
DISMANTLING THE 'CREDITOR-IN-CONTROL' ORTHODOXY: A BLUEPRINT FOR AN INTEGRATED RERA-IBC PROJECT-MANAGEMENT MODEL

Aryaman Tripathi, NALSAR University of Law

ABSTRACT

The article examines the discrepancies between India's Insolvency and Bankruptcy Code (IBC), 2016, and the Real Estate (Regulation and Development) Act (RERA), 2016, concerning financially distressed real estate projects. It argues that the difference- IBC's focus on corporations and RERA's consumer-protection goals results in poor resolutions. Homebuyers are recognised as "financial creditors," yet they hold little real power.

The research uses a mixed-methods approach. It merges a review of quantitative case filing and recovery data with qualitative case studies to provide insights from homebuyers' perspectives. The analysis outlines a non-linear path of reform, beginning with the notable Jaypee Infratech case that acknowledged homebuyers as financial creditors. It follows the legislative amendments in 2018 and 2020 and explores judicial innovations like "Reverse CIRP" and "Project-wise Resolution." The article highlights ongoing problems, such as information gaps, barriers to homebuyer participation, and low recovery rates for creditors, particularly in liquidation.

It advocates for a practical model that leverages the strengths of both laws. This would involve redefining the role of the Resolution Professional (RP) to focus only on corporate restructuring. It also suggests creating a dedicated project management team to manage daily operations and financial issues. The paper concludes by discussing the 2025 CIRP amendments. These amendments support this vision by introducing rules for handing over possession, involving facilitators, and allowing relevant authorities in CoC meetings. This signals a challenging but ongoing effort to build a more effective framework.

INTRODUCTION

The article, 'Dismantling the 'Creditor-in-Control' Orthodoxy: A Blueprint for an Integrated RERA-IBC Project-Management Model,' critically analyses the regulatory intricacies and jurisdictional intersections between the Insolvency and Bankruptcy Code, 2016 ('IBC') and Real Estate Regulation and Development Act, 2016 ('RERA'). Despite being designed to resolve corporate distress and protect stakeholder interests, these laws often work at cross purposes: while the IBC consolidates recovery and resolution mechanisms for stressed assets, RERA prioritises homebuyer protection. This article argues that these competing goals lead to ineffective resolution of financially distressed real estate projects, particularly when corporate insolvency and homebuyer rights intersect, providing solutions that are not acceptable for key stakeholders.

To clear up this ambiguity, the Supreme Court has stepped in multiple times and supported homebuyers' rights as 'financial creditors'. By the 2018 amendment act, allottees, homebuyers, and flat purchasers in real estate projects were included as 'financial creditors' under Section 5(7) of the IBC¹. This is because any amount raised under another transaction, including a 'purchase agreement', under Section 5(8)(f)², has the 'commercial effect of borrowing.' Homebuyers can claim or recover 'financial debts' as financial creditors. While this change acknowledged the struggles of homebuyers, the reality is different. Homebuyers do not get a seat at the table when the Committee of Creditors (CoC) makes big decisions. Their financial exposure to a single project is often larger than a bank's stake in one company. But banks and other institutions have whole legal teams and resources that most buyers don't have.

The Supreme Court also mandated that vacancies in the NCLT and NCLAT benches be filled within three months and ordered a stay on cases filed by homebuyers. Additionally, the recent IBC Amendment Bill 2025 aims to rectify the chaos surrounding the recent Supreme Court judgments, such as *Vidarbha Industries Power Ltd. v/s Axis Bank Ltd.*³, *State Tax Officer v/s Rainbow Papers Ltd.*⁴, and *GLAS Trust Company LLC v/s BYJU Raveendran and Ors*⁵, which have undermined the original intent of the IBC and the rights of the creditors. The amendment seeks to clarify that the proof of default is sufficient for admitting an insolvency case under

¹ The Insolvency and Bankruptcy Code of India, 2016, s 5(7)

² The Insolvency and Bankruptcy Code of India, 2016, s 5(8)(f)

³ *Vidarbha Industries Power Ltd. v Axis bank Ltd.*, (2022) 8 SCC 352

⁴ *State Tax Officer v Rainbow Papers Ltd.*, (2023) 9 SCC 545

⁵ *GLAS Trust Company LLC v BYJU Raveendran & Ors.*, (2024) SCC OnLine SC 3032

Section 7 of the IBC⁶ while prioritising the dues of secured creditors as per the waterfall mechanism under Section 53⁷ of the IBC.⁸

At its core, the paper highlights this deep imbalance: homebuyers are recognised as financial creditors in law but not treated equally in practice. The article suggests building a model that draws on the strengths of both IBC and RERA, instead of seeing them as competing systems. This model could protect homebuyers while maintaining insolvency resolution efficiency.

A. Statement of Problem:

The article identifies a series of statutory priority conflicts where the IBC framework had to grapple with sector-specific complexities such as the legal recognition of home buyer status under section 5(7) and 5(8)(f) of the IBC⁹, the overriding effect of Section 238 providing a non-obstante effect over RERA when section 88 declares RERA itself as in addition to other laws, the practical barrier for home buyers imposed through the 2020 amendments in the case of *Manish Kumar v. Union of India*¹⁰, the stalling of the handover of flats to homebuyers by the moratorium period under Section 14 of the IBC¹¹, Conflicting Creditor Interests prioritizing the financial returns of large creditors over the possession rights of individual homebuyers and Information Asymmetry, assessing the financial health and viability of multiple real estate projects under a single developer.

B. Aims & Objectives:

1. Evaluating the Efficacy of Facilitators: The article talks about how facilitators affect homebuyers and how they can help them make a meaningful change by representing them directly on the CoC.
2. Promoting Homebuyer Led Resolutions: The article emphasises how homebuyers' associations can now act as Resolution Applicants with fewer eligibility requirements.
3. Incorporation of recent legal developments: The article talks about how the Insolvency and

⁶ The Insolvency and Bankruptcy Code of India, 2016, s 7

⁷ The Insolvency and Bankruptcy Code of India, 2016, s 53

⁸ Udit Malik and Siddharth Praveen Acharya, 'IBC Amendment Bill 2025: Resolving the Conundrum arising out from Apex Court Judgements and an attempt to preserve the sanctity of IBC', [2025] ibclaw.in 148 Art.

⁹ *Ibid* at 1&2

¹⁰ *Manish Kumar v Union of India*, (2021) SCC OnLine SC 30

¹¹ The Insolvency and Bankruptcy Code of India, 2016, s 14

Bankruptcy Board of India (IBBI) amended the Corporate Insolvency Resolution Process (CIRP) Regulations in its notification dated 04.02.2025 to expedite the resolution process for real estate projects.

4. Evaluate the current challenges: The paper offers a thorough examination of information asymmetry and the difficulties in determining the financial stability of developers of multiple projects..
5. Propose a novel resolution model- The model integrates the admission of a corporate debtor into CIRP through a nominated project management team, which shall oversee the primary responsibility of overseeing the project's day-to-day completion, addressing the judicial gap of RERA's expertise in the IBC-led process. Further, the role of Resolution Professional would be redefined to focus exclusively on corporate restructuring.

C. Research Methodology:

The following article is a culmination of a mixed-methods approach, including the following methods:

1. Data Collection Methods: For a statistical review, the article will include numerical data and key metrics, including the total number of cases filed, the recovery rates for creditors, and data from public records like court filings and IBBI.
2. Qualitative Research: The article provides a brief impact of both the laws from the perspective of home buyers through the data collected from case studies.
3. Deductive Approach- The overall approach is deductive by using the qualitative and quantitative data to validate the hypothesis.

D. Literature Review:

The legal acknowledgement of homebuyers to Financial Creditors marked a paradigm shift in the protection of stakeholders. Furthermore, in cases like *Chitra Sharma v. Union of India*, the Supreme Court upheld the rights of homebuyers and appointed a representative of the homebuyers to participate in meetings of the Committee of Creditors of Jaypee Infratech Ltd.

The government, in response to these judicial and public concerns, constituted an Insolvency

Law Committee. The committee's report was beneficial to the promulgation of the IBC (Second Amendment) Act, 2018. The constitutional validity of this amendment was challenged by real estate companies in the landmark Pioneer Urban Land and Infrastructure Ltd. V. Union of India case.¹²

To deal with the flood of applications that were deemed frivolous, the 2020 amendment set a minimum threshold. This meant that at least 100 people who bought homes, or 10% of the people who were supposed to get them, had to file together. In *Manish Kumar v. Union of India*, the Supreme Court upheld this change, saying it struck a balance between people's rights and the IBC's goals. The IBC Code's ideas, like Reverse CIRP and its use as Project-wise Resolution of Insolvency of Real Estate projects, have helped promoters keep corporate debtors out of traditional CIRP.¹³

Sahil Arora, in his article highlights the judiciary's intellect in developing 'Reverse CIRP' and Project-Wise Resolution, particularly in *Flat Buyers Association Winter Hills v/s Umang Realtech Pvt. Ltd.* These mechanisms incorporated the necessity to maintain the balance of developers for keeping their projects alive, thereby emphasizing the homebuyer's interest without pushing developers into premature liquidation.¹⁴

Subsequent to the amendments, the homebuyers' interests have largely been enhanced. Acharya and Vyas examine the 2025 CIRP amendments, focusing on handover of possession during CIRP, subject to 66% CoC approval.¹⁵ Ravi and Sheth, in their article, cover the reforms enabling the facilitators for large classes of creditors and inviting competent authorities as observers in CoC meetings.¹⁶ Complimentary literature such as *Taxmann and IBC Laws* have been cited briefly for their practical analysis on the challenges faced by home buyers, allottee participation in resolution process and co-ordination with competent authorities.

¹² Anshi Joshi, 'Secured but Unsecured: An Attempt to Place Home Buyers Under Insolvency and Bankruptcy Code, 2016', [2021] 129 *taxmann.com* 105

¹³ Sushant Pal, Pragati Ojha, 'State of Homebuyers vis- a vis Applicability of their Claims During CIRP', [2023] 152 *taxmann.com* 117

¹⁴ Sahil Arora, 'Practical nuances of Insolvency Resolution of Real Estate Projects under IBC Code & Analysis of Reverse Insolvency of Real Estate Projects', [2025] 175 *taxmann.com* 85

¹⁴ *Ibid* at 10

¹⁵ Siddharth Praveen Acharya, Poorva Vyas, 'IBC Amendments 2025: Revolutionising the rights of Homebuyers and a new dawn for the Real Estate CIRP', [2025] *ibclaw.in* 05 Art

¹⁶ Aprna Ravi, Manan Sheth, 'CIRP Amendment Regulations 2025: Streamlining Resolution Processes and Protecting Homebuyer Interests', [2025] 171 *taxmann.com* 789

BUILDER v/s HOMEBUYER

The legal landscape governing RERA has significantly changed due to new legislation, rulings from the court, and fresh guidelines from the government. These changes have shifted the status of homebuyers from being marginalised stakeholders to being recognised as financial creditors who contribute to resolving insolvency.

The introduction of the IBC Code in 2016 brought with it the initial conflict for the rights of the homebuyers under the RERA Act. The overlapping of both laws in the case of stalled real estate projects brought into effect non—non-obstante clause of RERA, i.e Section 89¹⁷, whereas Section 238¹⁸ of the IBC Code provides that the provisions of this code shall have effect notwithstanding anything inconsistent therewith contained in any other law. Section 238¹⁹ functions as the master provision that harmonises conflicts between the IBC and RERA: where there is a true inconsistency, the IBC (being later and containing a non-obstante clause) will prevail, but courts have emphasised that RERA’s remedies remain available so long as they do not frustrate the CIRP.²⁰ The Supreme Court in *Pioneer Urban Land and Infrastructure Ltd v/s Union of India*²¹ affirmed this ordering - RERA and IBC are complementary, yet IBC prevails on the grounds of inconsistency. Tribunals have applied this principle practicality: the NCLT in *Natwar Agarwal (HUF) v. Sakash Builders*²² held that a RERA refund decree merely crystallises a financial claim and does not deprive the allottee of financial-creditor status. Most pointedly, the Supreme Court in *Vishal Chelani & Ors. v. Debashis Nanda*²³ struck down any resolution plan that penalised buyers for invoking RERA — holding that Section 238 requires equal treatment of allottees as financial creditors, and that discriminatory subclassification violated principles of fairness and Article 14.²⁴ Subsequent decisions interpret Section 238 narrowly — it operates only on actual inconsistencies — so courts and regulators typically “fold in” RERA outcomes (refunds, penalties, completion costs) into IBC claims rather than displacing RERA wholesale. The 2025 CIRP amendments (e.g., Reg.4E, facilitator provisions, inviting RERA authorities into CoC processes) further operationalise this harmony by

¹⁷ The Real Estate (Regulation and Development) Act, 2016, s 89

¹⁸ The Insolvency and Bankruptcy Code of India, 2016, s 238

¹⁹ The Insolvency and Bankruptcy Code of India, 2016, s 238

²⁰ Sara Jain, ‘Analysing The Overriding Effect of the Insolvency and Bankruptcy Code, 2016’, (2020) 13 NUJS L. Rev. 39.

²¹ *Pioneer Urban Land and Infrastructure Ltd v Union of India*, (2019) 8 SCC 416

²² *Mr. Natwar Agrawal (HUF) v. Ms. Sakash Developers & Builders Pvt. Ltd.*, (2023) ibclaw.in 425 NCLT

²³ *Vishal Chelani & Ors. v. Debashis Nanda*, (2023) ibclaw.in 117 SC

²⁴ The Constitution of India 1950, art 14

protecting buyers' interests (handover/possession, representation) while preserving a unified, company-wide CIRP.²⁵

When Jaypee Infratech entered the corporate insolvency resolution process (CIRP), the homebuyers were neither considered as financial creditors nor as operational creditors. In that sense, they would not be a part of the Committee of Creditors, thus making them ineligible to take part in the waterfall mechanism. The Insolvency Law Committee, through its report dated March 2018,²⁶ recognised the irregularity in the completion of real estate projects and amounts raised from the homebuyers, making them prudent to the dangers of financial debt as provided under Section 5(8)(f) of the IBC Code. Thus, the Hon'ble Supreme Court in the landmark case of Jaypee Orchard Resident Welfare Society v/s Union of India²⁷, addressed the interest of homebuyers.

The case of Chitra Sharma v/s Union of India²⁸ challenged various provisions under the Code, namely Sections 6,7,10,14, and 53 as ultra vires and only recognised the debtor, and financial and operational creditors. Homebuyers and consumers were given no hay and left distraught by the Code. The court admitted that the IBC did not make any provisions for the homebuyer since they were not part of the CoC and hence, they could not participate in the CIRP. This meant that the homebuyers' last resort, liquidation, would result in an inadequate remedy. The court concluded that due to the Amendment of the Act, the amounts raised by the homebuyers would be deemed as Financial Debt and have the commercial effect of borrowing as discussed in the Jaypee Case. The court's stance in this case was labelled as 'Pro-Homebuyer'²⁹ and established a legal equivalence between the funds disbursed by homebuyers and the money loaned by traditional financial institutions like banks.

The first paradigm shift was brought in the Supreme Court case of Pioneer Urban Land and Infrastructure Ltd v/s Union of India³⁰, where the 2018 amendment was challenged by real estate companies. The court upheld the constitutional validity of the 2018 amendment and

²⁵ Jayaprakash Padmanaban, 'CIRP Reforms: Homebuyers Can Now Get Possession of Flat', (Lexology, 12 March 2025) < <https://www.lexology.com/library/detail.aspx?g=b00bef1b-bd8a-4a59-9831-59c840a6bd37>> accessed on September 15 2025

²⁶ Ministry of Corporate Affairs, Government of India, Report of the Insolvency Law Committee available at: http://www.mca.gov.in/Ministry/pdf/ReportInsolvencyLawCommittee_12042019.pdf (Issued on March 2018)

²⁷ *Jaypee Orchard Resident Welfare Society v Union of India and others.*, (2017) SCC OnLine 2260

²⁸ *Chitra Sharma v Union of India.*, (2018) 18 SCC 575

²⁹ Anshi Joshi, 'Secured but Unsecured: An Attempt to Place Home Buyers Under Insolvency and Bankruptcy Code, 2016', [2021] 129 taxmann.com 105 (Article)

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

recognised the homebuyers as financial creditors. The ruling consolidated the position of home buyers and gave them the right to participate and vote in the CoC as well as initiate CIRP under Section 7 of the IBC. The 2018 amendment was received with a good legislative response but it brought with it more problems. Every individual home buyer decided to file a CIRP application under Section 7 which surged the litigation process and overwhelmed the National Company Law Tribunals (NCLT), thereby stalling viable real estate projects. The amendment of 2020, introduced a proviso to Section 7 and mandated that in order to initiate CIRP, the application must be jointly filed by a minimum of 100 allottees or 10% of the total allottees in a project, whichever is less.³¹

In *Manish Kumar v. Union of India*³², the Supreme Court upheld the constitutional validity of the amendment, reinforcing safeguards against frivolous litigation. At the intersection of the Real Estate (Regulation and Development) Act (RERA) and the Insolvency and Bankruptcy Code (IBC), home buyers are now recognised as a unified class of creditors with shared interests, rather than as isolated individuals. Two principal legal frameworks determine the classification of home buyers as secured creditors: the Transfer of Rights Approach and the Creation of Charge Approach. The Transfer of Rights Approach asserts that a builder-buyer agreement confers a right, title, or interest in the property to the home buyer. This argument is based on the broad definition of 'Security Interest' in Section 3(31) of the IBC³³, which includes both a claim to property and the transfer of rights. The Creation of Charge relies on Section 55(6)(b) of the Transfer of Property Act, 1882³⁴, stating that the buyer buys a property which creates a charge on it to the extent of its payment. The principle asserts that a fixed charge is created on the specific asset in the home buyer's favour.³⁵

PROJECT - WISE RESOLUTION & REVERSE CIRP

Real Estate developers function as corporate entities managing multiple independent projects. Ground-level reviews indicate that these projects frequently experience delays and financial distress. The application of CIRP to the whole corporate debtor could put healthy projects that

³¹ Sahil Arora, 'Practical nuances of Insolvency Resolution of Real Estate Projects under IBC Code & Analysis of Reverse Insolvency of Real Estate Projects', [2025] 175 taxmann.com 85

³² *Manish Kumar v Union of India*, (2021) SCC OnLine SC 30.

³³ The Insolvency and Bankruptcy Code of India, 2016, s 3(31).

³⁴ The Transfer of Property Act, 1882, s 55(6)(b).

³⁵ Mehreen garg and Arja B. Majumdar, 'The Homebuyers Conundrum in Real Estate Insolvency, Insolvency Law Academy', <<https://insolvencylawacademy.com/the-homebuyers-conundrum-in-real-estate-insolvency/>> accessed September 15 2025

are already going on at risk, which would hurt every stakeholder involved. Section 29 A³⁶ of the IBC states that a person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such persons as specified which conflicts with the notion of promoters resolving real estate insolvency.

To address this issue, the concept of Reverse Corporate Insolvency Resolution Process (CIRP) was introduced, operating on a project-wise basis and emphasising project-specific resolution. Project-wise resolution of insolvency applies only to the particular project for which creditors have initiated resolution proceedings, rather than encompassing all projects and assets of the corporate debtor. Reverse CIRP is a mechanism that enables promoters to resolve a distressed project by paying outstanding creditor dues, thereby preventing the corporate debtor from entering the traditional CIRP. This is in contrast to IBC's framework of 'creditor-in-control', where the promoter loses control upon the initiation of CIRP.

The NCLAT, in the case of Flat Buyers Association Winder Hills- 77, Gurgaon v/s Umang Realtech Pvt. Ltd.³⁷, put forth the concept of 'Reverse CIRP' and 'Project-Wise Resolution', recognising the need to complete real estate projects to protect the interest of allottees. The court directed the promoter of the project to cooperate with the Insolvency Resolution Professional (IRP) and to function as an outside lender to ensure project completion, with the intention of keeping the corporate debtor as a going concern. The Hon'ble Supreme Court in the case of Anand Murti v/s Soni Infratech Pvt. Ltd.³⁸ reaffirmed the principle of Reverse CIRP and noted that it could be carried out without the need to deposit 70% of funds in a separate account as per Section 4(2)(1)(d) of RERA³⁹, thereby benefiting the allottees in the timely completion of projects. The court concluded that the CIRP might result in higher costs for homebuyers as compared to the promoter's offer. The creation of Reverse CIRP led to a more homebuyer-centric outcome over the rigid application of the IBC's framework.⁴⁰

³⁶ The Insolvency and Bankruptcy Code of India, 2016, s 29 A.

³⁷ *Flat Buyers Association Winder Hills- 77, Gurgaon v Umang Realtech Pvt. Ltd.*, (2020) 119 taxmann.com 50 (NCLAT)

³⁸ *Anand Murti v Soni Infratech Pvt. Ltd.*, (2022) 137 taxmann.com 444/172 SCL 169

³⁹ The Real Estate (Regulation and Development) Act, 2016, s 4(2)(1)(d).

⁴⁰ Mahi Agarwal, 'Reverse CIRP in 2025: A Turning Point in Insolvency Law', (Insolvency Law Academy, 5 July 2025) <<https://www.irccl.in/post/reverse-cirp-in-2025-a-turning-point-in-insolvency-law>> accessed 15 September 2025

IMPLEMENTATION OF CIRP AMENDMENT REGULATIONS, 2025:

It is estimated that real estate insolvencies have accounted for approximately 22% of all cases admitted under the IBC, which is second to the manufacturing sector, thereby representing 37% of admitted cases.⁴¹ The high volume shows that the sector needs a specialized framework to deal with its unique features, including a large number of dispersed creditors (allottees or homebuyers), long-gestation projects and significant dependencies on external regulatory and land authorities. To address these challenges, the IBBI brought the 2025 amendments to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Amendment Regulations, 2025.⁴²

The 2025 amendments have been drafted meticulously, keeping in mind the objectives of IBBI in addressing the conflicts within real estate CIRPs. The amendment introduced Regulation 4E to the CIRP Regulations, prescribing the power of the Resolution Professional to hand over possession of plots, buildings, or apartments to allottees of a real estate project during the resolution process. This power is conditional and requires the approval of the Committee of Creditors (CoC) with a minimum vote of 66% of the total votes. This change codified the practice of not viewing the flats or houses as subject to assets under the moratorium period provided under Section 14 of the IBC. Further, it elucidated the construction and sale of these units as a recurrent business activity that should continue during CIRP to maintain the corporate debtor as a going concern. The new regulation provides a clear, statutory mechanism to protect the homebuyers and expedite their access to their homes while the insolvency process continues.⁴³

In order to reduce the burden of the RP, the amendment has permitted the appointment of facilitators by the CoC. The appointment of facilitators is subject to a request by a subclass comprising at least 100 creditors of the total number of creditors in a class. The roles and responsibilities of these facilitators are prescribed under Regulation 16D⁴⁴, and they include

⁴¹ Insolvency and Bankruptcy Board of India, Government of India, Improving Liquidation Outcomes (Quarterly Newsletter for October- December,2025)
<https://ibbi.gov.in/uploads/publication/1885c0421a20cc4173386ba9c5dc3466.pdf> accessed on September 15 2025.

⁴² Insolvency and Bankruptcy Board of India, Lok Sabha, The Insolvency And Bankruptcy Code (Amendment) Bill, 2025, Bill No. 107 of 2025, (February 2025)

⁴³ Aprna Ravi, Manan Sheth, 'CIRP Amendment Regulations 2025: Streamlining Resolution Processes and Protecting Homebuyer Interests', [2025] 171 taxmann.com 789

⁴⁴ Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Reg. 16 D

facilitating communication between RP and the creditors of the sub-class, attending CoC meetings as observers, among many other tasks assigned by the CoC to improve representation. Under the amendment, Regulation 18(4) of the CIRP Regulations⁴⁵ prescribes that the CoC invite competent development authorities, such as HUDA or NOIDA, to attend CoC meetings. The formal invitation addressed the larger issue of where the absence of these authorities on the CoC often led to an insufficient consideration of their perspectives.

The amendment also seeks to empower homebuyers by relaxing certain conditions to participate as resolution applicants in the CIRP. The relaxations are subject to such associations which represent not less than 10% of the total number of creditors in a class or 100 creditors, whichever is lower. The measure is supposed to eradicate any potential roadblocks and enable greater participation from homebuyers associations, representing a stronger position to take charge of the project's completion. In the case of *State Bank of India v/s Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch*⁴⁶, the Hon'ble Supreme Court emphasized the need for statutory recognition of monitoring committees, pursuant to which Regulations 38(4) and 38(5)⁴⁷ were introduced under the CIRP Regulations, advising the CoC to consider forming a monitoring committee to oversee the implementation of the resolution plan.⁴⁸

While the amendment marks a significant milestone in the resolution of corporate resolution, its practical application may present a new set of challenges, primarily focusing on the operationalisation of the possession handover process, coordination and efficiency over the roles of facilitators and a lack of statutory foundation in the implementation of Reverse CIRP, making its application uncertain and inconsistent.⁴⁹

IBBI UPDATES & REGULATORY FRAMEWORK:

The Insolvency and Bankruptcy Board of India issues a newsletter every quarter highlighting the new regulations, circulars, and guidelines issued by the IBBI, along with a summary of public comments invited on various discussion papers. As of the quarterly newsletter of the

⁴⁵ Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Reg. 18(4)

⁴⁶ *State Bank of India v Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch.*, (2024) ibclaw.in 290 SC

⁴⁷ Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Reg. 38(4) & 38(5)

⁴⁸ *Ibid* at 8

⁴⁹ Ayushi Agarwal, Jenul Bhati, 'The concept of reverse CIRP and recent amendments to the IBC around the real estate sector', [2025] ibclaw.in 07

Insolvency and Bankruptcy Board of India dated April- June, 2025,⁵⁰ the real estate represents a significant portion of all insolvency cases in India. The breakdown of CIRP outcomes in the real estate sector as of June 2025 shows that 25% of real estate cases were closed on appeal, review or through settlement/withdrawal, 17% of the cases resulted in an approved resolution, and 19% of the cases ended in a liquidation order. Furthermore, the majority of cases have been initiated by the Financial Creditors and Operational Creditors, accounting for 47.15% and 46.69% of the total, respectively. The overall perspective on creditor recovery has been reported as follows: -

1. The resolution plans, on average, have yielded a realisation of more than 32.57% of the admitted claims.
2. The overall reduction in creditors' recovery in resolved cases is approximately 67% relative to their admitted claims.
3. The cases that ended in liquidation reported the value of assets on average as 6.1% of the outstanding debt.

The case of Lotus 300 Apartment Owners' Association v/s IndusInd Bank Limited & Ors.⁵¹ illustrates the pragmatic application of insolvency law to homebuyer interest. The issues which arose before the NCLAT was whether an insolvency proceeding initiated by a financial creditor against the real estate developer, Hacienda Projects Private Limited could supersede the rights of homebuyers. The homebuyer association challenged the insolvency since the project was on the verge of completion. The NCLAT delivered a decisive ruling, recognising the unique status of homebuyers as financial creditors under the IBC as they commanded a 98% voting share in the CoC.

MODEL RESOLUTION PLAN FOR REAL ESTATE INSOLVENCY

The current IBC framework has laid down the role of RP as the central figure responsible for managing the Corporate Debtor (CD) as a going concern during the CIRP. This, in turn, has created a significant challenge in real estate insolvency since the RP's financial expertise may

⁵⁰ Insolvency and Bankruptcy Board of India, Government of India, The Information Memorandum (Quarterly Newsletter for April- June, 2025)
<https://ibbi.gov.in/uploads/publication/3694d8874ee2ac5802de48d293ad5802.pdf> accessed on September 15 2025.

⁵¹ *Lotus 300 Apartment Owners' Association v IndusInd Bank Limited & Ors.*, (2022) CA(AT) (Ins.) No. 1471

not extend to construction management, regulatory approvals, and land-related complexities. The model resolution plan focuses exclusively on financial restructuring. It seeks to facilitate the RP's concentration on economic analysis, managing the claim process, and mediating with the CoC. The goal of such a resolution is to align with the IBBI regulation, which mandates RP to submit detailed reports on development rights and permissions, targeting key strategic roles. While the plan intends to expand the role of RP, it does not come without its own set of challenges. The potential challenges might be the clash of RP's existing statutory duty to take custody of and manage the entire business operation of the CD.

In order to fill the operational gap, the model introduces a dedicated 'nominated project management team'. The primary responsibility of the team is to oversee every real estate project's day-to-day completion and address the judicial gap of RERA's expertise. The 2025 amendment mentioned above permits the CoC to appoint facilitators to assist the RP to hand over the possession of the completed unit with CoC approval. The project management team shall provide the CoC with critical insights on project progress, regulatory compliance, and construction viability. Furthermore, the model seeks to separate the financial insolvency which is managed by the RP, from the operational and technical aspects, which shall be managed by the project management team.

CONCLUSION

The article reveals that the journey towards an effective resolution mechanism of corporate distressed real estate projects in India has been a reactive one rather than a linear process, besieged by a fundamental clash between the corporate-centric IBC and homebuyer-focused RERA. Judicial and regulatory responses to distressed real-estate insolvencies have focused on Section 238 as the key that harmonises RERA's homebuyer protections with the IBC's company-wide insolvency scheme.

The intersection of the two laws began with a significant disadvantage for homebuyers, they were not recognised as financial creditors and were ineligible to participate in the CoC. The exclusion of homebuyers from CoC prompted judicial and legislative intervention, ranging from the Hon'ble Supreme Court's involvement, following the Jaypee Infratech case which resulted in the IBC (Second Amendment) Act, 2018, resulting in the formal recognition of homebuyers as financial creditors. The homebuyers were granted the right to initiate CIRP and participate in the CoC. However, their victory was short-lived since the amendment initiated a

substantial increase in individual CIRP filings. The tribunals became overwhelmed with the increased filings, thereby resulting in a delay of the project. To address the issue, the 2020 amendment mandated joint filings by at least 100 allottees or 10% of the total, whichever is lower. At this point, the judiciary recognised the lack of an IBC framework for real estate projects and introduced the concept of reverse cirp in project-wise resolution. The approach prioritised the homebuyer's interest over the traditional creditor-in-control principles of IBC. The judicial precedents mentioned in the article facilitated the introduction of the IBBI (Insolvency Resolution Process for Corporate Persons) Amendment Regulations, 2025. The amendment was instrumental in establishing a mechanism for transferring possession of completed units during CIRP and introduced the role of facilitators and development authorities in CoC meetings to address information asymmetry and operational challenges.

There has been a significant improvement in real estate insolvencies, but the objectives have not been met with the standards set by the IBC framework. The high volume of real estate insolvencies (22% of all cases admitted under the IBC) is a result of the system's inadequacy. To address the failure in increasing of creditor recovery rate, the author proposes a novel resolution model. The blueprint of the model advocates an 'Integrated RERA-IBC framework' that revolutionises the role of the Resolution Professional in handling corporate restructuring. The introduction of a project management team in handling day-to-day operational and financial aspects of a project shall bridge the gap between the judicial expertise of RERA within the IBC processes.