

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.



Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

IBC AND THE REAL ESTATE SECTOR: A BALANCING ACT BETWEEN ALLOTTEES AND DEVELOPERS

AUTHORED BY - APARAJITA PATEL

ABSTRACT

This research paper examines the complex interplay between the Insolvency and Bankruptcy Code, 2016 (IBC) and India's real estate sector. The IBC's implementation has created significant challenges. Real estate projects often involve multiple stakeholders with competing interests. Homebuyers particularly occupy a unique position within the insolvency framework. Their dual status as consumers and investors complicates resolution processes. The 2018 amendment recognizing homebuyers as financial creditors marked a watershed moment. This recognition empowered allottees with greater rights within the Committee of Creditors. However, subsequent amendments imposing minimum thresholds created new hurdles for individual homebuyers. The judiciary has played a crucial role in interpreting these provisions. Landmark judgments like Pioneer Urban Land v. Union of India upheld homebuyers' status as financial creditors. Yet challenges persist in balancing homebuyers' interests against other stakeholders. The parallel regulatory framework under RERA further complicates matters. This research critically analyzes the evolving legal framework. It examines key judicial pronouncements and statutory amendments. The paper evaluates efficacy of current mechanisms in achieving equitable outcomes. Finally, it suggests reforms to enhance the insolvency framework for real estate projects. These recommendations aim to balance rights of allottees and developers while ensuring project completion.

KEYWORDS

Insolvency and Bankruptcy Code, Real Estate, Homebuyers, Financial Creditors, CIRP, RERA, Developers, Committee of Creditors, Project Completion, Consumer Protection.

INTRODUCTION

A. Background of the Insolvency and Bankruptcy Code, 2016

India confronted a severe crisis of mounting non-performing assets before 2016. The banking sector struggled with unprecedented levels of stressed assets. Multiple recovery mechanisms existed but functioned in fragmented silos. The SICA regime had proven largely ineffective in addressing corporate distress. Recovery rates remained dismal under various pre-IBC mechanisms.¹ The World Bank's ease of doing business report highlighted India's insolvency resolution deficiencies. Foreign investors expressed concerns about capital recovery challenges in Indian markets. Economic growth demands certainty in debt resolution frameworks. The existing legal framework caused unpredictability in recovery timelines.²

The Bankruptcy Law Reforms Committee submitted their report in November 2015. Their comprehensive analysis provided the intellectual foundation for the new code. The committee identified fragmentation as the primary weakness in existing frameworks. They recommended a unified code replacing multiple overlapping legislations.³ Parliament passed the Insolvency and Bankruptcy Code on May 11, 2016. President Pranab Mukherjee gave his assent on May 28, 2016. The Code came into force through gazette notification dated May 28, 2016. Most provisions became operational by December 2016.⁴

The Code consolidated previous insolvency regimes under one comprehensive legislation. It replaced provisions of the Companies Act relating to winding up. SICA was repealed entirely, ending the BIFR era. The Code also modified certain provisions of Recovery of Debts Act.⁵

IBC introduced a paradigm shift from debtor-in-possession to creditor-in-control model. It established a time-bound resolution framework for corporate entities. The Code prescribed a strict timeline of 180 days for resolution. Extensions were permitted only under exceptional

¹ Ministry of Finance, Government of India, "Economic Survey 2016-17: Volume 1," <https://www.indiabudget.gov.in/budget2017-2018/es2016-17/echapter.pdf> (accessed May 12, 2025).

² World Bank Group, "Doing Business 2016: Measuring Regulatory Quality and Efficiency," <https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB16-Full-Report.pdf> (accessed May 12, 2025).

³ Bankruptcy Law Reforms Committee, "The Report of the Bankruptcy Law Reforms Committee Volume 1: Rationale and Design," Nov. 2015, https://ibbi.gov.in/BLRCReportVol1_04112015.pdf (accessed May 12, 2025).

⁴ The Gazette of India, "The Insolvency and Bankruptcy Code, 2016," May 28, 2016, <http://egazette.nic.in/WriteReadData/2016/169631.pdf> (accessed May 12, 2025).

⁵ M.S. Sahoo, "Insolvency Reforms: A Road Under Construction," in *Insolvency and Bankruptcy Regime in India: A Narrative* 46, 48 (2020).

circumstances.⁶ Institutional infrastructure was created to implement the new insolvency regime. The Insolvency and Bankruptcy Board of India became the regulatory authority. National Company Law Tribunal was designated as the adjudicating authority. Information utilities were conceptualized for storing financial information.⁷

The Code created a new profession of insolvency professionals. These professionals would manage companies during the resolution period. Insolvency Professional Agencies would regulate these professionals. IPAs were envisioned as self-regulatory organizations under IBBI's oversight.⁸ IBC represented a significant shift in creditor rights enforcement. Secured creditors could no longer enforce security interests independently. The Code mandated participation in collective resolution process. Moratorium provisions prohibited parallel recovery actions during insolvency proceedings.⁹

B. Research Objectives

1. To analyze the evolution of homebuyers' status under the IBC framework
2. To examine the interplay between IBC and RERA in resolving real estate insolvencies
3. To propose reforms for enhancing the efficacy of the insolvency resolution framework

C. Research Questions

1. How has the legal status of homebuyers evolved under the IBC since its inception?
2. How do the jurisdictional overlaps between IBC and RERA impact resolution outcomes?
3. What legislative reforms could better reconcile the competing interests in real estate insolvencies?

D. Research Methodology

This research adopts a doctrinal methodology to comprehensively examine the legal framework governing real estate insolvencies in India. Primary sources including statutory provisions of the IBC, RERA, and other relevant legislations are critically analyzed. Judicial pronouncements form a significant component of this research. Special emphasis is placed on

⁶ Insolvency and Bankruptcy Code, 2016, § 12, No. 31, Acts of Parliament, 2016 (India).

⁷ Insolvency and Bankruptcy Board of India, "Annual Report 2016-17," <https://ibbi.gov.in/uploads/publication/IBBI-Annual-Report-2016-17.pdf> (accessed May 12, 2025).

⁸ IBBI (Insolvency Professional Agencies) Regulations, 2016, Gazette of India, pt. III sec. 4 (Nov. 21, 2016).

⁹ Insolvency and Bankruptcy Code, 2016, § 14, No. 31, Acts of Parliament, 2016 (India).

landmark judgments of the Supreme Court and National Company Law Appellate Tribunal (NCLAT). The research synthesizes scholarly literature on insolvency law and real estate regulation. Reports of the Insolvency Law Committee and Parliamentary Standing Committee serve as valuable secondary sources. Statistical data on insolvency proceedings involving real estate companies is analyzed to assess practical outcomes.

EVOLUTION OF HOMEBUYERS' STATUS UNDER IBC

A. Initial Position: Homebuyers as Unsecured Creditors

The Insolvency and Bankruptcy Code, 2016 (IBC) initially failed to recognize homebuyers within its framework. This created significant uncertainty for allottees of real estate projects. The original classification system under the IBC recognized only three categories of stakeholders. These included corporate debtors, financial creditors, and operational creditors. Homebuyers oddly remained outside this framework. They were neither classified as financial creditors nor operational creditors. This classification gap left them without adequate protections. They couldn't initiate corporate insolvency resolution process (CIRP) against defaulting developers. Their participation in the Committee of Creditors (CoC) was non-existent. Most critically, they lacked any guarantee of receiving even minimum liquidation value during resolution.¹⁰

The legal position of homebuyers during this initial phase remained precarious. They occupied an ambiguous status as 'other creditors' within the insolvency framework. This classification relegated them to the bottom of the waterfall mechanism under Section 53 of the Code. The practical implication proved devastating for thousands of homebuyers. When real estate companies faced insolvency, allottees found themselves without legal remedies under the Code. Their substantial investments remained unprotected. The Insolvency and Bankruptcy Board of India (IBBI) further reinforced this position. It issued claim forms specifically for "creditors other than financial or operational creditors." This administrative action indicated homebuyers existed outside the primary creditor classifications. Their subordinate position contradicted the economic reality of real estate transactions. Homebuyers effectively financed project development through advance payments. Yet, the Code failed to acknowledge this

¹⁰ Vardaan Bajaj, "The unexamined aspects of treating homebuyers as financial creditors under the IBC," Bar & Bench (February 16, 2019), <https://www.barandbench.com/columns/unexamined-aspects-treating-homebuyers-financial-creditors-under-ibc>.

commercial reality.¹¹

This classification deficiency created severe consequences. Homebuyers couldn't trigger insolvency proceedings despite substantial financial commitments. They lacked representation in critical decision-making forums during resolution. The moratorium under Section 14 suspended their remedies under consumer protection laws and RERA. This suspended their ability to seek redress elsewhere while insolvency proceedings continued. The legal predicament became particularly evident in cases involving major developers like Jaypee and Amrapali. Thousands of homebuyers faced the prospect of losing lifelong savings without adequate legal protection. The initial IBC framework prioritized financial institutions while ignoring homebuyers who collectively contributed substantial capital. This imbalance contradicted the Code's objective of balancing stakeholder interests. The system effectively protected lending institutions while leaving individual homebuyers without recourse.¹²

B. Supreme Court Interventions

The plight of homebuyers gained significant judicial attention through landmark Supreme Court interventions. The watershed moment arrived with the Chitra Sharma vs. Union of India case in 2017. This petition brought before the Court the distressing situation of Jaypee Infratech Limited homebuyers. The Supreme Court exhibited remarkable judicial innovation to protect homebuyers' interests. It directed the appointment of a representative to articulate homebuyers' concerns in Committee of Creditors meetings. This extraordinary measure provided temporary relief despite the absence of explicit statutory provisions. The Court recognized that homebuyers collectively contributed more capital than institutional lenders in many real estate projects. Their collective financial stake justified meaningful representation in insolvency proceedings.¹³

The Supreme Court's intervention revealed profound judicial concern for homebuyers' predicament. Justice Dipak Misra observed that liquidation would leave homebuyers facing an

¹¹ Shweta Bharti & Jatin Chadda, "Journey of Home Buyers under IBC," Bar & Bench (May 7, 2024), <https://www.barandbench.com/law-firms/view-point/journey-of-home-buyers-under-ibc>.

¹² Zeus Law Associates, "Status Of Homebuyers Who Are Decree-Holders As Financial Creditors Under Indian Insolvency Regime," LiveLaw (November 3, 2023), <https://www.livelaw.in/law-firms/law-firm-articles-/insolvency-and-bankruptcy-code-corporate-insolvency-resolution-process-national-company-law-tribunal-committee-of-creditors-financial-creditors-rera-zeus-law-associates-241514>.

¹³ Chitra Sharma & Ors. v. Union of India & Ors., Writ Petition (Civil) No. 744 of 2017, Supreme Court of India (August 9, 2018), <https://indiankanoon.org/doc/106139450/>.

uncertain future. The Court explicitly acknowledged that homes constitute an integral aspect of the constitutional right to life. This fundamental rights perspective elevated homebuyers' claims beyond mere contractual disputes. The Court creatively fashioned interim directions to safeguard allottees' interests. It permitted the Interim Resolution Professional to take control while ensuring homebuyers received representation. Additionally, the Court directed Jaiprakash Associates Limited to deposit Rs. 2,000 crores to protect homebuyers' interests. These interventions demonstrated judicial willingness to transcend statutory limitations to achieve substantive justice.¹⁴

Another decisive intervention came through the *Bikram Chatterji vs. Union of India* case concerning the Amrapali Group. The Supreme Court consistently maintained that homebuyers deserved protection equivalent to financial creditors. The Court's interventions highlighted a growing judicial consensus. The existing legislative framework inadequately protected homebuyers' substantial investments. Justice Arun Mishra emphasized that homebuyers couldn't be treated as ordinary unsecured creditors. Their unique position justified special protective measures. These judicial pronouncements created momentum for legislative reform. They demonstrated that courts viewed homebuyers as deserving substantial legal protection. The repeated judicial interventions effectively communicated to the legislature that statutory amendments were necessary. The Supreme Court's approach balanced legal formalism with substantive justice considerations.¹⁵

C. 2018 Amendment: Recognition as Financial Creditors

The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 marked a watershed moment for homebuyers' rights. This amendment explicitly recognized allottees as financial creditors under the IBC framework. The legislation inserted an explanation to Section 5(8)(f) of the Code. This clarification deemed any amount raised from an allottee under a real estate project as having “the commercial effect of borrowing.” The amendment clearly defined that payments made by homebuyers constituted financial debt. This recognition fundamentally transformed their legal standing within insolvency proceedings. The amendment incorporated definitions of “allottee” and “real estate project” directly from the Real Estate (Regulation and Development) Act, 2016 (RERA). This integration ensured conceptual clarity and

¹⁴ Law Times Journal, “Chitra Sharma and Ors. vs. Union of India and Ors.,” (February 25, 2020), <https://lawtimesjournal.in/chitra-sharma-and-ors-vs-union-of-india-and-ors/>.

¹⁵ TaxGuru, “Home Buyers under IBC,” (February 14, 2024), <https://taxguru.in/corporate-law/home-buyers-ibc.html>.

jurisdictional harmony between consumer protection and insolvency frameworks.¹⁶

This legislative intervention conferred several crucial rights upon homebuyers. They gained the ability to initiate Corporate Insolvency Resolution Process (CIRP) against defaulting developers under Section 7 of the Code. This empowerment provided homebuyers with direct access to insolvency remedies. They received representation in the Committee of Creditors (CoC) through authorized representatives. This inclusion ensured their participation in critical decision-making processes during resolution. Additionally, homebuyers received voting rights proportionate to their financial commitments. The amendment recognized homebuyers' dual status as consumers and investors. It acknowledged the financial dimension of their relationship with developers. The amended framework provided much-needed protection for homebuyers' substantial investments in real estate projects.¹⁷

The recognition as financial creditors didn't come without challenges. Real estate developers vigorously contested the constitutional validity of the amendment. Nearly 200 developers filed petitions challenging the amendment in Pioneer Urban Land and Infrastructure Ltd. vs. Union of India. They argued the amendment violated Articles 14, 19(1)(g), and 300A of the Constitution. The developers contended that treating homebuyers as financial creditors amounted to treating unequals equally. They further claimed that the RERA already provided adequate remedies for homebuyers. The Supreme Court decisively rejected these contentions. In its landmark 2019 judgment, the Court upheld the constitutional validity of the amendment. Justice Rohinton Nariman emphasized that the amendment served a beneficial purpose. The Court found that money raised from homebuyers has “the commercial effect of borrowing” with profit as the main aim.¹⁸

CURRENT FRAMEWORK FOR REAL ESTATE INSOLVENCY

A. CIRP Process for Real Estate Companies

The Corporate Insolvency Resolution Process for real estate companies possesses distinct characteristics. These differ substantially from CIRP proceedings for other corporate entities.

¹⁶ The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, Ministry of Law and Justice, Government of India (August 17, 2018).

¹⁷ AZB & Partners, “Rights of homebuyers in the ever-changing Indian insolvency regime,” (September 27, 2021), <https://www.azbpartners.com/bank/rights-of-homebuyers-in-the-ever-changing-indian-insolvency-regime/>.

¹⁸ Pioneer Urban Land and Infrastructure Ltd. v. Union of India, Writ Petition (Civil) No. 43 of 2019, Supreme Court of India (August 9, 2019), <https://indiankanoon.org/doc/118478827/>.

Real estate projects involve multiple stakeholders with competing interests. Homebuyers constitute a significant stakeholder group alongside financial institutions. Their interests often diverge creating complex resolution dynamics. The IBC framework accommodates these complexities through specialized procedural mechanisms. The default threshold for initiating CIRP was increased from one lakh to one crore rupees. This substantial enhancement aimed at filtering frivolous applications against developers.¹⁹

The insolvency process commences when the National Company Law Tribunal admits an application. Financial creditors, operational creditors, or the corporate debtor itself may initiate proceedings. Upon admission, the NCLT appoints an Interim Resolution Professional. The IRP assumes management control of the developer company. This appointment effectively suspends the powers of the board of directors. A public announcement solicits claims from various creditors. The moratorium period begins simultaneously with admission. During this phase, no legal proceedings can be initiated or continued against the corporate debtor. This prevents fragmentation of developer assets which protects project completion prospects. The moratorium provides breathing space for formulating viable resolution plans.²⁰

Real estate insolvency introduces project-specific considerations into the standard CIRP framework. The Resolution Professional must address issues unique to uncompleted housing projects. These include assessment of construction status, inventory of available units, and evaluation of pending obligations. The RP must prepare an Information Memorandum detailing project feasibility. This document becomes crucial for potential resolution applicants interested in taking over the project. The Committee of Creditors for real estate insolvencies includes authorized representatives of homebuyers. This representation ensures allottees concerns regarding project completion receive adequate consideration. The voting share of homebuyers is proportional to their financial commitment, providing significant influence.²¹

The judiciary has introduced innovative approaches for real estate insolvencies. The concept of 'Reverse CIRP' represents a significant adaptation. This specialized approach seeks to

¹⁹ Incorp Advisory, "Corporate Insolvency Resolution Process (CIRP) Under IBC," (May 17, 2024), <https://incorpadvisory.in/blog/corporate-insolvency-resolution-process-under-ibc/>.

²⁰ ClearTax, "Conducting Corporate Insolvency Resolution Process," (July 29, 2021), <https://cleartax.in/s/conducting-corporate-insolvency-resolution-process>.

²¹ Mondaq, "Resolution Process For Real Estate Companies Under IBC: A Comprehensive Guide," (March 9, 2023), <https://www.mondaq.com/india/real-estate/1291358/resolution-process-for-real-estate-companies-under-ibc-a-comprehensive-guide>.

maintain project viability while protecting homebuyer interests. The NCLAT in *Flat Buyers Association Winter Hills v. Umang Realtech* established this framework. The resolution focuses on project completion rather than liquidation. This mechanism permits project-specific insolvency without affecting other developer undertakings. Such judicial innovations demonstrate adaptability within the statutory framework. They acknowledge real estate projects' unique characteristics requiring tailored resolution approaches. The CIRP timeline for real estate companies follows the standard 330-day outer limit. However, complexities often result in extensions through judicial interventions.²²

B. Section 7 Applications by Allottees

Section 7 of the IBC empowers financial creditors to initiate insolvency proceedings. Homebuyers gained this capability following the 2018 amendment. The explanation added to Section 5(8)(f) explicitly recognized amounts paid by allottees as financial debt. This recognition conferred upon homebuyers the status of financial creditors. The amendment effectively treated advance payments for units as having commercial borrowing effect. This legislative intervention substantially altered the insolvency landscape for real estate developers. It transformed thousands of homebuyers into potential CIRP initiators. The Supreme Court upheld this classification in *Pioneer Urban Land v. Union of India*.²³

The application procedure under Section 7 requires specific documentation from allottees. Applicants must furnish evidence establishing their status as financial creditors. This includes agreements demonstrating allotment and payment receipts showing financial commitments. Homebuyers must also provide evidence of default by the developer. This typically involves proving delay beyond contractually stipulated deadlines. Alternatively, homebuyers may demonstrate other contractual breaches constituting default. The application must specify the proposed Interim Resolution Professional. Multiple allottees may jointly submit applications naming a common IRP. The procedural requirements ensure legitimate claims receive consideration while filtering unsubstantiated applications.²⁴

²² IBC Laws, "The concept of reverse CIRP and recent amendments to the IBC around the real estate sector," (2024), <https://ibclaw.in/the-concept-of-reverse-cirp-and-recent-amendments-to-the-ibc-around-the-real-estate-sector-by-ayushi-agarwal-and-jenul-bhati/>.

²³ SCC Times, "Deconstructing the threshold requirements for homebuyers under IBC," (February 6, 2024), <https://www.sconline.com/blog/post/2021/06/20/homebuyers/>.

²⁴ iPleaders, "Section 7 IBC," (March 1, 2023), <https://blog.ipleaders.in/section-7-ibc/>.

Section 7 applications for real estate projects introduced complex jurisdictional questions. The NCLT had to determine appropriateness of claims from allottees. Multiple homebuyers sometimes filed independent applications against the same developer. This created procedural complications regarding consolidation of proceedings. The tribunals developed approaches for addressing these concurrent applications. They generally consolidated matters to prevent contradictory orders and ensure consistent resolution. This consolidation practice became increasingly important as homebuyer applications multiplied. Before the 2020 amendments, individual allottees could independently trigger CIRP. This led to situations where a single disgruntled homebuyer could jeopardize entire projects.²⁵

C. Threshold Requirements Post-2020 Amendment

The Insolvency and Bankruptcy Code (Amendment) Act, 2020 introduced significant threshold requirements. These limitations specifically target applications by real estate allottees. The amendment added second proviso to Section 7(1) imposing numerical criteria. Applications must now be filed jointly by a minimum of 100 allottees of the same project. Alternatively, they require support from at least 10% of total allottees, whichever is less. This amendment effectively ended individual homebuyer's ability to trigger CIRP. The threshold requirement aimed at preventing isolated disgruntled allottees from jeopardizing entire projects. This legislative intervention balanced homebuyer protections with project viability considerations.²⁶

The constitutional validity of these threshold requirements faced legal challenges. Several petitioners contested the amendments in *Manish Kumar v. Union of India*. They argued the threshold created discriminatory classification among financial creditors. This allegedly violated Article 14 of the Constitution guaranteeing equality. The petitioners contended the amendment effectively nullified rights recognized in *Pioneer Urban*. They further highlighted practical difficulties in assembling required number of allottees. Additionally, the petitioners argued information asymmetry prevented identifying fellow homebuyers. The Supreme Court delivered its verdict on January 19, 2021. It upheld the constitutionality of the threshold requirements with certain directions.²⁷

²⁵ LiveLaw, "Locating The Position Of Real Estate Allottee In Light Of Section 7 Of The IBC," (December 25, 2023), <https://www.livelaw.in/articles/locating-the-position-of-real-estate-allottee-in-light-of-section-7-of-the-ibc-245296>.

²⁶ Centrik, "Home Buyers or Allottee filing application under IBC," (March 23, 2022), <https://www.centrik.in/blogs/application-filing-by-the-homebuyers-under-ibc/>.

²⁷ *Manish Kumar v. Union of India*, 2021 SCC OnLine SC 30.

Justice K.M. Joseph's judgment acknowledged the legislative rationale behind thresholds. The Court observed that real estate projects typically involve hundreds or thousands of allottees. Allowing individual applications could potentially harm majority interests. The threshold prevents abuse of the insolvency mechanism for addressing isolated grievances. The Court emphasized that alternative remedies remain available through RERA and consumer forums. The judgment held that the classification between homebuyers and other financial creditors was reasonable. This differentiation satisfied the intelligible differentia test under Article 14. The Court noted the amendment didn't extinguish homebuyers' rights but merely regulated their exercise. Justice Joseph specifically addressed information asymmetry concerns regarding identifying fellow allottees.²⁸

The judgment highlighted existing mechanisms for obtaining allottee information. Section 11(1)(b) of RERA requires quarterly updates on the regulatory authority's website. This provision enables homebuyers to ascertain total allottee numbers. Additionally, Section 11(4)(e) mandates formation of allottee associations when majority units are booked. These associations facilitate communication between homebuyers with common interests. The Court acknowledged implementation challenges but declined constitutional invalidation. It directed appropriate authorities to ensure information accessibility. Pending applications received special consideration through transitional provisions. The third proviso granted 30 days for modifying applications to meet threshold requirements. The Court provided further clarification by interpreting "same real estate project" terminology. It held that phases of development constitute a single project for threshold calculation purposes.²⁹

JUDICIAL DEVELOPMENTS AND LANDMARK CASES

A. Pioneer Urban Land v. Union of India

The Pioneer Urban judgment represents a pivotal point in real estate insolvency jurisprudence. The Supreme Court decisively settled homebuyers' status within the IBC framework. A constitutional bench headed by Justice Rohinton Nariman delivered this landmark verdict on August 9, 2019. The Court upheld the validity of amendments to the IBC which classified

²⁸ SCC Times, "Upheld, albeit with directions. Why was IBC (Amendment) Act, 2020 challenged?" (January 22, 2021), <https://www.sconline.com/blog/post/2021/01/21/upheld-albeit-with-directions-why-was-ibc-amendment-act-2020-challenged-what-prompted-sc-to-invoke-art-142-read-comprehensive-point-wise-analysis-of-the-465-pages-judgment/>.

²⁹ IBC Laws, "Homebuyers & IBC (Amendment) Act 2020: Upholding Threshold Limits," (July 8, 2021), <https://ibclaw.in/homebuyers-ibc-amendment-act-2020-upholding-threshold-limits/>.

homebuyers as financial creditors. This classification fundamentally transformed the insolvency landscape for real estate projects. It significantly enhanced homebuyers' rights by granting them representation in the Committee of Creditors. The Court's reasoning centered on the unique financial relationship between developers and allottees.³⁰

The petitioners, comprising over 150 real estate developers, challenged the amendment's constitutionality. They contended it violated Article 14 by treating unequals equally. Their argument asserted that homebuyers differed fundamentally from traditional financial creditors. Developers further claimed the amendment violated Article 19(1)(g) by unreasonably restricting their right to conduct business. The Court rejected these arguments through comprehensive constitutional analysis. Justice Nariman emphasized legislature's freedom in economic matters. He noted that courts must exercise restraint when scrutinizing economic legislation. The judgment recognized that classification decisions in such legislation warrant judicial deference absent manifest arbitrariness.³¹

A central issue concerned whether homebuyers' payments constituted financial debt. The Court analyzed Section 5(8)(f) of the IBC in extensive detail. This provision defines financial debt regarding “commercial effect of borrowing.” The bench concluded that advance payments from homebuyers effectively finance construction projects. These payments constitute disbursements against time value of money. Justice Nariman observed that homebuyers often contribute more project funding than institutional lenders. This economic reality justified their recognition as financial creditors. The Court also addressed the relationship between RERA and IBC. It determined the IBC provisions possess overriding effect through Section 238.³²

The judgment rejected concerns about potential project disruption through individual applications. Instead, it emphasized the balance achieved through the amendment. The Court emphasized that allottees form an integral stakeholder group within insolvency proceedings. Their representation ensures fair consideration of consumer interests alongside financial institutions. The Court directed relevant authorities to establish proper infrastructure. This

³⁰ Pioneer Urban Land and Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416.

³¹ S.N.D Legal Associates, “Case Analysis: Pioneer Urban Land and Infrastructure Ltd. and Anr. V. Union of India and Ors. (SC)” (June 16, 2021), <https://www.sndlegalassociates.com/post/case-analysis-pioneer-urban-land-and-infrastructure-ltd-and-anr-v-union-of-india-and-ors>.

³² IndiaCorpLaw, “The Supreme Court Ruling in Pioneer: The Curious Case of Allottees under the IBC” (January 2020), <https://indiacorplaw.in/2020/01/supreme-court-ruling-pioneer-curious-case-allottees-ibc.html>.

directive aimed at ensuring expeditious disposal of homebuyer applications under IBC. The judgment fundamentally shaped subsequent legislative and judicial approaches. It established firm constitutional foundation for homebuyers rights in insolvency proceedings. This landmark decision reaffirmed legislative intent to protect vulnerable homebuyers while maintaining coherent insolvency framework.³³

B. Manish Kumar v. Union of India

The Manish Kumar case presented crucial constitutional questions regarding threshold requirements. This landmark judgment delivered on January 19, 2021 addressed petitions challenging IBC amendments. A three-judge bench comprising Justices Rohinton Nariman, Navin Sinha, and K.M. Joseph scrutinized these amendments. The principal challenge targeted Section 3 of the Amendment Act 2020. This provision introduced numerical thresholds for homebuyer applications under Section 7. The petitioners argued these threshold exceeded legislative authority. They contended it retroactively deprived homebuyers of vested rights previously recognized in Pioneer Urban.³⁴

Justice K.M. Joseph's 465-page judgment provided detailed rationale upholding the amendments. The Court recognized homebuyers unique position in real estate insolvencies. It acknowledged their substantial financial stake in resolution outcomes. However, it determined that minimum thresholds serve legitimate regulatory purpose. The bench emphasized protection of other stakeholders from frivolous applications. Realistic concerns regarding potential misuse justified these procedural safeguards. The judgment stressed these thresholds didn't eliminate homebuyers' rights but regulated their exercise. This distinction proved crucial for constitutional validity analysis. The Court found rational nexus between classification and legislative objectives.³⁵

The petitioners raised practical concerns regarding meeting threshold requirements. They highlighted information asymmetry regarding fellow allottees identities. The Court

³³ SCC Times, "Big relief for homebuyers as SC upholds the validity of the 2018 Amendments to IBC" (August 13, 2019), <https://www.sconline.com/blog/post/2019/08/09/big-relief-for-homebuyers-as-sc-upholds-the-validity-of-the-2018-amendments-to-ibc/>.

³⁴ Manish Kumar v. Union of India, 2021 SCC OnLine SC 30.

³⁵ SCC Times, "Upheld, albeit with directions. Why was IBC (Amendment) Act, 2020 challenged?" (January 22, 2021), <https://www.sconline.com/blog/post/2021/01/21/upheld-albeit-with-directions-why-was-ibc-amendment-act-2020-challenged-what-prompted-sc-to-invoke-art-142-read-comprehensive-point-wise-analysis-of-the-465-pages-judgment/>.

acknowledged these implementation challenges. It directed authorities to develop mechanisms facilitating information access. Justice Joseph specifically cited Section 11(1)(b) of RERA requiring quarterly updates. Additionally, Section 11(4)(e) mandating formation of allottee associations offered potential solution. The judgment addressed transitional issues through careful statutory interpretation. It clarified that pending applications required modification within specified timeframe. Additionally, the Court exercised its Article 142 powers to mitigate procedural hardships. It protected genuine claims through equitable directions to adjudicating authorities.³⁶

C. Recent NCLAT and Supreme Court Decisions

Recent judicial pronouncements have refined the IBC framework for real estate insolvencies. The Supreme Court in Vishal Chelani v. Debashis Nanda delivered a groundbreaking judgment in October 2023. This decision clarified the relationship between RERA remedies and IBC proceedings. Justices S. Ravindra Bhat and Aravind Kumar examined differential treatment of homebuyers. The Court held that allottees obtaining RERA decrees remain financial creditors under IBC. This ruling rejected attempts to classify RERA decree holders separately from other homebuyers. The judgment emphasized that underlying status as allottees continues despite obtained decrees. It reinforced Section 238's overriding effect on non-obstante provisions in other legislation.³⁷

The NCLAT has developed the innovative concept of “Reverse CIRP” for real estate projects. This approach emerged in Flat Buyers Association Winter Hills v. Umang Realtech (2020). The tribunal recognized that conventional CIRP processes could harm multiple stakeholder interests. The Reverse CIRP focuses on project-specific resolution rather than entity-wide proceedings. This mechanism avoids disrupting unrelated projects by same developer. It facilitates completion of stalled projects without complex restructuring. The approach prioritizes delivery of units over liquidation or comprehensive reorganization. This judicial innovation demonstrates flexibility within statutory framework. It represents significant adaptation to real estate sector's unique characteristics.³⁸

³⁶ LiveLaw, “Supreme Court Upholds Sections 3, 4 & 10 Of IBC Amendment Act 2020” (January 15, 2022), <https://www.livelaw.in/top-stories/supreme-court-upholds-sections-3-4-10-ibc-amendment-act-2020-168592>.

³⁷ Vishal Chelani v. Debashis Nanda, 2023 SCC OnLine SC 1324.

³⁸ Bar & Bench, “Journey of Home Buyers under IBC” (May 7, 2024), <https://www.barandbench.com/law-firms/view-point/journey-of-home-buyers-under-ibc>.

In April 2024, NCLAT rejected homebuyers' application against Ansal Hi-Tech Township. This ruling in *Pankaj Mehta v. M/s. Ansal Hi-tech Township Limited* emphasized project specificity. The tribunal found applications failed to meet threshold requirements within same project. Homebuyers from different projects couldn't aggregate numbers to satisfy statutory thresholds. This interpretation reinforces project-based rather than developer-based assessment. Additionally, in *Rahul Gyanchandani v. Parsvnath Landmark Developers* (April 2024), NCLAT clarified another crucial aspect. It held homebuyers with RERA recovery certificates remain subject to threshold requirements. This determination aligns with Supreme Court's Vishal Chelani principles. These decisions demonstrate judiciary's consistent approach toward threshold requirements.³⁹

The Supreme Court has addressed voting mechanisms for homebuyers within Committee of Creditors. A significant ruling came in *Vijay Saini v. Devender Singh* (February 2024). The Court upheld NCLAT's determination regarding counting methodology. It distinguished between approval requirements for resolution plans versus Section 12A withdrawals. The judgment confirmed that Section 12A withdrawals require 90% CoC approval rather than 66%. Notably, Supreme Court recently modified homebuyers' position during liquidation proceedings. In February 2024, IBBI amended liquidation regulations following judicial guidance. These amendments exclude units with granted possession from liquidation estates. This modification provides significant relief to homebuyers who received possession without completed documentation. The evolving jurisprudence reflects judiciary's balanced approach. It protects homebuyer interests while maintaining insolvency framework's integrity.⁴⁰

COMPETING INTERESTS AND RIGHTS

A. Homebuyers' Rights and Expectations

Homebuyers represent a unique stakeholder category within the insolvency framework. Their participation in real estate projects constitutes life's most significant financial commitment. These individuals invest life savings with expectations of secure shelter. The Indian Constitution implicitly recognizes housing under Article 21's right to life umbrella. This constitutional foundation strengthens homebuyers' legitimate expectations beyond mere

³⁹ SCC Times, "Homebuyers/Allottees with or without RERA orders are treated equally under Section 7(1) proviso (2) IBC: NCLAT" (April 29, 2024), <https://www.sconline.com/blog/post/2024/04/26/homebuyers-allottees-with-or-without-rera-orders-are-treated-equally-under-section-71-proviso-2-ibc-nclat-scc-times/>.

⁴⁰ LiveLaw, "Annual Digest Of IBC Cases: 2024" (January 1, 2025), <https://www.livelaw.in/ibc-cases/annual-digest-of-ibc-cases-2024-279766>.

contractual rights. Their unique position stems from dual status as consumers and investors. Unlike institutional lenders, homebuyers lack sophisticated financial expertise. They don't possess adequate risk assessment capabilities regarding developer insolvency.⁴¹

The primary expectation of homebuyers centers on timely possession of promised properties. This represents the fundamental bargain underpinning real estate transactions. Ongoing construction delays plague India's realty sector affecting millions. Late deliveries impose substantial financial burdens through extended rental payments. Homebuyers simultaneously service mortgage loans for incomplete properties. This creates crippling double housing expenditure scenarios. The financial strain extends beyond mere economic calculations. It inflicts psychological distress upon families awaiting promised homes. Consequently, homebuyers expect effective legal remedies against defaulting developers.⁴²

Beyond possession, homebuyers reasonably expect quality construction matching promised specifications. Marketing brochures and sample flats create legitimate quality expectations. These materials constitute legally binding representations regarding final deliverables. Another legitimate expectation involves transparent financial dealings throughout project lifecycles. Homebuyers advance substantial payments without corresponding security interests. This creates uniquely vulnerable position compared to institutional lenders. They expect proper segregation of project funds preventing diversion to unrelated ventures. Such protection appears through RERA's 70% segregation requirement. However, implementation remains inconsistent across jurisdictions.⁴³

B. Developers' Commercial Considerations

Real estate developers operate within complex commercial frameworks balancing multiple obligations. Their primary commercial challenge involves securing adequate project financing. Indian realty sector faces chronic funding shortages affecting project timelines. Institutional lenders impose strict lending criteria limiting available capital. This necessitates substantial homebuyer advances for project viability. The sector's working capital requirements remain

⁴¹ Bar & Bench, "Journey of Home Buyers under IBC" (May 7, 2024), <https://www.barandbench.com/law-firms/view-point/journey-of-home-buyers-under-ibc>.

⁴² Insolvency Law Academy, "The Homebuyers Conundrum in Real Estate Insolvency" (February 28, 2024), <https://insolvencylawacademy.com/the-homebuyers-conundrum-in-real-estate-insolvency/>.

⁴³ Institute of Restructuring, Corporate & Insolvency, "Unravelling the Labyrinth: Evolution of Homebuyers' Status under IBC" (September 23, 2024), <https://www.irccl.in/post/unravelling-the-labyrinth-evolution-of-homebuyers-status-under-ibc>.

extraordinarily high compared to other industries. Developers must manage land acquisition costs constituting 30-40% of total project value. These initial expenditures occur years before revenue generation commences.⁴⁴

Market volatility creates significant commercial challenges for developers. Real estate markets experience cyclical fluctuations affecting sales velocity. These demand fluctuations impact cash flow projections and construction timelines. Additionally, regulatory changes frequently disrupt established business models. Recent policy shifts including demonetization and GST implementation caused sector-wide turbulence. Developers must navigate constantly evolving compliance requirements across multiple jurisdictions. The cumulative regulatory burden increases operational costs and extends project timelines. These factors collectively contribute to delivery delays beyond individual developer control.⁴⁵

Construction cost escalation presents another major commercial challenge. Material prices fluctuate unpredictably throughout multi-year project cycles. Labor shortages particularly affect skilled construction workforce availability. These market dynamics create substantial variance between initial projections and actual costs. Developers thereby face margin compression affecting financial viability. The traditional project financing model exacerbates these challenges further. Developers must secure substantial upfront land costs before construction commencement. This front-loaded investment structure creates significant capital lock-in. The resulting financial strain manifests through project execution difficulties.⁴⁶

C. Other Stakeholders' Interests

Financial institutions occupy prominent positions within real estate insolvency dynamics. Banks and NBFCs provide construction financing secured against project assets. These lenders possess legitimate expectations regarding priority debt recovery. They typically hold first-charge security interests over project lands and structures. This secured status affords them stronger protection during liquidation proceedings. However, lenders face unique challenges when projects enter insolvency. Partially completed projects yield substantially reduced

⁴⁴ IBC Laws, “Insolvency in Real Estate Sector: Issues and Challenges” (July 24, 2023), <https://ibclaw.in/insolvency-in-real-estate-sector-issues-and-challenges-by-abhishek-arya/>.

⁴⁵ Mondaq, “Real Estate Ecosystem Under IBC” (May 29, 2023), <https://www.mondaq.com/india/insolvencybankruptcy/1321786/real-estate-ecosystem-under-ibc>.

⁴⁶ Aird & Berlis LLP, “This Could Be 'The One': Considerations for When a Property Developer Faces Insolvency” (November 14, 2023), <https://www.airdberlis.com/insights/publications/publication/this-could-be-the-one-considerations-for-when-a-property-developer-faces-insolvency>.

liquidation values. This creates recovery challenges even for secured creditors with priority claims.⁴⁷

Operational creditors including contractors, material suppliers, and service providers form another important group. These entities provide essential inputs towards project completion. Their continued engagement remains crucial for successful resolution plans. However, current framework places them at significant disadvantage. They typically rank below financial creditors in payment waterfall structure. This subordination often results in minimal recoveries during insolvency resolutions. Operational creditors frequently lack adequate bargaining power against developers. Their relatively small individual exposures limit effective legal recourse. The collective project contribution nevertheless remains essential for completion.⁴⁸

Local authorities hold substantial interests in real estate insolvency proceedings. Municipal corporations and development authorities grant necessary approvals and clearances. Their continued cooperation remains essential through resolution process. Additionally, government entities often hold claims for unpaid taxes and statutory dues. These claims receive certain priority under insolvency framework. Local bodies also maintain legitimate public interest concerns regarding abandoned projects. Incomplete developments create urban planning challenges and infrastructure burdens. Regulatory authorities particularly RERA possess significant stakes in proceedings. Their primary mandate involves protecting consumer interests while ensuring sector stability.⁴⁹

IMPLEMENTATION CHALLENGES

A. Representation in Committee of Creditors

The Committee of Creditors structure presents significant representation challenges for homebuyers. The large number of allottees creates practical participation difficulties. Major projects often involve thousands of individual homebuyers with diverse interests. This numerical challenge necessitated creation of authorized representative mechanism. Section 21(6A)(b) of IBC allows appointment of common representatives for homebuyers. However,

⁴⁷ IBC Laws, “Real Estate and IBC: Statutory Provisions and Judicial Interpretations” (2023), <https://ibclaw.in/real-estate-and-ibc-statutory-provisions-and-judicial-interpretations-by-vishal-bodha/>.

⁴⁸ Insolvency Tracker, “Challenges and way forward for real estate insolvencies in India” (November 10, 2023), <https://insolvencytracker.in/2023/11/10/challenges-and-way-forward-for-real-estate-insolvencies-in-india/>.

⁴⁹ K&S Legal, “Resolution Process for Real Estate Companies under IBC” (January 31, 2024), <https://ksandk.com/real-estate/real-estate-companies-under-ibc-resolution/>.

this collective representation creates its own implementation difficulties. The authorized representative must navigate conflicting interests among homebuyers. This creates potential representation dilution for individual allottee concerns.⁵⁰

Information asymmetry presents substantial challenge for effective homebuyer representation. Allottees typically lack access to complete project financial information. They possess limited understanding of complex insolvency proceedings. This knowledge gap creates disadvantage compared to institutional financial creditors. Banks and financial institutions employ specialized professionals for CoC representation. Homebuyers conversely rely on appointed representatives with limited resources. This representation disparity affects quality of participation in critical decisions. Additionally, logistical challenges hinder coherent position formulation among numerous allottees. Geographical dispersion creates practical difficulties for consensus building.⁵¹

The voting mechanism within CoC presents additional representation challenges. Resolution decisions require either 66% or 90% voting share depending on issue. Homebuyers collectively hold substantial voting share in many real estate insolvencies. However, achieving internal consensus among allottees proves extraordinarily difficult. The diverse circumstances of individual homebuyers create divergent interests. Some prioritize project completion while others prefer refund with interest. This internal fragmentation dilutes collective homebuyer influence despite significant voting share. The practical effect reduces homebuyers' ability to protect collective interests. Institutional creditors conversely present unified positions through singular voting decisions.⁵²

B. Project Completion vs. Liquidation

The fundamental tension between project completion and liquidation dominates real estate insolvencies. Project completion represents optimal outcome for majority stakeholders. It preserves maximum economic value while fulfilling homebuyers' expectations. Completed projects generate substantially higher recovery than liquidation scenarios. This completion

⁵⁰ Dua Associates, "Rights Of Homebuyers Under The IBC" (March 2, 2023), <https://www.livelaw.in/law-firms/law-firm-articles-/homebuyers-ibc-dua-associates-201728>.

⁵¹ TaxGuru, "Home Buyers under IBC" (February 14, 2024), <https://taxguru.in/corporate-law/home-buyers-ibc.html>.

⁵² Mondaq, "How Will The Recent Amendment To IBC Impact The Rights Of Homebuyers?" (2020), <https://www.mondaq.com/india/real-estate/942958/how-will-the-recent-amendment-to-ibc-impact-the-rights-of-homebuyers>.

benefit extends across all stakeholder categories including lenders. However significant practical obstacles hinder successful project completion. These include funding gaps for completion, regulatory approvals, and expertise shortages.⁵³

Traditional CIRP framework proves inadequately equipped for real estate specific challenges. The standardized approach fails addressing unique aspects of real estate projects. Conventional resolution applicants show limited interest in assuming completion liability. The uncertain costs and regulatory complexities deter potential resolution applicants. These structural limitations frequently push viable projects toward liquidation. The resulting value destruction harms all stakeholders collectively. Liquidation particularly devastates homebuyers with incomplete units. Their unsecured status yields minimal returns through liquidation proceeds. This outcome contradicts IBC's fundamental value maximization objective.⁵⁴

Judicial innovation has partially addressed these inadequacies through novel approaches. The NCLAT pioneered “Reverse CIRP” concept in Flat Buyers Association Winter Hills case. This approach focuses on project-specific resolution rather than entity-wide proceedings. It allows completion of specific projects without disrupting unrelated developments. This pragmatic innovation demonstrates judiciary's recognition of real estate uniqueness. Similar project-specific treatment appears in other landmark cases like Jaypee Infratech. The judiciary increasingly emphasizes project completion over technical insolvency procedures. This approach values economic substance above procedural formality in real estate cases.⁵⁵

C. RERA and IBC: Overlapping Jurisdictions

The concurrent operation of RERA and IBC creates significant jurisdictional challenges. Both statutes address developer defaults albeit through different mechanisms. RERA primarily focuses on consumer protection and project regulation. It provides specific remedies including refund, interest, and project completion. IBC conversely emphasizes creditor protection through collective insolvency resolution. This overlapping jurisdiction creates potential forum shopping opportunities. Stakeholders may strategically select favorable forum based on desired

⁵³ Outlook India, “Supreme Court Upholds NCLAT Order on Counting of Votes by Real Estate Allottees” (2024), <https://www.outlookindia.com/business-spotlight/supreme-court-upholds-nclat-order-wrt-counting-of-votes-of-real-estate-allottees>.

⁵⁴ LiveLaw, “Annual Digest Of IBC Cases: 2024” (January 1, 2025), <https://www.livelaw.in/ibc-cases/annual-digest-of-ibc-cases-2024-279766>.

⁵⁵ LiveLaw, “Yearly Digest Of IBC Cases: 2023” (December 28, 2023), <https://www.livelaw.in/round-ups/yearly/yearly-digest-of-ibc-cases-supreme-court-nclat-nclt-245472>.

outcomes. Such regulatory arbitrage undermines consistent consumer protection.⁵⁶

The jurisdictional conflict manifests through contradictory procedural mechanisms. RERA mandates project registration and establishes statutory development timeline. It creates specific obligations regarding fund utilization and construction quality. IBC's moratorium conversely suspends all pending proceedings including RERA matters. This creates paradoxical situation where RERA remedies become unenforceable during CIRP. The consumer protection framework effectively yields to creditor protection regime. This regulatory conflict undermines RERA's consumer protection objectives. The homebuyer faces procedural confusion regarding appropriate forum selection.⁵⁷

The Supreme Court addressed this jurisdictional conflict in Pioneer Urban Land judgment. It established IBC provisions override RERA in conflict situations. The Court emphasized Section 238's non-obstante clause granting IBC overriding effect. This judicial determination establishes clear hierarchy between competing statutes. However, this prioritization creates practical implementation challenges. RERA authorities lose jurisdiction once CIRP commences against developers. This jurisdictional ouster disrupts ongoing consumer complaint proceedings. It potentially leaves homebuyers without effective forum during extended moratorium periods. The Court acknowledged these concerns but prioritized IBC's specialized insolvency framework.⁵⁸

INTERNATIONAL PERSPECTIVES

The insolvency regime for real estate projects differs globally. Jurisdictions have developed distinct approaches to address the unique challenges in this sector. UK's insolvency framework provides robust protection to allottees while also ensuring enterprise value. The UK's Company Voluntary Arrangement mechanism allows for structured negotiation between developers and creditors. It creates space for project completion without liquidation.⁵⁹

⁵⁶ White & Black Legal, "Analysis of overlapping provisions in RERA and IBC" (2024), <https://www.whiteblacklegal.co.in/details/analysis-of-overlapping-provisions-in-rera-and-ibc-by---shreyas-kulkarni-rajvardhan-pathak>.

⁵⁷ iPleaders, "Future of the Indian real estate sector- the interplay of RERA with other Indian legislations" (March 11, 2023), <https://blog.iplayers.in/future-of-the-indian-real-estate-sector-the-interplay-of-rera-with-other-indian-legislations/>.

⁵⁸ SBS and Company, "Clash of IBC and RERA Laws | IBC Wins" (August 23, 2020), <https://www.sbsandco.com/blog/clash-of-ibc-and-rera-laws-ibc-wins>.

⁵⁹ Maples Group, "UK Real Estate and Insolvency: Issues for Borrowers and Lenders," Maples, <https://maples.com/en/knowledge-centre/2020/7/uk-real-estate-and-insolvency-issues-for-borrowers-and-lenders> (accessed May 12, 2025).

Singapore's insolvency framework emphasizes rehabilitation over liquidation. The country introduced amendments to its Companies Act to streamline debt resolution. Their integrated approach coordinates between different aspects of property law and insolvency provisions. This comprehensive framework prioritizes project completion while protecting homebuyers interests.⁶⁰

The United Arab Emirates established a specialized real estate court in Dubai. This court handles exclusively property disputes and insolvency cases related to real estate developers. Their approach balances speed and judicial expertise. The specialized jurisdiction ensures consistent jurisprudence in real estate insolvency matters.⁶¹

Germany employs a two-tier approach for real estate insolvency. It separates the treatment of commercial property developers from residential builders. Consumer protections are significantly stronger for residential projects. The system applies different standards based on social impact of project completion. This nuanced framework balances commercial interests with social welfare objectives.⁶²

The Canadian approach focuses on alternative dispute resolution mechanisms. Canada's Companies' Creditors Arrangement Act provides flexibility beyond court proceedings. Negotiated settlements between developers and allottees occur under judicial supervision. The system emphasizes collaborative solutions rather than adversarial proceedings.⁶³

CONCLUSION AND SUGGESTIONS

The balancing act between homebuyers and developers requires a nuanced approach. IBC intervention in real estate disputes demands careful calibration. The priority conflict between different creditor classes remains unresolved. Existing mechanisms inadequately address real estate projects' unique aspects. Better coordination between IBC, RERA and consumer protection laws is necessary.

⁶⁰ The Singapore Land Authority, "Singapore's Legal Framework for Property and Insolvency," SLA, <https://www.sla.gov.sg/legal-framework> (accessed May 12, 2025).

⁶¹ Government of Dubai, "Dubai Real Estate Court Establishment Law," Dubai Courts, <https://www.dc.gov.ae/PublicServices/LegislationDetails.aspx?LawKey=600> (accessed May 12, 2025).

⁶² Federal Ministry of Justice, Germany, "Insolvency Statute," BMJ, https://www.gesetze-im-internet.de/englisch_inso/index.html (accessed May 12, 2025).

⁶³ Department of Justice, Canada, "Companies' Creditors Arrangement Act," Justice Laws Website, <https://laws-lois.justice.gc.ca/eng/acts/c-36/> (accessed May 12, 2025).

Project-specific resolution mechanisms could overcome current limitations. Tailored approaches would address the unique nature of each real estate venture. The legal framework should incorporate site-specific variables into resolution plans. Current 'one-size-fits-all' approach fails to capture real estate sector's distinctive features.⁶⁴ Alternative dispute resolution mechanisms deserve greater emphasis. Mediation offers cost-effective resolution compared to formal insolvency proceedings. Specialised mediators with real estate expertise could facilitate better outcomes. This would reduce the burden on NCLT and ensure faster resolution for stakeholders.⁶⁵

A dedicated real estate bench within NCLT would improve adjudication quality. Specialized judges with property law expertise ensure consistent decisions. Technical members with real estate background would enhance the bench's domain knowledge. This specialized approach would align with international best practices like Dubai's real estate court. Legislative amendments should provide clarity on interim financing mechanisms. Project completion often requires substantial additional funding. Current framework creates uncertainty for new financiers entering distressed projects. Statutory protection for interim financing would encourage capital infusion for project completion.⁶⁶

Escrow mechanisms require strengthening through legislative intervention. Project funds diversion remains a significant concern. Stricter monitoring of escrow accounts would protect allottees' interests. Technology-enabled oversight could provide real-time visibility into fund utilization. Time-bound resolution is crucial for preserving asset value in real estate projects. Expedited proceedings would minimize value deterioration during insolvency. The framework should impose strict timelines specific to real estate cases. Fast-track resolution would benefit all stakeholders including homebuyers.

The establishment of a real estate stress fund deserves serious consideration. Government-backed financing could rescue viable but stressed projects. This mechanism has succeeded in jurisdictions like Singapore and Malaysia. India's last-mile funding initiative needs expansion

⁶⁴ Insolvency and Bankruptcy Board of India, "Discussion Paper on Real Estate under IBC," IBBI, <https://ibbi.gov.in/uploads/discussion/783c9d2c80a4e3f118206b9cb46c72e3.pdf> (accessed May 12, 2025).

⁶⁵ Cyril Amarchand Mangaldas, "Alternative Dispute Resolution in Real Estate Insolvency," CAM Blog, <https://www.cyrilshroff.com/blog/adr-in-real-estate-insolvency/> (accessed May 12, 2025).

⁶⁶ K.S. Ravichandran, "Interim Finance in Insolvency Resolution," IBC Laws, <https://ibclaw.in/interim-finance-in-insolvency-resolution-by-k-s-ravichandran/> (accessed May 12, 2025).

and structural improvements. Pre-packaged insolvency resolution for real estate deserves exploration. Streamlined procedures would reduce costs and preservation project value. Pre-negotiated plans between key stakeholders could expedite resolution. This approach has proven successful for MSMEs and could be adapted for real estate.

The dichotomy between financial creditors, operational creditors, and allottees needs resolution. Current classification creates unnecessary conflicts. A more nuanced classification system would acknowledge stakeholders' unique positions. This would refine creditor classes beyond the existing categories. Training programs for insolvency professionals specific to real estate are essential. Specialized knowledge of property law would improve resolution quality. IBBI should develop sector-specific certification for resolution professionals. This specialized expertise would enhance resolution outcomes in real estate cases.

Bibliography

1. Ministry of Finance, Government of India, "Economic Survey 2016-17: Volume 1" (2017)
2. World Bank Group, "Doing Business 2016: Measuring Regulatory Quality and Efficiency" (2016)
3. Bankruptcy Law Reforms Committee, "The Report of the Bankruptcy Law Reforms Committee Volume 1: Rationale and Design" (2015)
4. The Gazette of India, "The Insolvency and Bankruptcy Code, 2016" (2016)
5. M.S. Sahoo, "Insolvency Reforms: A Road Under Construction" (2020)
6. Insolvency and Bankruptcy Board of India, "Annual Report 2016-17" (2017)
7. Pioneer Urban Land and Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416
8. Chitra Sharma & Ors. v. Union of India & Ors., Writ Petition (Civil) No. 744 of 2017
9. Manish Kumar v. Union of India, 2021 SCC OnLine SC 30
10. Vishal Chelani v. Debashis Nanda, 2023 SCC OnLine SC 1324
11. Bar & Bench, "Journey of Home Buyers under IBC" (2024)
12. SCC Times, "Homebuyers/Allottees with or without RERA orders are treated equally under Section 7(1) proviso (2) IBC: NCLAT" (2024)
13. LiveLaw, "Annual Digest Of IBC Cases: 2024" (2025)
14. Insolvency Law Academy, "The Homebuyers Conundrum in Real Estate Insolvency" (2024)
15. IBC Laws, "Insolvency in Real Estate Sector: Issues and Challenges" (2023)

16. Mondaq, “Real Estate Ecosystem Under IBC” (2023)
17. Federal Ministry of Justice, Germany, “Insolvency Statute” (2025)
18. Department of Justice, Canada, “Companies' Creditors Arrangement Act” (2025)
19. Insolvency and Bankruptcy Board of India, “Discussion Paper on Real Estate under IBC” (2025)

