



INSOLVENCY & BANKRUPTCY

IBC and Homebuyers Protection

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The 2018 amendment in the Insolvency and Banking Code transformed the rights of the real estate allottees by recognizing them as financial creditors, if there was assured return in which case it [1] would thus giving them a clear entitlement to participate and vote in the Committee of Creditors (COC) during the Corporate Insolvency Resolution Process (CIRP) but in practice, their interests remain secondary to those large institutional lenders who often dominate the COC. The courts repeatedly held that the delay in handover of the real estate premise to will amount to default under the IBC. [2] The Courts repeatedly held that the developer will have to return the money of the homebuyer, if the former does not hand over the property in the said deadline.[3] The developer has to deliver on their promise without delay, if they do not want any insolvency procedure against them. Moreover, If the company is undergoing a resolution process, then a moratorium is imposed, which means that all other cases or the suits against the corporate debtor will be stayed.

The 2018 amendment found constitutional validation in the Supreme Court's decision in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India* (2019), which, while affirming homebuyers' inclusion as financial creditors, categorized them as unsecured creditors. The Court acknowledged the massive financial exposure of allottees often funding up to 100% of real estate projects, but did not delve deeply into their contractual and proprietary rights, deviating from the complex reality involving tripartite loan agreements and security interests created via No Objection Certificates (NOCs). This classification as unsecured creditors has been criticized for limiting homebuyers' recovery prospects and decision-making power compared to secured financial institutions like project lenders who dominate the CoC.

In *Vishal Chelani & Ors v. Debashis Nanda RP Bulland Buildtech Pvt. Ltd.*, the Tribunal held that once the Recovery Certificate has been issued, the party in the possession of the Recovery Certificate is considered as financial creditor. The Insolvency and Bankruptcy Code (IBC), 2016, ushered in a transformative era in India's insolvency framework, consolidating various fragmented laws and establishing a credible, time-bound mechanism for corporate resolution and liquidation.

Initially, the IBC categorized creditors strictly as financial or operational, with real estate allottees falling outside this scope and thus without any right to participate meaningfully in insolvency proceedings. Dismayed homebuyers protested during the JIL [4] insolvency process, demanding inclusion as financial creditors with a voice in the Committee of Creditors (CoC), which oversees the resolution of companies under the IBC. This led to the Insolvency and Bankruptcy Board of India (IBBI) amending the CIRP regulations in 2017 to introduce 'Form F' and later 'Form CA' to enable allottees to file claims, albeit without initiation rights. Recognizing the inherent injustice, the government amended the IBC in 2018 to include real estate allottees as financial creditors by expanding the definition of financial debt and linking it to payments under the Real Estate (Regulation and Development) Act (RERA), 2016. Consequently, homebuyers gained statutory standing to participate in insolvency proceedings and voting rights in the CoC through appointed representatives.

Further judicial clarity was provided in *Mansi Brar Fernandes v. Shubha Sharma* (2020), [5] which restricted speculative investors from initiating insolvency proceedings, protecting bona fide homebuyers from frivolous petitions. The *Himanshu Singh & Ors* [6] judgment further exposed exploitation by a builder-bank nexus that forced homebuyers to continue EMI without possession, highlighting ongoing challenges in protecting homebuyers' rights.

In parallel, regulatory provisions like IBBI's 2025 insertion of Regulation 4-E mandate CoC approval (at least 66%) before possession can be handed over, introducing hurdles that disproportionately empower project lenders and have invited criticism for enabling further homebuyer suppression during insolvency.

The practical administration of insolvency processes reveals glaring inequities. Resolution professionals often exclude homebuyers who fail to timely file claims, even when these allottees' unpaid dues have been factored into project valuations, exemplifying a 'double fraud' where such buyers lose both value and possession. The project lenders' dominant participation in CoC and limited regulatory accountability deepen these disparities. Homebuyers receive interest at a capped 8% p.a. while project lenders impose significantly higher, sometimes exorbitant rates, expanding homebuyers' financial woes. Moreover, inadequately remunerated authorized representatives of homebuyers, some simultaneously involved with resolution professionals for banks, raise concerns about independence and effectiveness in representing homebuyers' interests.

Alongside IBC provisions, the Real Estate (Regulation and Development) Act, 2016 (RERA) complements homebuyer protections by mandating transparency, timely project completion, and recourse through compensation or refund for delays, defects, or false representations. Together, IBC and RERA form critical pillars in addressing homebuyers' rights, though their integration demands further consolidation.

Legal scholarship and emerging jurisprudence invite consideration of categorizing homebuyers as secured creditors. The contractual right to a specific immovable flat, reinforced by the statutory debt arising on non-delivery or delay under RERA, resembles a mortgage or floating charge rendering homebuyers' interests proprietary. The NCLAT's *Flat Buyers Association* order [7] introduced the innovative 'Reverse CIRP' allowing alternate developers to complete projects, preserving homebuyers' possession rights despite the corporate debtor's financial distress. However, this doctrine's wide applicability remains contested, and no definitive judicial consensus yet formally elevates homebuyers to secured creditor status, leaving ambiguity in their recovery priorities.

Recent filings and judgments between 2023–2025 affirm positive trends, 1) The Supreme Court's recognition of verified homebuyer claims to flat possession, 2) Courts urging inclusion of unfiled but recorded claims in information memoranda, and legislative tweaks enhancing homebuyer participation all signal progress. Yet, systemic challenges persist due to fragmented homebuyer groups, procedural complexities, opaque valuations, and financial dominance of project lenders.

Addressing these multifaceted issues necessitates reforms to boost homebuyers' voting power in CoC, legally recognize their secured status, equalize interest rates, and empower regulators like IBBI to enforce transparency and penalize promoter malfeasance. Only through such comprehensive reforms can homebuyers, the most affected stakeholders who underwrite India's housing sector, find justice and have their constitutional right to shelter meaningfully upheld within the insolvency framework.

In summation, while the IBC framework has evolved considerably toward protecting homebuyers as evidenced by progressive case law including *Jaypee Orchard Resident Welfare Society v. Union of India*, *Pioneer Urban Land*, *Mansi Brar Fernandes*, *Swiss Ribbons*, *Himanshu Singh*, *Flat Buyers Association v. Umang Realtech*, and others the journey toward full equity, inclusion, and protection is ongoing. The law must continue to adapt dynamically, bridging gaps between legislative intention, judicial pronouncements, and on-ground realities, to secure homebuyers' rights in India's increasingly complex insolvency landscape.

[1] Anil Mahindro & Anr v. Earth Iconic Infrastructure Pvt. Ltd

[2] Alka Agarwal v. Parsvanath landmark Developers Pvt. Ltd

[3] Neeraj Gupta v. Emmar MGF Land Ltd.

[4] Jaypee Infratech Ltd v. IDBI Bank Ltd.

[5] Mansi Brar Fernandes v. Shubha Sharma

[6] Himashu Singh & Ors v. Union of India

[7] Flat Buyers Association v. Umang Realtech

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