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Journey of Home Buyers under IBC: Examining their Recognition and Role in Real Estate through the Evolving Insolvency Framework

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Received 18 August 2025; *Accepted* 18 September 2025; *Published* 22 September 2025

Homebuyers have been facing many systemic challenges under the Insolvency and Bankruptcy Code, 2016, particularly when the developers delay the projects for years. The special position of the IBC and the Real Estate (Regulation and Development) Act, 2016, has led to overlapping jurisdictions and conflicting remedies, leaving homeowners in a vulnerable position. Homebuyers, which have been a significant financial contributor, lacked standing in the CIRP process due to exclusion from the definition of either financial or operational creditor. Legislatures and policymakers recognised the challenges and issues faced by homeowners, leading to the amendment of 2018. However, this shift also brought new complexities, prompting further policy reforms to prevent the misuse of the insolvency process. This paper delves into the evolving legal position of homebuyers under the IBC and critically analyses the emergence of the Reverse Corporate Insolvency Resolution Process. Although Reverse CIRP is an innovative approach to balance the interests of stakeholders, its lack of a statutory foundation raises concerns regarding procedural integrity and legal consistency. The study highlights the need for calibrated legislative intervention to harmonise equitable remedies with the structural mandates of the IBC.

Keywords: RERA, IBC, CRIP, homeowners.

INTRODUCTION

‘The rights of every man are diminished when the rights of one man are threatened.’

— John F. Kennedy.¹

In India, the real estate sector has been recognised as a cornerstone of the nation’s economic development and growth. Millions of homebuyers invest their hard-earned money with the hope and trust of securing a home. However, when real estate developers default in fulfilling their contractual obligations, homebuyers are often left without any effective legal remedy to reclaim their rights. Despite their substantial financial contributions, homebuyers were initially excluded from the financial creditor or Operational Creditor under the Insolvency and Bankruptcy Code, 2016², thereby depriving them of the right to participate in insolvency proceedings, highlighting a significant gap in the legal framework. The evolving jurisprudence, through legislative amendments, judicial interventions and regulatory innovations, has enabled the inclusion of homebuyers within the insolvency regime.

This paper examines the transformation of homebuyers from silent sufferers to acknowledged financial creditors under the IBC framework. It delves into the various judicial pronouncements that contributed to this shift, and also analyses the statutory interventions introduced through the 2018 and 2020 Amendments that sought to secure creditors’ rights and safeguards from developers. It further critically evaluates the jurisprudential innovation of the Reverse CIRP, examining how such a mechanism attempts to reconcile the need for equitable relief for affected homebuyers. By examining the landmark rulings and regulatory developments, it highlights the ongoing efforts to balance the equitable interests of stakeholders with the structural rigidity of the insolvency framework. Ultimately, the study aims to establish that protecting homebuyers’ rights is not merely a regulatory obligation but a constitutional imperative.

¹ John F Kennedy, ‘Radio and Television Report to the American People on Civil Rights’ (Speech, The White House, 11 June 1963)

² Insolvency and Bankruptcy Code 2016

REAL ESTATE AND INSOLVENCY CODE: AN OVERVIEW

Sectoral Vulnerability and Legal Challenges in Real Estate Insolvency: The Real Estate sector is a prominent industry encompassing housing, retail, hospitality, and commercial properties worldwide. It plays a crucial role in the country's economic framework and has become a substantial contributor to India's economic well-being. According to the IBBI Quarterly Newsletter, as of 30th September 2023, approximately 21% of insolvency cases under the IBC pertain to the real estate sector. The number of Corporate Insolvency Resolution Process (Hereinafter referred to as CIRP) in this sector increased from an average of 208 in FY22 to 313 per quarter in FY23. However, FY24 started weakly with only 238 cases in Q1. Despite challenges such as legal battles, funding issues, and land title disputes, real estate recoveries under the IBC rose to about 19%, as reported by Anarock in their Update on IBC in Indian Real Estate.

Despite being the highest contributor to the Indian Economy, the real estate sector has encountered several challenges during insolvency proceedings. Initially, numerous discrepancies occurred within the Real Estate industry, affecting both homebuyers and builders. The homebuyers, particularly, were subjected to significant exploitation due to the statutory irregularities.

The primary challenge faced by the homebuyer included project completion delays and contracts favouring builders or developers. Absence of specific project completion dates, inadequate disclosure of sanctioned plans, failure to execute and register the sale deed, along with denial of physical possession of the flats to the allottees, despite full or substantial payment of consideration, are among various other issues that significantly impacted the interests of home buyers.³ Simultaneously, investors were discouraged from investing in real estate due to persistent delays and erosion of their capital investments.⁴

Despite being the stakeholder, homebuyers were initially not considered as financial creditors under Section 5(7) of the Insolvency and Bankruptcy Code 2016⁵, as held by the

³ Akash Aggarwal, 'PROVISIONS OF IBC IN INDIA WITH FOCUS ON REAL ESTATE SECTOR: REVERSE CIRP' (2024) 4(3) International Journal of Advanced Legal Research <<https://ijalr.in/wp-content/uploads/2024/04/PROVISIONS-OF-IBC-IN-INDIA-WITH-FOCUS-ON-REAL-ESTATE-SECTOR-rp.pdf>> accessed 15 May 2025

⁴ Uday Khare, 'Insolvency in Real Estate: A Difficult Balancing Act' (2021) JGLS Working Paper No 03/2021 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3911840> accessed 17 May 2025

⁵ Insolvency and Bankruptcy Code 2016, s 5(7)

Hon'ble NCLT in the case of *Nikhil Mehta v AMR infrastructure*⁶. Similarly, they were not considered as an Operational creditor under IBC, 2016, held by the Hon'ble NCLT in the case of *Col Vinod Awasthi v AMR Infrastructure (Col Vinod Awasthi)*⁷ and *Pawan Dubey v JBK Developers Private Limited*⁸ (Pawan Dubey). As a result, the homebuyers were prohibited from initiating the CIRP against the builder and developer who defaulted. Furthermore, they were also not permitted to participate in the Committee of Creditors (hereinafter referred to as COC) and were not assured of receiving the liquidation value as stated in the resolution plan. The IBC was enacted in 2016, and ever since then, it has undergone numerous amendments.

IBC's Original Framework and Homebuyer Exclusion: Initially, the home buyers were in a very disadvantaged position in insolvency proceedings, as they were not recognised as Financial or Operational Creditor under the IBC, 2016.⁹ This lack of express recognition hindered their ability to initiate insolvency proceedings against defaulting real estate developers. In their attempt to invoke the statutory provisions of the IBC against defaulting real estate developers, judicial interpretation became necessary to determine their classification within the statutory framework of creditors under the code.¹⁰

In the case of *Nikhil Mehta*, the Hon'ble NCLT held that the Homebuyer did not fall under the definition of financial creditors under Section 5(7) of IBC, 2016, as the debt in question was not extended in exchange for consideration reflecting the time value of money. Similarly, in the case of *Col Vinod Awasthi v AMR Infrastructure*¹⁴ (Col Vinod Awasthi) and *Pawan Dubey v JBK Developers Private Limited (Pawan Dubey)*,¹¹ the NCLT held that the 'Operational Creditor' is limited to the creditors who provide goods or services to the corporate debtor, and thus, the homebuyer did not fall within any of these categories.

As a result, since the code did not recognise homebuyers in any other category of COC at that time, they had no legal standing or protection within the insolvency framework.

⁶ *Nikhil Mehta & Sons (HUF) & Ors v AMR Infrastructure* (2024) SCC OnLine NCLT 3237

⁷ *Col Vinod Awasthi v AMR Infrastructure Ltd* (2017) CP No (IB)-10(PB)/2017 NCLT

⁸ *Pawan Dubey & Anr v J B K Developers Pvt Ltd* (2018) SCC OnLine NCLAT 615

⁹ *Ibid*

¹⁰ Jeta Shree and Sachika Vij, 'Revolutionising real estate insolvency in India' *Bar and Bench* (26 April 2025)

<<https://www.barandbench.com/columns/revolutionising-real-estate-insolvency-in-india>> accessed on 10 May 2025

¹¹ *Ibid*

Furthermore, upon admission of a corporate debtor into the CIRP, the moratorium under Section 14 of the IBC 2016¹² was imposed. This stayed all ongoing cases and prohibited the institution of any new legal actions against the corporate debtor. This statutory bar effectively precluded the homebuyer from seeking any remedy through any alternate legal forum during the pendency of the CIRP.¹³

Consequently, homebuyers had to resort to the Consumer Protection Act 1986, and its successor legislation, the Consumer Protection Act 2019,¹⁴ under which they can file a complaint against the real estate developers and seek remedies, including compensation. However, this process often involved prolonged delays in securing justice in cases involving fraud and misconduct.¹⁵

To safeguard the interests and rights of the homebuyers and to promote transparency in the real estate industry, the legislature enacted the Real Estate (Regulation and Development) Act 2016 (RERA).¹⁶ RERA introduced several regulatory measures with which developers were required to comply, such as the mandatory maintenance of escrow accounts for funds received from allottees and vested regulatory authority with the power to impose penalties and grant refunds. However, in light of Hon'ble NCLT rulings, such statutory remedies under RERA were rendered ineffective for homebuyers during the insolvency proceedings.

Despite several amendments, homebuyers were neither assured of receiving the liquidation value stipulated in the resolution plan nor permitted to participate in the CoC. In the case of *Chitra Sharma & Ors v Union of India & Ors*,¹⁷ homebuyers approached the Supreme Court under Article 32¹⁸ to protect their financial interests in the CIRP of Jaypee Infratech Ltd by its order dated 11th September 2017, the Supreme Court directed the Insolvency Resolution Professional to take necessary measures to safeguard the interests of home buyers.

¹² Insolvency and Bankruptcy Code 2016, s 14

¹³ Ministry of Finance and Corporate Affairs, *Report of the Insolvency Law Committee* (2020)

¹⁴ Consumer Protection Act 2019

¹⁵ M P Ram Mohan and Vishakha Raj, "Allottees' as financial creditors: pushing the conceptual limits of the Indian insolvency regime" (2019) Working Paper No 2019-11-0

<<https://www.iima.ac.in/sites/default/files/rnpfiles/4252520492019-11-01.pdf>> accessed 15 May 2025

¹⁶ Real Estate (Regulation and Development) Act 2016

¹⁷ *Chitra Sharma v Union of India* (2018) 18 SCC 610

¹⁸ The Constitution of India 1950, art 32

The Insolvency Law Committee also recognised that the homebuyers pay substantial sums as advances and that delays in possession can severely affect them. In *Chitra Sharma v Union of India*¹⁹, the Hon'ble Supreme Court also expressed apprehension that if homebuyers were placed in the last category of the creditor's list as per the waterfall mechanism in the insolvency resolution process, it would amount to gross injustice to the home buyers.

However, despite the enactment of the IBC 2016 and the numerous amendments introduced thereafter, no legal recognition or enforceable right was initially conferred upon homebuyers. Notwithstanding their substantial financial contributions to real estate projects, homebuyers remained without legal standing under the code, as they were neither classified as Financial Creditor nor Operational Creditor under the code. This exclusion effectively deprived them of locus standi in the CIRP, thereby revealing a significant structural deficiency in the original framework of the IBC.

THE EMERGENCE OF HOMEBUYERS AS FINANCIAL CREDITORS

Status of Homebuyers in Insolvency Process: In the case of *Bikram Chatterji v Union of India*²⁰, the Hon'ble Supreme Court, while protecting the aggrieved homebuyers of the Amrapali Group in Noida and Greater Noida, held that treating homebuyers as the last category in the waterfall mechanism under the insolvency resolution process would amount to gross injustice to them.

In an attempt to address the concerns of homebuyers, the IBBI, in exercise of its regulatory power under the Code, introduced the category of other creditors into the Insolvency and Bankruptcy for Corporate Persons, Regulation 2016 (CIRP Regulations), to facilitate the submissions and the claims of homebuyers. However, the IBC only recognises two types of creditors, financial and operational.²¹ As a result, such creditors were neither entitled to voting rights in the resolution plan nor guaranteed any minimum payment in liquidation.

¹⁹ *Chitra Sharma v Union of India* (2018) 18 SCC 610

²⁰ *Bikram Chatterji v Union of India* (2020) 16 SCC 363

²¹ Pranav Shroff, 'IBC amendment gives voice to beleaguered homebuyers' (*Law Asia*, 17 December 2018) <<https://law.asia/ibc-amendment-gives-voice-beleaguered-homebuyers>> accessed 21 September 2025

Consequently, the said regulatory measure failed to provide any substantive legal remedy to homebuyers.²²

The Insolvency Law Committee Report 2018: As the Insolvency and Bankruptcy Code 2016 initially provided no effective remedy or regulatory framework to homebuyers, they remained in a highly disadvantaged position. Their interests were neither adequately protected nor recognised, leading to significant uncertainty in the real estate sector.

Nevertheless, in the landmark case of Chitra Sharma,²³ several homebuyers who invested in projects launched by Jaypee Infratech Ltd., a subsidiary of Jaiprakash Associates Ltd., approached the Hon'ble Supreme Court, as the homebuyers' claims were placed under other creditors, which ranked below financial creditors and operational creditors in the waterfall mechanism. They challenged the validity of the provisions of the code regarding their rights under the code.²⁴

The Hon'ble SC observed that the homebuyers are vital stakeholders and the IBC 2016 does not adequately recognise their interest in the resolution process. In response, the central government constituted the Insolvency Law Committee, under the chairmanship of Injeti Srinivas, comprising 14 members. The committee observed that out of a total of 782 real estate projects across India, 215 projects were subject to delays, with the period of such delays varying from one month to 261 months. It further observed that the exclusion of the homebuyers from the definition of both financial and operational creditors deprived them of several crucial rights under the code, including the right to initiate CIRP, the right to representation on the COC, and the right to receive the liquidation value under the resolution plan.

The 2018 Amendment to the IBC: Based on the recommendations of the Insolvency Law Committee in its report dated March 26, 2018, the Government of India amended the Insolvency and Bankruptcy Code, 2016, through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018. In accordance with the ordinance, the Hon'ble Court in the

²² Swati Gandhi and Rama Sharma, 'Supreme Court upholding the status of Homebuyers as Financial Creditors: Paving a Roadmap towards Beneficial Legislative Jurisprudence' (*Indian Institute of Insolvency Professionals of ICAI*, 01 July 2022) <<https://www.iiipicai.in/wp-content/uploads/2022/07/16-21-Article-Supreme-Court-upholding-the-status-of-Homebuyers-as-Financial-Creditors-Paving-a-Roadmap-towards-Beneficial-Legislative-Jurisprudence-Swati-Gandhi-and-Rama-Sharma.pdf>> accessed 19 May 2025

²³ *Ibid*

²⁴ *Ibid*

Chitra Sharma case, by exercising its power under Article 142 of the Constitution, issued an order on August 9, 2018, providing various directions, including initiation of CIRP afresh from the date of the order, reconstituting the COC, and inclusion of homebuyers as members of the COC, in light of the provisions of the said ordinance.²⁵

On 17th August 2018, the Parliament passed the Insolvency and Bankruptcy (Second Amendment) Act 2018 (hereinafter referred to as the 2018 Amendment). The amendment significantly broadened the definition of Financial Creditor by including Real Estate Allottees as defined under section 2(d) of the Real Estate (Regulation and Development) Act 2016 (RERA). It further provided that amounts raised from homebuyers shall be deemed to have a commercial effect of a borrowing and therefore qualify as Financial Debt, by way of an explanation inserted under clause (f) of sub-Section (8) of Section 5 of the code.²⁶ This amendment gave a ray of hope to the homebuyers by statutorily recognising them as financial creditors, thereby enabling them to initiate the CIRP under section 7 of the code and to participate in the Committee of Creditors.

Judicial Recognition and Constitutional Validity: The constitutional validity of the Amendment 2018 was challenged by real estate developers before the Hon'ble Supreme Court in the case of *Pioneer Urban Land and Infrastructure Ltd. v Union of India*²⁷, on the ground that it was arbitrary, discriminatory and inappropriate. It was contended that homebuyers and other financial creditors do not fall within the same category and, therefore, cannot be treated alike, as such treatment would violate Articles 14²⁸ and 19(1)(g)²⁹ r/w Articles 19(6)³⁰, or 300-A³¹, it was further argued that homebuyers, in case of delay in possession or any other related grievances, could seek remedies under RERA, 2016, which is a sector-specific legislation that provides a comprehensive dispute resolution mechanism between builders and buyers.³²

²⁵ Sushil Kumar Antal, 'Home buyers under IBC' (*Tax Guru*, 5 February 2023) <<https://taxguru.in/corporate-law/home-buyers-ibc.html>> accessed 19 May 2025

²⁶ Khare (n 4)

²⁷ *Pioneer Urban Land and Infrastructure Ltd v Union of India* (2019) 8 SCC 416

²⁸ The Constitution of India 1950, art 14

²⁹ The Constitution of India 1950, art 19(1)(g)

³⁰ The Constitution of India 1950, art 19(6)

³¹ The Constitution of India 1950, art 300A

³² Gandhi (n 22)

Despite several objections, the Hon'ble Supreme Court upheld the constitutionality of the Amendment 2018. The Hon'ble Court, by acknowledging the existence of remedies under RERA and the Consumer Protection Act, 1986 (which has been replaced by the Consumer Protection Act, 2019), operates concurrently with the remedies available under the IBC. The Hon'ble Court observed, inter alia, that homebuyers hold a distinct position, as they finance the construction of their own apartments. This crucial aspect served as the foundation for distinguishing homebuyers from other operational creditors. The Hon'ble Court, by taking this aspect into account, justified its classification as financial creditors under the IBC.³³

CHECKS AND BALANCES: THRESHOLD REQUIREMENTS AND THE 2020 AMENDMENT

Judicial Recognition of Homebuyers' Rights: One such seminal development in the IBC's recent history has been the treatment of homebuyers/allotees under the Code. Originally labelled as other creditors under the IBC, homebuyers were not identified as either Financial or Operational Creditors. This position of homeowners changed after the decision of the Hon'ble Supreme Court in the case of *Chitra Sharma v Union of India*.³⁴

The Supreme Court in the *Chitra Sharma* cases recognised the rights of homebuyers and held that their interest shall be reflected in the committee of creditors set up for the CIRP of the corporate debtors. The position of homebuyers under the IBC was further strengthened by the Hon'ble Supreme Court's adoption of a similar stance in the case of *Bikram Chatterji v Union of India*.³⁵ This was a dispute regarding the insolvency resolution of the Amrapali Group. The Hon'ble Supreme Court reiterated the observations made in *Chitra Sharma* regarding homebuyers.

According to the judgment of the Supreme Court in the *Pioneer Urban*, the court validated the 2018 Amendment to IBC as discussed above. The 2018 amendment positively recognised the right of real estate allottees as financial creditors, which opened a backdoor for various problems. As discussed above, the 2018 amendment gave power and enabled even a single homebuyer or allottee to initiate CIRP under Section 7 of the said act; the said amendment

³³ 'Rights of Home Buyers in the ever-changing Indian insolvency regime' (*AZB & Partners*, 21 October 2020) <<https://www.azbpartners.com/bank/rights-of-homebuyers-in-the-ever-changing-indian-insolvency-regime/>> accessed 21 July 2025

³⁴ *Chitra Sharma v Union of India* (2018) 18 SCC 610

³⁵ *Bikram Chatterji v Union of India* (2019) 19 SCC 161

widened the scope of individuals who can initiate the insolvency proceeding against real estate companies. Although the shift was meant to give homeowners an effective remedy against the delayed possession or stalled projects, it really gave individual allottees undue leverage. As a result, it paved the way for litigation, which was frequently initiated by unsatisfied consumers with individual projects. When such procedures were commenced, they had the potential to touch the whole corporate organisation, including numerous other active projects, disrupting operations, leading to the developer's significant financial and reputational loss. The said issue was recognised and was widely discussed by the judiciary and the lawmakers, which led to the Ordinance of 2019 in IBC.

To resolve the issue created by the 2018 amendment swiftly, the IBC Ordinance 2019 was passed. It established the minimum number of home buyers required to initiate the CIRP. It stated that for an allottee to make an application to initiate the CIRP, its application must be filed by at least 100 allottees or 10% of the total number of allottees under the project, whichever is lesser. The Code was amended in 2020, which had a direct impact on homebuyers and allottees. The amendment of 2020 took away the homebuyer's right to be considered as a financial creditor. The real estate developers were burdened by IBC actions initiated by a few speculative homebuyers who individually commenced the CIRP under section 7 with a malicious intention. The 2020 amendment was approved after hearing such concerns. Homebuyers who are unable to gather enough can always turn to the Real Estate (Regulation and Development) Act 2016³⁶ for assistance.

The Insolvency and Bankruptcy Code (Amendment) Act, 2020 (Hereinafter the 2020 Amendment) was introduced on 12th December 2019 in the 17th Lok Sabha Session, after which it was referred to the Standing Committee on Finance for recommendations and suggestions. The Committee discussed various issues related to homebuyers, and after which the 2020 Amendment made the following modifications in the implementation of the Code, by adding a proviso in the form of Section 7(1) before the Explanation in the Code. The said amendment was challenged in the case of *Manish Kumar v Union of India*.³⁷ The Supreme Court upheld the constitutionality of the 2020 amendments and held that the homebuyers are in a distinct position as compared to the other creditors, due to which the threshold limit

³⁶ *Ibid*

³⁷ *Manish Kumar v Union of India and Ors* (2021) 5 SCC 1

required to start the CIRP in homebuyer or allottee cases is not unreasonable nor inconsistent with Article 14 of the Indian Constitution. The bench thought that if the single allottee/homebuyer is permitted to apply to section 7 of IBC as per the prior provisions of the 2018 amendment act to start the CIRP, then the interests of all other allottees might get compromised along with the whole project. Furthermore, the allottees have other effective remedies under the Real Estate (Regulation and Development) Act 2016, the Consumer Protection Act, 2019, or by filing a civil suit. The Supreme Court also observed that all independent allotments would qualify as separate allottees and would be considered in the computation of the hundred allottees/one-tenth of the allottees.

Innovations in Resolution Mechanisms for Real Estate: Generally, under the IBC, when the CIRP is initiated, there is a mandatory imposition of a moratorium as per section 14 of the said act, to ensure an efficient and focused consolidation of claims against the Corporate Debtor. In IBC, the Resolution Professional, through the CIRP process, primarily tries to recover the company or the business from debt if possible. Further, Section 29A of the said act also demonstrates the intention of the legislature by a list of Persons not eligible to be resolution applicants, which mainly includes the personnel responsible for the company's debt situation.

However, it was recognised that the fundamental concepts of the CIRP framework would be counterproductive for real estate enterprises in resolving the concerns of homebuyers. The primary reason the conventional CIRP approach would be ineffective for homebuyers is the difference in the assets in question, and due to such a difference in priorities of the financial institutions and homebuyers, there exists tension between them. Homebuyers value the allocation of the flat or apartment for which they have invested in the firm; nevertheless, banks and financial institutions lack any incentive to allocate flats in return for their loans and financial contributions to the real estate company. Furthermore, as the Committee of Creditors' main goal is securing possession of the allotted flat or apartment developed by the real estate company, they have the discretion to consider a compromise on their financial claim in the case of allottees and homebuyers. In the case of Flat Bayers Association Winter

Hills v Umang Real Tech Pvt Ltd. and others³⁸ (Hereinafter Winter Hills), these criteria were considered by the National Company Law Appellate Tribunal.

In the Winter Hills case, the homebuyers had started CIRP against the real estate corporation upon defaults in completing the construction and assignment of units in the real estate project. Curiously, the NCLAT highlighted the challenges experienced by homebuyers under such a method and how their interests are left unserved with a third-party resolution plan, instead of choosing the typical CIRP approach under section 7. Using the idea of a Reverse CIRP, the NCLAT appointed the promoter of the real estate company Uppal Housing Private Limited as an external lender to raise funds to complete the real estate project and serve the needs of the homebuyers. They were directed to furnish a chart showing the amount as due from different allottees and any default committed by allottee(s).

Noting that homebuyers do not have the technical expertise to examine the influence on their interests in a third-party resolution plan, the NCLAT pointed out that by adopting the Reverse CIRP, the interests of all stakeholders will be handled optimally. While homebuyers as financial creditors will be given their allotted flats/apartments, the infusion of funds by the external lender will allow the corporate debtor to finish the project in time and use the proceeds from the allotment of flats to strengthen its financial health.

However, the NCLAT permitted specific riders for the use of Reverse CIRP to aid the interests of homebuyers. Firstly, it specified that the CIRP against any real estate business, which is initiated due to the commission of default for a specific project, shall be limited to that project only and would not affect the other projects of that real estate business, for which separate actions may have to be initiated/resolution plans need to be devised. Secondly, the allottees can enter into an agreement with the promoter for a refund of the amount after the completion of the project, even though it is not permissible under Section 18 of the RERA Act.

The NCLAT's experimental approach of the Reverse CIRP, taking inspiration from the liberal observations of the Supreme Court in the case of Swiss Ribbons Pvt. Ltd. & Anr. v Union of

³⁸ *Flat Buyers Association Winter Hills-77, Gurgaon v Umang Realtech Pvt Ltd and Ors* (2021) SCC OnLine NCLAT 5001

India & Ors,³⁹ this judicial innovation has raised doubts regarding its legal tenability under the IBC and NCLAT Rules, 2016. Although in cases like *Ram Kishor Arora v Union Bank of India*,⁴⁰ the NCLAT reaffirmed the feasibility of project-wise CIRP and maintained Winter Hills as precedent, with safeguards. Whether such experimentation meets judicial muster depends on its conformity with statutory restrictions, respect for the business sense of the CoC, and its proportionality in protecting homebuyers' interests. While the Supreme Court's deferential approach in *Swiss Ribbons* gives some scope, continuous reliance on Reverse CIRP must not undermine the core principles of the IBC or shake the stakeholders' confidence through uncontrolled judicial discretion.

Reverse CIRP: Between Equity and Statutory Rigidity: NCLAT, in the case of Winter Hills, attempted to address the issues faced by the homeowners in the CIRP framework and concluded that the present mechanism and procedure within IBC is not enough to provide the remedy which the homeowner sought as a Financial Creditor. The approach of NCLAT has been commended for its sensitivity to the specific issues faced by homeowners; the ruling also raises considerations regarding the extent of judicial action under the IBC. One of the core concepts of the code is the suspension of the powers of the existing directors and promoters of the Corporate Debtor upon the start of the CIRP. As illustrated by the introduction of Section 29A, which is intended to ensure that the resolution professional is provided a clean slate to restore the financial situation of the corporate debtor, enabling the committee of creditors to work collaboratively with the Resolution professional in formulating an effective resolution plan.

However, NCLAT, in its judgement in the Winter Hills case, has bypassed the traditional CIRP process under the IBC for homebuyers. Although NCLAT's decision in acknowledging and identifying the challenges faced by the home buyers in the traditional and in securing their interests under the IBC is admirable, the decision overall lacks the existence of any foundation under the provisions of the IBC, or its jurisdiction, even under its inherent powers under Section 11 of the NCLAT Rules 2016. The NCLAT has allowed the Promoters of the Corporate Debtor a chance to be informed throughout the CIRP procedure by disregarding the statutory provision of Section 29A. This undermines the aim of the CIRP procedure,

³⁹ *Swiss Ribbons Pvt Ltd & Anr v Union of India & Ors* (2019) SCC OnLine SC 73

⁴⁰ *Ram Kishor Arora v Union Bank of India* (2025) SCC OnLine NCLAT 644

which is to be free from any influence from the company's promoters and suspended management. Although NCLAT's unusual approach in Winter Hills is justified by the specific facts and circumstances of the case, its relevance as judicial precedent is limited because it fails to recognise the statutory principle established under Section 29A addressing the promoter's participation in the CIRP process.

Moreover, in the lack of a promoter prepared to act as an external lender in funding the real estate project, the NCLAT's Reverse CIRP experiment is hindered, while the deadlock between the homebuyers and the Corporate Debtor remains unresolved. Although the Hon'ble Supreme Court alluded to the concept of experimenting under the IBC in Swiss Ribbons, the NCLAT does not cite any of its instructions to the parties in developing the alternative scheme of Reverse CIRP within the purview of the IBC. Section 7's statutory mandate for the start and operation of CIRP calls for the suspension of the current management, a fresh start for the IRP/RP, and the development of a customised resolution plan by the CoC—a requirement that the NCLAT has mysteriously departed from without offering any legal justification for doing so.

CONCLUSION

The evolution of homebuyers' rights under the Insolvency and Bankruptcy Code 2016 (IBC) exemplifies the manner in which insolvency jurisprudence in India has been shaped by both legislative intervention and judicial innovation. At the inception of the Code, homebuyers were relegated to the status of consumers, with remedies confined largely to sectoral legislations such as the Consumer Protection Act and the Real Estate (Regulation and Development) Act 2016 (RERA). This lacuna was addressed through the Insolvency and Bankruptcy (Amendment) Act 2018, which accorded homebuyers the status of financial creditors, thereby granting them the right to initiate proceedings under section 7 and participate in the Committee of Creditors.

While this amendment significantly enhanced the agency of homebuyers, it simultaneously generated concerns of multiplicity of proceedings and the potential misuse of insolvency as a debt recovery tool. The 2020 Amendment sought to restore balance by introducing a threshold requirement, ensuring that insolvency proceedings could only be triggered collectively. This reflects an attempt to preserve the objectives of the Code, namely, timely

resolution and maximisation of value, while protecting homebuyers as a vulnerable class of stakeholders.

Judicial responses have further shaped the landscape. The formulation of the Reverse CIRP mechanism demonstrates a pragmatic recognition of the peculiarities of real estate insolvencies, wherein the completion of projects, rather than corporate liquidation, is the paramount concern. However, given its absence of a statutory footing, reliance on judicially crafted doctrines risks inconsistency and unpredictability.

In sum, the trajectory of homebuyers under the IBC reveals both the responsiveness and the limitations of India's insolvency regime. Protecting the interests of homebuyers is not only a matter of contractual fairness but also one of constitutional significance, considering the socio-economic stakes involved. Going forward, a calibrated legislative framework harmonising the IBC with RERA and codifying innovations such as Reverse CIRP is imperative to ensure that insolvency law achieves its twin aims of efficiency and equity, with homebuyers firmly recognised as central stakeholders.