ors.+Vs.+Puri+Construction+Pvt.+Ltd.+--+24.01.2024+NCLT+New+Delhi+Bench.pdf](#)

¹² *ibid*

¹³ Insolvency and Bankruptcy Code, Sec 7.

¹⁴ Flat Buyers Association Winter Hills - 77, Gurgaon v. Umang Realtech Private Limited, Company Appeal (AT) (Insolvency) No. 926 of 2019, (24.01.2020), [16399221145e2ae9a53485e.pdf](#)

contract. Providing for remedies under RERA and Consumer Protection Act, gave over and above effect to the transaction entered into by and between the Homebuyers and project developers. However, section 14 read with section 238 of IBC practically withdrew the homebuyers of their remedies under RERA and Consumer Foras. Section 14 of IBC left homebuyers remediless inasmuch it halted all the legal proceedings against the Corporate Debtor/defaulting companies. From having options to recourse to RERA, Consumer Foras, and Civil Court, homebuyers were left for nowhere. The acknowledgment of the disadvantageous position of the homebuyers by the Hon'ble SC in Chitra Sharma (supra) and subsequent judgments was crucial in putting the plight of homebuyers before the legislature which for this purpose appointed the Injeti Srinivas Committee and also adhered to the recommendations made by the committee in its report by enacting the amendment act of 2018. The inclusion of homebuyers in the scheme of financial creditors was a required step to ensure that homebuyers are not left remediless due to the imposition of the moratorium.