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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **BALANCING INSOLVENCY RESOLUTION AND CONSUMER PROTECTION: THE INTERFACE OF IBC AND RERA IN INDIAN REAL ESTATE**

AUTHORED BY - C.S. TEJASHREE & KADIYALA DEVADATH

## **ABSTRACT**

The intersection of the Insolvency and Bankruptcy Code, 2016 (IBC) and the Real Estate (Regulation and Development) Act, 2016 (RERA) presents a complex legal landscape in India's real estate sector. While IBC aims to provide a time-bound resolution framework for distressed companies, RERA focuses on safeguarding homebuyers' interests and ensuring timely project delivery. This duality often leads to conflicting priorities, particularly when developers enter insolvency proceedings under IBC, leaving homebuyers in a precarious position.

Homebuyers, traditionally considered operational creditors under IBC, gained recognition as financial creditors following the 2018 amendment, allowing them to initiate insolvency proceedings. However, subsequent amendments introduced thresholds, such as requiring a minimum of 100 allottees or 10% of total allottees to file a petition, which have been challenged on grounds of constitutional validity. Despite these legal advancements, homebuyers frequently find themselves at the bottom of the creditor hierarchy, with limited influence in the Committee of Creditors (CoC) and often receiving minimal compensation. The imposition of a moratorium under IBC proceedings, which restricts the initiation or continuation of legal actions against the developer, further complicates the enforcement of consumer rights and project delivery obligations.

Recent judicial developments have sought to address these conflicts. The Supreme Court has emphasized the need for a balanced approach, directing the government to enforce regulations strictly to prevent exploitation of homebuyers. Additionally, the introduction of the Reverse Corporate Insolvency Resolution Process (Reverse CIRP) allows developers to retain control over projects by infusing funds, aiming to complete stalled projects without transferring control to the resolution professional.

This paper examines the legal interplay between IBC and RERA, highlighting the structural, legal, and procedural challenges that arise due to overlapping jurisdictions, differing priorities, and financial hierarchies faced by homebuyers. By highlighting these dynamics, the paper underscores the need to understand the balance between consumer protection and insolvency objectives, proposing a harmonized framework that prioritizes consumer protection while ensuring effective insolvency resolution.

**Keywords:** Real estate insolvency, Homebuyers' protection, RERA, IBC, Legal Implications, Corporate Insolvency Resolution Process, Financial Creditors, Project-specific CIRP, Reverse CIRP, Consumer protection, Legislative reforms.

## INTRODUCTION

The real estate sector has been one of the fastest-growing segments of the Indian economy, significantly influencing GDP growth and meeting the housing needs of millions. However, this rapid growth also exposed deep-rooted issues, including project delays, diversion of funds, and lack of accountability, leaving homebuyers in a vulnerable position. In response to these concerns, two legislative frameworks—the Real Estate (Regulation and Development) Act, 2016<sup>1</sup> (RERA) and the Insolvency and Bankruptcy Code, 2016 (IBC)<sup>2</sup>, were introduced as central instruments in regulating the sector. While both statutes were enacted to address the distress of consumers and stakeholders, they differ fundamentally in their objectives, mechanisms, and implications.

RERA was enacted with the objective of enhancing transparency, accountability, and efficiency in order to address the persistent issues in the real estate sector. It established specialised regulatory authorities, mandated compulsory registration of projects, required disclosure of project details, and created mechanisms to safeguard the interests of allottees, particularly homebuyers.

On the other hand, in response to the escalating financial distress in India's corporate sector and the growing burden of non-performing assets (NPAs) on banks, the Insolvency and Bankruptcy Code, 2016 (IBC), was enacted to provide a comprehensive, time-bound framework for insolvency resolution. Its objective is to maximise the value of assets and ensure

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<sup>1</sup> The Real Estate (Regulation and Development) Act, No. 16 of 2016, INDIA CODE (2016).

<sup>2</sup> The Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, INDIA CODE (2016).

equitable treatment of creditors through the Corporate Insolvency Resolution Process (CIRP), which is administered under the supervision of the National Company Law Tribunal (NCLT).

The intersection between RERA and IBC becomes most evident when real estate developers undergo the CIRP under the IBC. In such scenarios, homebuyers protected under RERA often find themselves in a complex position as their interests must be balanced against the claims of financial creditors under the insolvency framework. This overlap can create legal and practical conflicts, particularly regarding the allocation of funds from distressed developers, the continuation of ongoing projects, and the enforcement of homebuyers' rights.

This interplay between RERA and IBC underscores a classic conflict between consumer protection and insolvency resolution. Courts, most notably in **Pioneer Urban Land & Infrastructure Ltd. v. Union of India**<sup>3</sup>, have sought to harmonise the two frameworks, recognising their complementary objectives but affirming the primacy of IBC in case of conflict. Nevertheless, unresolved tensions persist, highlighting the need for a coherent approach that balances homebuyers' expectations with the financial realities of insolvency. As more developers face insolvency proceedings under the IBC, safeguarding the interests of allottees, particularly homebuyers, has become increasingly crucial while ensuring effective insolvency resolution in India's real estate sector.

## **PROTECTION OF HOMEBUYERS UNDER RERA**

Under the Real Estate (Regulation and Development) Act, 2016<sup>4</sup> (RERA), a homebuyer becomes an allottee when a plot, apartment, or building is allotted, sold, or otherwise transferred by the promoter, as defined in Section 2(d)<sup>5</sup> of RERA. RERA confers a wide range of rights upon allottees, broadly categorized as information rights, rights to title, insurance-related rights, rights against unauthorized transfer to third parties, and pecuniary rights. Furthermore, Section 13<sup>6</sup> of RERA reinforces these protections by regulating the collection of advance payments by developers. Promoters are prohibited under Section 13(1)<sup>7</sup> from demanding more than 10% of the property's cost as an advance or application fee unless a registered agreement for sale has been executed. This agreement must contain essential project

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<sup>3</sup> Pioneer Urban Land & Infrastructure Ltd. v. Union of India (2019) 8 SCC 416.

<sup>4</sup> *Supra* note 1.

<sup>5</sup> The Real Estate (Regulation and Development) Act, 2016, No. 16 of 2016, § 2(d), INDIA CODE (2016).

<sup>6</sup> The Real Estate (Regulation and Development) Act, 2016, No. 16 of 2016, § 13, INDIA CODE (2016).

<sup>7</sup> The Real Estate (Regulation and Development) Act, 2016, No. 16 of 2016, § 13(1), INDIA CODE (2016).

details, including construction specifications, payment schedules, possession timelines, and penalties for defaults by either party, as specified in Section 13(2)<sup>8</sup>. These provisions are designed to prevent buyers from paying substantial sums without formal commitment, reducing the risk of financial loss in case of project delays, abandonment, or developer insolvency. The MahaRERA ruling in **M/s. Sakla Enterprises**<sup>9</sup> held that the promoter had violated Section 13(1) by accepting full payment without executing a registered agreement. The tribunal further clarified that a notarized allotment letter could not substitute for the mandatory agreement. This decision underscores the necessity of strict compliance with RERA provisions to secure homebuyers' interests, especially when insolvency proceedings threaten the completion of real estate projects.

Further, a key feature of RERA is the requirement for promoters to deposit a significant portion of homebuyers' funds into a Designated Project Account (DPAR) or escrow account, under Section 4(2)(1)(D)<sup>10</sup>. Typically, 70% of the funds collected are transferred to the RERA-specific account, dedicated solely to the construction and development of the project, while the remaining 30% is allocated for other permissible purposes. The Haryana Real Estate Appellate Tribunal, in **Raheja Developers Limited v. Manohar Lal Kapur**<sup>11</sup>, recognised this arrangement as an escrow account designed to protect homebuyers' interests. The segregation of funds into a RERA-specific account enforces financial discipline, prevents diversion of funds, enhances financial transparency, and safeguards timely project completion. Further, in cases of project cancellation or failure, this account safeguards allottees by ensuring that refunds can be provided from the funds allocated explicitly for the project, addressing major issues such as financial mismanagement, project delays.

RERA confers a wide range of rights upon allottees, broadly classified into information rights, rights to title, insurance-related rights, rights against unauthorized transfer to third parties, and pecuniary rights.

Additionally, one of the key protections is provided under Section 18<sup>12</sup>, which addresses situations where the promoter fails to deliver possession of the apartment, plot, or building

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<sup>8</sup> The Real Estate (Regulation and Development) Act, 2016, No. 16 of 2016, § 13(2), INDIA CODE (2016).

<sup>9</sup> Kamal Agrawal & Babita Agarwal v. M/s. Sakla Enterprises, Complaint No. CC00600000100078, MahaRERA (Oct. 9, 2017).

<sup>10</sup> Real Estate (Regulation and Development) Act, No. 16 of 20, § 4(2)(1)(D), INDIA CODE (2016).

<sup>11</sup> Raheja Developers Ltd. v. Manohar Lal Kapur, (2006) 5 SCC 532 (India).

<sup>12</sup> The Real Estate (Regulation and Development) Act, 2016, No. 16 of 2016, § 18, INDIA CODE (2016).

within the timeframe declared at the time of registration. In such cases, the allottee can either withdraw from the project, thereby obtaining a refund of the amount advanced along with interest, or remain in the project and claim compensation for the delay in transfer of possession. Compensation is also available for structural defects or deficiencies in workmanship, as well as for any loss arising from defective title to the land on which the project is developed or from the promoter's failure to discharge obligations under RERA.

Further, under Section 19(4)<sup>13</sup>, when a promoter does not hand over possession as agreed in the registered agreement for sale, the allottee is entitled to seek a refund of the consideration paid and interest at the prescribed rate and compensation as provided under the Act. This remedy also extends to situations where the promoter discontinues business as a developer due to suspension or revocation of registration under RERA or its allied rules and regulations. Additionally, if an allottee suffers loss or damage due to false or misleading statements made in an advertisement, prospectus, or other promotional material of a project, RERA places liability on the promoter to compensate the allottee.

These statutory protections under RERA thus give rise to circumstances in which a debt becomes due from the promoter to the allottee, rendering the promoter a corporate debtor in default. Non-payment of these debts amounts to a default under Section 3(12)<sup>14</sup> of the Insolvency and Bankruptcy Code, 2016 (IBC), thereby giving rise to a cause of action for homebuyers to initiate proceedings before the National Company Law Tribunal (NCLT).

### **REAL ESTATE INSOLVENCIES: HOMEBUYER RIGHTS UNDER IBC, 2016**

The insolvency of real estate developers under the Insolvency and Bankruptcy Code (IBC), 2016, poses significant challenges for homebuyers, who often have advanced substantial funds for projects. When a promoter becomes a corporate debtor under Sections 7, 9, or 10<sup>15</sup> of the IBC and development work ceases, allottees with registered agreements for sale are left without remedies under RERA and must approach the National Company Law Tribunal (NCLT) to seek redress.

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<sup>13</sup> The Real Estate (Regulation and Development) Act, 2016, No. 16 of 2016, § 19(4), INDIA CODE (2016).

<sup>14</sup> The Insolvency and Bankruptcy Code, No. 31 of 2016, § 3(12), INDIA CODE (2016).

<sup>15</sup> The Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 7, 9 & 10, INDIA CODE (2016).

Initially, despite providing substantial financing for projects, IBC did not explicitly recognize homebuyers as stakeholders. In **Col. Vinod Awasthy v. AMR Infrastructure Ltd.**<sup>16</sup>, the NCLT dismissed a petition for initiating insolvency proceedings, holding that homebuyers did not qualify as operational creditors, as payments made were not operational debts arising from goods, services, or statutory obligations. This highlighted the inadequacy of existing IBC provisions in safeguarding homebuyers' interests, as they remained outside the formal creditor classifications and were often treated as "other creditors" with limited procedural recognition.

However, in **Nikhil Mehta and Sons v. AMR Infrastructure**<sup>17</sup>, the National Company Law Appellate Tribunal (NCLAT) classified homebuyers as financial creditors under Section 5(7) of the IBC<sup>18</sup>, entitling them to invoke the CIRP against defaulting developers. The issue of homebuyers' creditor status was first addressed by the NCLT, which initially held that homebuyers were not financial creditors because their payments were considered as sale transactions without consideration for the time value of money. The NCLAT reversed this view, determining that homebuyers' investments qualify as financial debt under Section 5(8)<sup>19</sup>, thereby recognizing their right to participate in insolvency proceedings under Section 7 of the Code<sup>20</sup>.

The Supreme Court, in **Chitra Sharma v. Union of India (2017)**<sup>21</sup>, marked a pivotal moment in real estate insolvency jurisprudence by affirming the rights of homebuyers to be represented in the Committee of Creditors (CoC), under Section 21 of the IBC<sup>22</sup>. This ensured that their concerns regarding preferential treatment of financial creditors could be addressed, and their interests were formally safeguarded during the insolvency proceedings. Following this, the Insolvency Committee introduced the Insolvency and Bankruptcy (Amendment) Ordinance, 2018, and the IBC (Second Amendment) Act, 2018<sup>23</sup>, which amended Section 5(8)(f)<sup>24</sup> to explicitly recognize amounts raised from allottees under a real estate project as 'financial debt.' The amendment clarified that such amounts have the commercial effect of borrowing, thereby

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<sup>16</sup> Col. Vinod Awasthy v. A.M.R Infrastructure Ltd (2017) C.P.No.(IB)-10(PB)/2017.

<sup>17</sup> Nikhil Mehta & Sons (HUF) v. AMR Infrastructure Ltd., (2017) 203 Comp. Cas. 1 (NCLAT) (India).

<sup>18</sup> The Insolvency and Bankruptcy Code, No. 31 of 2016, § 5(7), INDIA CODE (2016).

<sup>19</sup> The Insolvency and Bankruptcy Code, No. 31 of 2016, § 5(8), INDIA CODE (2016).

<sup>20</sup> *Supra* note 15.

<sup>21</sup> Chitra Sharma v Union of India (2018) 18 SCC 575.

<sup>22</sup> The Insolvency and Bankruptcy Code, No. 31 of 2016, § 21, INDIA CODE (2016).

<sup>23</sup> Insolvency and Bankruptcy (Amendment) Ordinance, No. 6 of 2018, and Insolvency and Bankruptcy Code (Second Amendment) Act, No. 26 of 2018, INDIA CODE (2018).

<sup>24</sup> The Insolvency and Bankruptcy Code, No. 31 of 2016, § 5(8)(f), INDIA CODE (2016)

bringing homebuyers within the statutory definition of financial creditors.

The constitutional validity of the 2018 Amendment to Section 5(8)(f) of the IBC was contested in **Pioneer Urban Land and Infrastructure Ltd. v. Union of India**.<sup>25</sup> The Supreme Court upheld the amendment, affirming that including homebuyers as financial creditors was consistent with Articles 14, 19(1)(g), and 19(6) of the Constitution<sup>26</sup>. The Court affirmed that the amendment was declaratory in nature, serving to clarify rather than alter the law substantively. By recognizing amounts paid by homebuyers as “financial debt,” the ruling ensured that their claims would be treated on par with other creditors, thereby protecting their interests and enabling them to actively participate in the CIRP.

Despite being recognized as financial creditors, homebuyers remained disadvantaged in practice due to collective representation through an Authorized Representative (AR)<sup>27</sup>. They were classified as unsecured financial creditors, unlike banks and institutional lenders, who hold security interests. Consequently, homebuyers’ voting rights within the CoC were limited, often leaving their preferences for possession of flats rather than financial recovery, subordinated to institutional creditors’ interests. Moreover, the absence of security interests over project assets left them vulnerable when funds were diverted or projects were abandoned. Their position in liquidation was also weak, as unsecured creditors ranked lower in the distribution waterfall under Section 53 of the IBC<sup>28</sup>. The **Jaypee Infratech insolvency Case**<sup>29</sup> stands as a landmark example of the systemic challenges in balancing creditor recovery with consumer protection under the IBC. In this case, more than 20,000 homebuyers were deprived possession of their homes despite having made substantial payments, as banks and institutional creditors, who dominated the Committee of Creditors (CoC), prioritized debt recovery over project completion. Even after years of proceedings, many buyers still remain without possession, underscoring the inadequacy of the existing framework.

The legislature sought to address these challenges through the IBC (Amendment) Act, 2020<sup>30</sup>, which introduced a threshold for initiating the Corporate Insolvency Resolution Process (CIRP)

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<sup>25</sup> *Supra* note 3.

<sup>26</sup> The Constitution of India 1950, arts. 14, 19(1)(g), 19(6) (as amended 2025).

<sup>27</sup> Adv. Navya Shekhar, Resolving Real Estate Insolvency: Safeguarding Homebuyers' Interests While Ensuring Project Completion, IBC Laws (Apr. 24, 2025).

<sup>28</sup> The Insolvency and Bankruptcy Code, No. 31 of 2016, § 53, INDIA CODE (2016).

<sup>29</sup> IDBI Bank Ltd. v. Jaypee Infratech Ltd., C.P. No. (IB)-77/ALD/2017, NCLT Allahabad Bench (2017) (India).

<sup>30</sup> Insolvency and Bankruptcy Code (Amendment) Act, No. 1 of 2020, INDIA CODE (2020).

by homebuyers. Under this amendment, at least 100 allottees, or 10% of the total allottees in a project, whichever is lower, must jointly file an application under Section 7<sup>31</sup>. This change was designed to streamline the initiation process, prevent frivolous or isolated petitions, and protect the viability of ongoing projects. By consolidating multiple individual applications, the amendment ensures a more organized, efficient, and cost-effective insolvency process, safeguarding the interests of both homebuyers and developers. The Supreme Court, in **Manish Kumar v. Union of India**<sup>32</sup>, upheld this provision, affirming the constitutional validity of the threshold requirement for homebuyers to initiate proceedings under Section 7 of the Code. The Court emphasized that the amendment reflects a deliberate effort to strike a balance between protecting homebuyers' rights and maintaining the operational stability of real estate developers, ensuring that insolvency proceedings are triggered only when there is a substantial and collective grievance.

### **MORATORIUM UNDER IBC AND ITS INTERSECTION WITH RERA**

The initiation of insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC), typically results in imposing a moratorium under Section 14<sup>33</sup>. Once a corporate debtor is admitted into CIRP under Section 7 of the IBC, the adjudicating authority, NCLT declares a moratorium which, inter alia, prohibits (i) the institution or continuation of suits or proceedings against the corporate debtor, (ii) the transfer or disposal of assets, and (iii) the recovery of any property by an owner or lessor. By suspending these actions, the law seeks to maintain the debtor as a going concern and provide a "calm period" in which a viable resolution plan can be considered. While this provision seeks to preserve the debtor's assets and provide breathing space for restructuring, its implications are severe in the real estate sector. For homebuyers who have already made substantial financial contributions, the moratorium often halts construction activities and prolongs possession timelines, aggravating their financial distress. This has affected lakhs of homebuyers across India, as they are barred from approaching alternative forums, including RERA authorities or consumer courts, for redress during the moratorium period.

The inability of homebuyers to seek alternative remedies has, in practice, tilted the balance in favor of defaulting developers. Developers have often exploited the moratorium under Section

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<sup>31</sup> *Supra* note 15.

<sup>32</sup> *Manish Kumar v. Union of India*, (2021) 5 SCC 1.

<sup>33</sup> The Insolvency and Bankruptcy Code, No. 31 of 2016, § 14, enforcing INDIA CODE (2016).

14 of the IBC to their advantage. Once insolvency proceedings are admitted, the moratorium immediately stays all claims and enforcement actions, including those arising from valid RERA orders directing possession, completion, or compensation. This legal shield, while intended to protect the corporate debtor's assets during resolution, has in practice been misused by defaulting promoters to delay compliance and frustrate homebuyers' rights. In **Umakant Shukla v. Pioneer Buildmart Pvt. Ltd**<sup>34</sup>, a homebuyer had obtained an RERA order directing the developer to hand over possession and compensation for delays. However, shortly thereafter, the developer entered insolvency proceedings, rendering the RERA order unenforceable and leaving the homebuyer without any effective remedy. The case highlighted the severe financial and emotional impact on buyers caught between two statutory frameworks, with the moratorium effectively nullifying regulatory enforcement. Similarly, in **Umang Realtech Pvt. Ltd. v. Daphne Reita Rajan Sharma**<sup>35</sup>, promoters attempted to use the pendency of CIRP and the moratorium under Section 14 of the IBC as a ground to evade the mandatory pre-deposit under Section 43(5) of RERA<sup>36</sup> for filing an appeal. The Delhi High Court, however, decisively rejected this contention, emphasizing that the CIRP pertained to a different project, and the moratorium did not apply to the one under dispute. This strategic use of moratorium provisions by developers underscores the structural conflict between IBC and RERA and highlights the urgent need for harmonisation of the two regulatory frameworks.

### THE OVERRIDING EFFECT OF IBC

The legal relationship between the Insolvency and Bankruptcy Code, 2016 (IBC), and the Real Estate (Regulation and Development) Act, 2016 (RERA) has been a matter of intense judicial scrutiny, primarily because both statutes contain overriding provisions. Section 238 of the IBC<sup>37</sup> grants it primacy over all other laws in case of inconsistency, while Section 89 of RERA<sup>38</sup> contains a similar clause. However, RERA also includes Section 88<sup>39</sup>, which clarifies that its provisions are "in addition to, and not in derogation of" any other law.

The Supreme Court conclusively resolved this issue in *Pioneer Urban Land & Infrastructure*

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<sup>34</sup> Umakant Shukla v. Pioneer Buildmart Pvt. Ltd., 2021 SCC OnLine Del 1621.

<sup>35</sup> Umang Realtech Pvt. Ltd. v. Mrs. Daphne Reita Rajan Sharma & Anr., RERA Appeal 7/2024, Delhi High Court (2024).

<sup>36</sup> The Real Estate (Regulation and Development) Act, No. 16 of 2016, § 43(5), INDIA CODE (2016).

<sup>37</sup> The Insolvency and Bankruptcy Code, No. 31 of 2016, § 238 Notably, INDIA CODE (2016).

<sup>38</sup> The Real Estate (Regulation and Development) Act, No. 16 of 2016, § 89, INDIA CODE (2016).

<sup>39</sup> The Real Estate (Regulation and Development) Act, No. 16 of 2016, § 88, INDIA CODE (2016).

Ltd. v. Union of India (2019)<sup>40</sup>, ruling that the IBC prevails in cases of direct conflict. In this case, real estate developers challenged the 2018 IBC Amendment, which classified homebuyers as financial creditors, arguing that RERA, as a special law, should prevail. The Court rejected this contention and upheld the supremacy of IBC. It reasoned that the IBC, being a later and comprehensive legislation, must override RERA in cases of conflict. Further, IBC had no provision similar to Section 88 of RERA, which stated “in addition to and not in derogation of” other laws, making it evident that remedies under RERA for allottees were intended to be additional and not exclusive. Notably, the Court distinguished the two laws: IBC proceedings are in rem, aimed at collective insolvency resolution and revival of the corporate debtor, while RERA provides individual remedies to aggrieved allottees for possession, compensation, or refund.

The Court further affirmed that the 2018 amendment that inserted an explanation to Section 5(8)(f)<sup>41</sup> of the IBC was clarificatory in nature and retrospective, meaning that homebuyers were financial creditors from the inception of the Code. This interpretation strengthened the ability of homebuyers to invoke IBC remedies while still retaining their rights under RERA or consumer law.

Subsequent rulings reinforced this position. In **Sunil Handa v. Today Homes**<sup>42</sup> and **Rachna Singh v. Umang Realtech**<sup>43</sup>, the NCLT admitted homebuyers’ petitions, reiterating that in the event of conflict, IBC prevails over RERA. At the same time, tribunals have cautioned against the misuse of the Code by speculative investors. In **Nandkishore Attal v. Marvel Landmarks**<sup>44</sup>, the NCLT rejected an allottee’s petition, observing that he sought a refund despite the flat being ready, thereby using IBC as a pressure tactic. The tribunal stressed that IBC must be invoked in good faith and not merely to claim compensation. The jurisprudence reflects that while homebuyers have parallel remedies under RERA, consumer law, and IBC, in case of conflict, IBC’s overriding effect prevails with safeguards against misuse.

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<sup>40</sup> *Supra* note 3.

<sup>41</sup> *Supra* note 24.

<sup>42</sup> Sunil Handa and Others v. Today Homes Noida Pvt. Ltd., C.P. (IB) No. 923(PB)/2018, National Company Law Tribunal (Principal Bench, New Delhi) (2025).

<sup>43</sup> Rachna Singh & Anr. v. Umang Realtech Pvt. Ltd., C.P. (IB) No. 1564(PB)/2018, National Company Law Tribunal (Principal Bench, New Delhi) (2019).

<sup>44</sup> Nandkishore Harikishan Attal v. Marvel Landmarks Pvt. Ltd., C.P. (IB) No. 617/MB/2019, National Company Law Tribunal (Mumbai Bench) (2019)

## **CHALLENGES AT THE INTERSECTION OF RERA AND IBC**

The intersection of RERA and IBC highlights deep-rooted challenges in balancing creditor rights with consumer protection as follows-

### **1. FORUM SHOPPING AND JURISDICTIONAL OVERLAPS:**

A key issue lies in the overlap between RERA's consumer-centric regulatory framework and IBC's insolvency mechanisms. Developers, creditors, and homebuyers frequently choose forums that align with their interests, a practice termed forum shopping. Developers may prefer IBC proceedings, which emphasize financial restructuring, while homebuyers often approach RERA, which is focused towards ensuring possession and project completion. This undermines the complementary intent of the statutes and causes delays, inefficiencies, and jurisdictional disputes, often requiring judicial intervention to decide precedence.

### **2. CONFLICTS IN PRIORITY BETWEEN CREDITORS AND ALLOTTEES:**

Another concern is the conflict in priority between financial creditors and allottees. Banks and other financial institutions, as secured creditors, prioritize debt recovery and asset value maximization, while homebuyers primarily seek possession of their homes. Although the Supreme Court in Pioneer Urban recognized allottees as financial creditors under the IBC, their dispersed nature often leaves them with limited influence in the Committee of Creditors, which remains dominated by institutional lenders. This creates a recurring conflict, as resolution plans may satisfy the repayment interests of banks while overlooking the delivery concerns of allottees, highlighting the lack of a coherent statutory framework to reconcile these competing priorities.

### **3. DELAY IN PROJECT RESOLUTION:**

The dual application of RERA and IBC often delays the resolution of stalled projects. While RERA mandates project completion within specified timelines, IBC prioritizes debt restructuring. Once insolvency proceedings begin, insolvency professionals or committees may prioritize financial recovery over project delivery, further postponing possession. Moreover, the ambiguity of whether RERA orders can be enforced during the moratorium under Section 14 of IBC has further complicated matters. Courts and tribunals are compelled to decide such issues case-by-case, creating prolonged uncertainty for stakeholders.

#### **4. DIVERGENT APPROACHES OF RERA AND IBC:**

The two frameworks also differ fundamentally in orientation. RERA focuses on consumer protection, accountability, and timely possession, while IBC is creditor-centric, oriented toward maximizing recovery through restructuring or liquidation. This divergence creates friction in real estate insolvency.

A striking example is the **Amrapali**<sup>45</sup> judgment of the Supreme Court. In dealing with thousands of aggrieved homebuyers who had paid substantial sums yet remained without possession, the Court recognized that allowing insolvency proceedings under the IBC to run their natural course would undermine the remedial objectives of RERA. To reconcile this conflict, the Court directed the National Building Construction Corporation (NBCC) to step in and complete the stalled projects, thereby safeguarding the rights of allottees while the insolvency resolution process continued. This intervention was not only pragmatic but also indicative of judicial creativity in aligning the two statutes, ensuring that consumer interests were not sacrificed at the cost of creditor recovery.

Unless legislative or regulatory measures establish a precise mechanism for harmonizing these frameworks, homebuyers, developers, and creditors will continue to face uncertainty at the crossroads of RERA and IBC.

### **RECOMMENDATIONS AND PROPOSED ALTERNATIVES**

Addressing the intersectional challenges between the Real Estate (Regulation and Development) Act, 2016 (RERA) and the Insolvency and Bankruptcy Code, 2016 (IBC) requires a comprehensive reform strategy. Such reforms must include legislative amendments, judicial guidelines, policy interventions, and alternative dispute resolution mechanisms. The goal is to create a cohesive framework that safeguards the rights of allottees while balancing the interests of developers and creditors.

#### **1. INTEGRATION OF RERA AND IBC MECHANISMS:**

One major reform is integrating RERA decisions into the insolvency framework so that adjudications under RERA remain enforceable during corporate insolvency resolution processes. A hybrid approach could mandate that resolution plans necessarily include provisions for project completion. This could be achieved by requiring an escrow

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<sup>45</sup> Amrapali Group of Companies v. Union of India, (2019) 13 SCC 725.

mechanism, where funds are specifically earmarked for construction, thereby preventing diversion. Judicial precedents have already emphasized the need to balance creditor recovery with the protection of homebuyers' rights, indicating that courts can play a pivotal role in clarifying these overlaps.

## **2. STRENGTHENING THE FINANCIAL POSITION OF ALLOTTEES:**

Reforms must recognize the unique position of homebuyers as financial stakeholders. Amendments to IBC could grant allottees a special status as "allottee financial creditors", ensuring their deposits are safeguarded in escrow accounts. In the event of insolvency, these funds could either be refunded or directed exclusively toward the completion of stalled projects. This would place allottees at par with other secured creditors, enhancing their protection and reducing their vulnerability in insolvency scenarios.

## **3. PRO-RATA MORTGAGE AND OWNERSHIP MODELS:**

Adopting pro-rata mortgage models can further safeguard homebuyers. Under this system, payments made by allottees translate into proportional ownership rights in the project's land or constructed units. For example, a buyer who has paid 40% of the unit's cost would hold a 40% mortgage interest. Such fractional ownership frameworks are already in practice in jurisdictions like Singapore, where they ensure repayment priority in the event of project failure. Comparative models, such as Chapter 11 bankruptcy in the United States<sup>46</sup> also provide useful guidance, as they allow businesses to reorganize while continuing operations, balancing developer viability with consumer interests.

## **4. GOVERNMENT-BACKED RELIEF MECHANISMS:**

To protect stranded homebuyers in cases of large-scale developer insolvency, a centralized relief fund should be established. This could be financed through developer contributions, transaction-based levies, or real estate taxes. The United Arab Emirates' Real Estate Regulatory Agency operates a compensation fund for distressed buyers, offering a valuable model for India. Additionally, public sector entities like NBCC and state housing boards, as demonstrated in the Amrapali and Unitech cases, can be tasked with completing stalled projects to ensure timely possession.

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<sup>46</sup> 11 U.S.C. §§ 1101–1195 (2025).

#### **5. PROJECT -SPECIFIC INSOLVENCY FRAMEWORK:**

India requires a project-specific insolvency framework for real estate developers. Default in one project should not automatically trigger insolvency for the entire company, as this disrupts other projects that may be progressing smoothly. A project-wise insolvency mechanism would protect assets, ensure continuity, and prevent the collapse of the developer's entire portfolio. Alongside a robust pre-insolvency framework, including pre-packaged insolvency arrangements, could allow early intervention and prevent disputes from escalating into full-scale insolvency.

#### **6. REFORM OF ADVANCE AMOUNT AND ESCROW REGULATIONS:**

Current provisions under RERA require that 70% of advance payments from buyers be deposited in a separate account. However, weak monitoring has allowed misuse through fraudulent certifications and fund diversion. To prevent such malpractice:

- Withdrawals should only be permitted upon reaching critical stages of construction.
- Initial stages should be funded by the developer's equity or borrowings, not buyer advances.
- Independent third-party audits and government oversight should certify withdrawals.
- Advance amounts must remain refundable if the project stalls and the developer becomes insolvent.

#### **7. STREAMLINING DISPUTE RESOLUTION:**

Alternative Dispute Resolution (ADR) mechanisms, particularly mediation, should be institutionalized for real estate disputes. Mediation offers a quicker and cost-effective means of resolving conflicts, though safeguards must be in place to protect weaker parties, such as individual allottees. Furthermore, greater coordination between RERA authorities and the National Company Law Tribunal (NCLT) could help streamline remedies, reduce forum shopping, and avoid duplication of proceedings.

#### **8. CLARIFICATION OF OVERLAPPING JURISDICTIONS:**

Legislative or judicial interventions should clearly define the hierarchy of claims and remedies available under RERA and IBC. Clear guidance on overlapping jurisdictions will reduce forum shopping, minimize legal ambiguity, and enhance consistency in

decision-making.

These recommendations collectively aim to bridge the gaps between RERA and IBC, ensuring greater protection for allottees while promoting accountability among developers. A cohesive approach would strengthen investor confidence and support the sustainable growth of the real estate sector.

## **CONCEPT OF REVERSE CIRP MECHANISM**

The Corporate Insolvency Resolution Process (CIRP), operating under the Insolvency and Bankruptcy Code, 2016 (IBC), was principally designed to provide a transparent and time-bound mechanism for resolving corporate insolvency. Upon initiation of CIRP, an Interim Resolution Professional (IRP) is appointed to take control of the debtor's operations, and a moratorium is imposed on all legal proceedings. The IRP then constitutes the Committee of Creditors (CoC), which considers resolution plans for either the rehabilitation of the corporate debtor or the liquidation of its assets. While this mechanism has enhanced transparency, discipline, and efficiency in insolvency proceedings, its rigid application in the real estate sector has produced complex challenges. Even after homebuyers being recognized as financial creditors under the 2018 amendment to the IBC, the commencement of CIRP often results in long delays in possession and completion of projects, trapping them in financial distress. Unlike institutional financial creditors, homebuyers often lack the commercial expertise to assess complex resolution plans, as their primary expectation is the delivery of their homes rather than monetary recovery.

To counter these difficulties, the National Company Law Appellate Tribunal (NCLAT) has developed the innovative concept of the Reverse Corporate Insolvency Resolution Process (Reverse CIRP), a mechanism not expressly derived from the Insolvency and Bankruptcy Code (IBC). This framework allows promoters to fund the completion of stalled projects as lenders while avoiding the full-scale CIRP of the entire company. Since the Code does not separately address the unique difficulties of the real estate sector, courts have sought to adapt insolvency procedures to suit its peculiarities by devising flexible approaches such as reverse CIRP and project-wise CIRP.

The project-wise CIRP confines insolvency resolution strictly to those real estate projects against which CIRP has been initiated by allottees, financial creditors, or operational creditors,

without extending its impact to other projects under the same developer that may involve distinct landowners, financial institutions, or homebuyers. In contrast, reverse CIRP operates as a promoter-led initiative where the existing promoter collaborates with stakeholders under the supervision of insolvency professionals to clear outstanding debts and ensure project completion. Both mechanisms ultimately aim to safeguard the interests of all stakeholders by maximizing value and facilitating the timely completion of projects, thereby securing the prompt delivery of flats to the allottees.

The concept was first crystallized in **Flat Buyers Association Winter Hills v. Umang Realtech Pvt. Ltd.**<sup>47</sup>, where the NCLAT faced the predicament of hundreds of allottees awaiting delivery of flats in the “Winter Hills” project. The Tribunal concluded that invoking a traditional CIRP would worsen the situations of homebuyers, thereby permitted the erstwhile promoter, Uppal Housing Pvt. Ltd., to finance project completion under the Resolution Professional’s oversight. Crucially, the Tribunal restricted the insolvency process to the distressed project alone, without extending it to the developer’s other ventures. This judgment thus laid down a model for construction-specific insolvency resolution, combining legal accountability with a pragmatic focus on project delivery.

Subsequent rulings consolidated this approach. In **Rajesh Goyal v. Babita Gupta**<sup>48</sup>, the NCLAT directed the promoter to contribute funds as a financial creditor, reinforcing the promoter-led nature of Reverse CIRP and underscoring its role in avoiding unnecessary liquidation. Similarly, in **Ram Kishor Arora v. Union Bank of India (the Supertech case)**<sup>49</sup>, the NCLAT addressed concerns of fund misuse by directing that receivables be deposited into a separate account, thereby aligning Reverse CIRP with RERA’s requirement that 70% of project funds be reserved for construction. These cases illustrate the judiciary’s sustained effort to tailor insolvency law to the complexities of the real estate sector.

Nevertheless, the legal validity of Reverse CIRP remains contentious. Its judicial origins raise questions of compatibility with the statutory framework of the IBC, particularly Section 29A<sup>50</sup>, which disqualifies defaulting promoters from participating in the resolution process and allows

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<sup>47</sup> Flat Buyers Ass’n Winter Hills v. Umang Realtech Pvt. Ltd., Comp. Appeal (AT) (Insolvency) No. 926 of 2019, NCLAT (2020).

<sup>48</sup> Rajesh Goyal v. Babita Gupta, Comp. Appeal (AT) (Insolvency) No. 1056 of 2019, NCLAT (2020).

<sup>49</sup> Ram Kishor Arora v. Union Bank of India, Comp. App. (AT) (Insolvency) No. 406 of 2022, NCLAT (2025).

<sup>50</sup> The Insolvency and Bankruptcy Code, No. 31 of 2016, § 29A, INDIA CODE (2016).

promoters to fund stalled projects, even as lenders, risks blurring this prohibition. Moreover, privileging promoters who infuse funds as financial creditors may disturb the carefully structured priority of claims under the Code. Another challenge is the lack of a consistent monitoring mechanism to prevent diversion of funds, as high-profile instances such as *Supertech* have demonstrated. While courts have introduced safeguards, including separate accounts for receivables, the absence of codified rules renders the application of Reverse CIRP dependent on judicial discretion and the facts of individual cases, leading to legal uncertainty.

Acknowledging these gaps, the Insolvency and Bankruptcy Board of India (IBBI) introduced the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2024<sup>51</sup>, which sought to institutionalize project-wise CIRP for real estate companies. This regulatory step, inspired by the jurisprudential evolution of Reverse CIRP, restricts insolvency to the specific distressed project rather than the developer's entire business, thereby ensuring targeted relief while preserving overall financial stability.

Most recently, in **Satish Chander Verma v. Grand Reality Pvt. Ltd.**<sup>52</sup>, the NCLAT reinforced the legitimacy of Reverse CIRP. Invoking its inherent powers under Rule 11 of the NCLAT Rules, 2016<sup>53</sup>, the Tribunal concluded the insolvency proceedings once the promoter successfully completed the project under judicial supervision. Following the issuance of occupation certificates and settlement of all stakeholder claims, the Resolution Professional was formally discharged. This marked a significant moment, as the Tribunal effectively recognized Reverse CIRP as a viable mechanism for project-specific resolution. Despite its practical success in completing stalled projects and protecting homebuyers rights, Reverse CIRP continues to operate on judicial intervention alone, underscoring the urgent need for legislative recognition to ensure consistency and sustainability.

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<sup>51</sup> Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2024, Insolvency and Bankruptcy Board of India, Notification No. IBBI/2024-25/GN/REG/001, 24 Sept. 2024.

<sup>52</sup> *Satish Chander Verma v. Grand Reality Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 289 of 2023, National Company Law Appellate Tribunal (2025).

<sup>53</sup> National Company Law Appellate Tribunal Rules, 2016, R. 11, INDIA GAZETTE (2016).

## CONCLUSION

The evolution of India's real estate insolvency framework reflects both progress and persistent challenges. While legislative and judicial reforms have sought to reconcile consumer protection with creditor interests, significant systemic gaps remain in ensuring efficiency, transparency, and effective resolution. Mechanisms such as project-specific CIRP and Reverse CIRP demonstrate the potential of adaptive insolvency solutions, highlighting the importance of flexibility in addressing sector-specific complexities. These initiatives underscore a critical principle, effective resolution in real estate requires not only legal clarity but also operational strategies that secure project continuity and stakeholder confidence.

Moreover, the challenges faced by homebuyers in insolvency proceedings emphasizes the need for institutional safeguards that go beyond statutory recognition. Structured oversight of funds, enhanced representation in decision-making processes, and dedicated monitoring frameworks can reduce risks of mismanagement and improve the prospects of project completion. Strengthening these mechanisms will also foster trust between developers, investors, and consumers, essential for long-term growth of the sector.

Looking ahead, the real estate sector must embrace an integrated approach that combines regulatory prudence with market-driven solutions. Establishing clear procedural frameworks, promoting early intervention mechanisms, and institutionalizing innovative models such as Reverse CIRP can collectively create a more resilient system. Ultimately, the goal is to cultivate a real estate ecosystem where project completion, financial stability, and consumer confidence coexist, ensuring that homebuyers' rights and corporate interests are safeguarded. Such a harmonized framework will not only resolve existing disputes efficiently but also strengthen India's real estate market for future challenges, making it transparent, accountable, and sustainable.