

Homebuyers and Indian insolvency law: unravelling the interplay and evolution

Souvik Ganguly

Acuity Law, Mumbai

Prachi Tandon

Acuity Law, Mumbai

Indian insolvency law has undergone a significant shift in addressing homebuyer distress. This article examines three key phases of this transformation: statutory recognition of homebuyers as financial creditors; the introduction of safeguards against the misuse of provisions enabling homebuyers to initiate insolvency; and recent reforms, including project-wise resolution. Further, the article argues that project-wise resolutions, while prioritising completion and possession over liquidation, also create complex challenges around governance, promoter participation and asset fragmentation. Against this backdrop, a calibrated approach is advocated, anchoring routine disputes under the Real Estate (Regulation and Development) Act, 2016 and reserving the Insolvency and Bankruptcy Code, 2016 as a last-resort remedy for genuine insolvency cases.

Introduction

Real estate in India, particularly residential real estate, is a combination of dreams meeting reality. Insolvency in this sector has long been a contentious issue, as it sits at the intersection of economic policy, social justice and creditor rights. For homebuyers, the insolvency of builders, or their inability to fulfil their promise of delivering the home/unit to the homebuyer, is not an abstract financial or contractual breach event, but a deeply personal crisis, one that can convert a long-awaited home into an uncertain asset locked in litigation. For builders, it involves tackling multiple litigations initiated by homebuyers aimed at either obtaining possession of the home/unit or a refund of the money paid as an advance.

In this short piece, we analyse the interplay between distressed homebuyers and the Insolvency and Bankruptcy Code, 2016 (the 'IBC'), and how this has unravelled over the years.

History of real estate insolvency and homebuyers' place in it

When the IBC was enacted in 2016, it did not specifically treat homebuyers as financial creditors, which led to uncertainty over whether the money advanced by them to a builder for purchasing their homes or units and so on could qualify as a debt

under the IBC. Over time, concerns about this gap prompted Parliament to insert an explanation to section 5(8)(f) of the IBC through an amendment in 2018. This explanation created a statutory fiction whereby amounts collected from allottees in real estate projects were to be regarded as a financial debt, and that such allottees would be regarded as financial creditors.

A constitutional challenge to this amendment was mounted but eventually rejected by the Supreme Court in *Pioneer Urban Land and Infrastructure Ltd v Union of India*.¹ The Court emphasised that amounts paid to builders embody the time value of money and have the commercial effect of borrowing because developers use such amounts as a source of finance for the project. This legislative and judicial shift acknowledges that purchasers effectively fund construction while bearing delay and insolvency risk.

However, this reform produced a new, second-order difficulty: dispersed allottees increasingly began to deploy the IBC as a pressure tool for individual refunds, even in cases where the underlying real estate project remained capable of revival or where the delay could be resolved through sectoral and consumer mechanisms. To address this, the IBC was amended in 2020 and a threshold was introduced for real estate allottees to initiate insolvency proceedings. The threshold stipulates

that a minimum number of allottees – at least 100, or not less than ten per cent of the total allottees in the same project, whichever is lower – must act jointly when seeking to trigger insolvency resolution against a developer. This threshold was subsequently upheld by the Supreme Court in *Manish Kumar v Union of India*² as a constitutionally permissible safeguard against vexatious or speculative filings, intended to ensure that homebuyer-driven insolvency retains its character as a collective, last-resort remedy rather than a substitute for performance claims or consumer proceedings.

Alongside these statutory recalibrations to address the explicit inclusion of homebuyers in the framework of the IBC, the tribunals fashioned an innovative form of real estate insolvency resolution that is the reverse corporate insolvency resolution process (CIRP) for distressed real estate ventures. In *Flat Buyers Association Winter Hills-77, Gurugram v Umang Realtech Pvt. Ltd through IRP & Ors*³ and later cases, the National Company Law Appellate Tribunal experimented with confining the insolvency exercise to the specific project in default, ringfencing other projects of the same developer, and allowing promoter-linked entities to infuse funds as quasi lenders under the monitoring of the resolution professional (RP) so that construction could be completed and possession delivered. The Supreme Court has also, in cases like *Indiabulls Asset Reconstruction Company Ltd v Ram Kishore Arora & Ors*,⁴ upheld the concept of project-wise CIRP.

This approach tried to align the project-based nature of real estate with the IBC by prioritising project completion over liquidation. However, it also revealed practical and legal tensions, especially because section 29A of the IBC bars errant promoters from taking part in the resolution process, and the IBC did not expressly provide for a project-level insolvency process. As a result, the concept of project-wise CIRP was viewed as a useful, yet legally fragile attempt to bridge the gap between the IBC's structure and the on-ground realities of the real estate sector. To address this fissure, an amendment was brought in 2024.

The refinement era in residential real estate insolvency

Amendments to the CIRP regulations

In 2024, the Insolvency and Bankruptcy Board of India amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (the 'CIRP Regulations') to address, inter alia, long-standing challenges in residential insolvency cases. Key among these reforms is the power of the

RP to invite separate resolution plans for individual residential projects or clusters of projects, enabling targeted revival strategies. Further, the amendment also mandated that each real estate project of a corporate debtor maintain a distinct bank account operated by the RP to ensure financial segregation and prevent the cross-utilisation of funds.

Similarly, even in 2025, amendments were introduced to the CIRP Regulations to address challenges faced by homebuyers. Inter alia, this amendment empowers the RP to hand over possession of completed plots, apartments or buildings to homebuyers on their request, subject to a committee of creditors (CoC) approval by a two-thirds majority and the fulfilment of the buyer's contractual obligations. Further, statutory authorities related to real estate development may participate in CoC meetings as non-voting members. Furthermore, to promote homebuyer-driven resolution plans, the CoC for a corporate debtor in the real estate sector, representing at least ten per cent in value or 100 creditors, may relax the eligibility and deposit requirements for associations of allottees to propose resolution plans.

Case law evolution

From a case law standpoint, there has been significant change. The focus is no longer only on whether homebuyers are financial creditors but also on which buyer qualifies for that status and in what kind of project. Recent decisions such as *Mansi Brar Fernandes v Shubha Sharma & Anr*⁵ at the Supreme Court level and *Harisharan Hi-Tech Industries v Birendra Kumar Agrawal, Interim Resolution Professional of Renaissance Indus Infra Pvt Ltd*⁶ at the National Company Law Tribunal (NCLT) level exemplify this shift.

In *Mansi Brar*, the Supreme Court addressed speculative participation in housing projects. It reiterated that allottees are, by statute, treated as financial creditors, but clarified that this legislative protection is aimed at genuine purchasers seeking a home, not investors designing high return, buy-back or assured interest products with no real intention of taking possession. The Court mapped out practical signposts to separate the two, such as whether the arrangement carries assured or premium returns; the stage of the project when the buyer enters and exits; and how the allottee behaves in relation to possession and other remedies. On that analysis, the Court held that investors using such structures cannot rely on the IBC as a personalised recovery tool; they may file and prove claims once CIRP is underway, but they cannot be the ones to push the developer into insolvency to facilitate a strategic exit. This gives

adjudicating authorities a more disciplined framework for screening homebuyer applications.

The NCLT case referred to above develops the law from the perspective of project type. The question there was whether buyers of units in an industrial estate, who were also promised a fixed monthly return, could benefit from the deeming fiction created for real estate allottees. The NCLT differentiated between real estate projects centred on residential apartments or plots and industrial schemes whose primary function is manufacturing, warehousing or similar commercial use. On that basis, it held that such industrial purchasers are not 'allottees' like homebuyers who intend to possess and therefore cannot invoke the IBC against the builder. Nonetheless, the NCLT held that their claims can still be recognised in CIRP.

Taken together, these 2025 decisions show the system moving from broad inclusion to variegated categorisation. Residential allottees are now filtered through intent; industrial and commercial unit buyers are evaluated by project character. The result is a more layered insolvency map in which genuine homebuyers in residential projects retain strong financial creditor status and consequent rights to participate in the CoC in case CIRP is initiated; speculative investors in such projects are precluded from initiating CIRP and are confined to claims in an ongoing CIRP; and buyers in industrial projects are acknowledged as stakeholders, but not elevated to the same priority as genuine homebuyers and given the right to initiate CIRP.

Project-wise CIRP: promise and pitfalls

Regulatory reforms and judicial signals now converge around project-wise CIRP as the preferred template for real estate insolvencies. The 2024 and 2025 amendments to the CIRP Regulations accommodate and formalise project-wise CIRP, which was tested through judicial pronouncements. Project-wise CIRP is normatively attractive because it aligns the unit of insolvency with the unit of consumer expectation: the particular project in which an allottee has invested, where the meaningful remedy is completion and possession rather than total restructuring of the insolvent company.

At the same time, project-wise CIRP is fraught with challenges that cannot be ignored. First, promoter re-entry remains a live concern. Many project-wise or reverse CIRP structures depend on promoter-linked financing to complete construction, which can blur the line between permissible funding and effective control; sit uncomfortably with section 29A's disqualification of errant promoters; and create perceptions of back-door rehabilitation. Second,

carving a corporate debtor into multiple project-wise processes risks fragmenting its estate and creditor pool, particularly where land, common amenities, brand value and financing may act as collateral across projects. This raises complex questions about valuation, the allocation of shared assets and overheads, and the ranking of competing claims from different projects whose fortunes are intertwined.

Third, the governance and capacity demands of project-wise CIRP are significant. RPs must operate multiple project-specific accounts, monitor separate cashflows, coordinate with diverse CoC configurations and implement granular monitoring arrangements, while regulators like the real estate regulatory authorities would be expected to engage more actively with insolvency forums. Without adequate institutional capacity, there is a real risk that project-wise CIRP may generate delay and confusion rather than speeding up the process and ensuring clarity and completion.

Way forward: Real Estate (Regulation and Development) Act, 2016 (RERA) first, the IBC last and project-wise insolvency resolution with safeguards

Read together, the legislative amendments, tribunal innovations and 2025 decisions reveal an insolvency regime that is more coherent, project-aware and sensitive to the distinct intentions of stakeholders. The system has moved from homebuyer exclusion to blanket inclusion as financial creditors, and now to a differentiated map distinguishing genuine residential allottees from speculative investors and commercial/industrial buyers. Project-wise CIRP, now finding a place in the CIRP Regulations and informed by reverse-CIRP jurisprudence, is a laudable development because it aligns remedies with the project that matters to allottees, and prioritises completion and possession over liquidation and haircuts. Yet, it is also structurally demanding: it heightens the risk of promoter dominance; complicates the allocation of shared assets and creditor rights across projects; and places heavy governance burdens on RPs, CoCs and real estate regulators.

Against this background, *Mansi Brar's* insistence that the mechanism under RERA should be the primary option for routine homebuyer disputes, with the IBC reserved as a remedy of last resort for genuine corporate insolvency affecting bona fide residential allottees, offers a crucial ordering principle. Properly implemented, that principle allows insolvency law to accommodate real estate distress within a carefully delimited, project-aware architecture that

complements rather than displaces sectoral regulation: within a framework in which homebuyers receive meaningful relief, solvent projects are shielded from collateral damage, and the IBC remains focused on its core function of time-bound, value-maximising corporate resolution.

Notes

- 1 (2019) 8 SCC 416.
- 2 (2021) 5 SCC 1.
- 3 Order dated 4 February 2020 in Company Appeal (AT) (Insolvency) No 926 of 2019.
- 4 2023 SCC OnLine SC 612.
- 5 2025 INSC 1110.
- 6 Order dated 26 November 2025 in IA No 4320 of 2023 in CP No 979(MB)2022.

About the authors

Souvik Ganguly is the founder and managing partner of Acuity Law, Mumbai, and has worked on some of the leading distressed M&A/corporate rescues in India, including Nippon Steel's acquisition of Essar Steel together with Arcelor Mittal. He can be contacted at souvik.ganguly@acuitylaw.co.in.

Prachi Tandon is an associate at Acuity Law, Mumbai and can be contacted at prachi.tandon@acuitylaw.co.in.