

## ***Real Estate Disputes in India: Exploring the Challenges and Prospects for Harmonisation in RERA and IBC***

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### **ABSTRACT**

*The Real Estate (Regulation and Development) Act, 2016 and the Insolvency and Bankruptcy Code, 2016 address different problems in the real estate and financial sectors. Their combined applications produce harmonisation and, at some times, conflicts. By examining multiple landmark cases, the paper explores the recognition of homebuyers' rights under the IBC by analysing what qualifies as 'financial debt' and who qualifies as a 'financial creditor', thereby empowering homebuyers to initiate insolvency proceedings. Moreover, it seeks to establish that the amendments recognising homebuyers as financial creditors enhance their representation in insolvency processes. The paper emphasises the need for effective harmonisation of RERA and IBC for holistic redressal while also pointing out other unresolved issues regarding homebuyers' rights in relation to other creditors, underscoring the need for further clarity to achieve balance in equal treatment and creditor rights.*

*Recognising the role of homebuyers in financing real estate projects, the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018,*

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*termed home buyers as financial creditors and thereby permitted them to initiate the Corporate Insolvency Resolution Process under Section 7. However, this harmonisation remains challenging due to inherent tensions between RERA's consumer-centric approach and IBC's insolvency priorities. It particularly emphasises that these two frameworks should synergise with one another to secure equitable treatment and meaningful remedies. The paper further discusses challenges posed by overlapping jurisdictions and conflicting priorities, including delays in resolutions of insolvency and dilution of protections available for homebuyers.*

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## **I. INTRODUCTION**

The synergy between the Insolvency and Bankruptcy Code, 2016 (IBC)<sup>1</sup> and Real Estate (Regulation and Development) Act, 2016 (RERA)<sup>2</sup> is of great significance in instances of conflicts arising between homebuyers and developers in India.<sup>3</sup> This is because both aim to protect the interests of homebuyers but have different approaches. The RERA has been implemented for the protection of homebuyers and accountability in real estate dealings, while the IBC has been implemented to attain a time-bound resolution of corporate insolvency in a way that maximises the value of the assets for the creditors. This makes it important to understand the classification of payments towards real estate projects as 'financial debt' under the IBC and grant homebuyers the standing to initiate insolvency proceedings.

This paper focuses on the changing legal understanding in terms of strengthening the rights of homebuyers by aligning with the objectives of RERA and IBC by placing reliance upon a few landmark judgments and legislative amendments. Besides, the research discusses new approaches such as the Reverse Corporate Insolvency Resolution Process (Reverse CIRP), which provides sophisticated remedies for insolvency in real estate and also emphasises the other directions along with the new amendments made to the IBC Liquidation Regulations.<sup>4</sup>

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<sup>1</sup> Insolvency and Bankruptcy Code 2016.

<sup>2</sup> Real Estate (Regulation and Development) Act 2016.

<sup>3</sup> Rohit Pradhan, 'Critical Analysis: Insolvency and Bankruptcy Code 2016 [IBC]' (15 September 2020) <<https://lexforti.com/legal-news/critical-analysis-insolvency-and-bankruptcy-code-2016/>> accessed 19 December 2024.

<sup>4</sup> VP Singh and Bhumika Indulia, 'Reverse Insolvency: A Judicial Innovation with Unintended Consequences' (SCC Online, 5 September 2024) <<https://www.scconline.com/blog/post/2024/09/05/reverse-insolvency-a->

Homebuyers were initially not classified as financial or operational creditors under the IBC before the Amendment of 2018. However, the courts had held them to be creditors much before that in multiple rulings. Issues like these were specifically modified by the *Ordinance, Insolvency and Bankruptcy (Amendment), 2018* (2018 Ordinance), which was later replaced by the *Insolvency and Bankruptcy Code (Second Amendment) Act, 2018* (2018 Amendment), which specifically gave them the status of being creditors.<sup>5</sup>

This change was inspired by the recommendations of the 2018 Insolvency Law Committee (ILC), which recognised that money spent by buyers on an unsuccessful real estate project would have the same commercial effect as that caused by non-payment.<sup>6</sup> Also, the *Insolvency and Bankruptcy Code (Amendment) Act, 2020* (2020 Amendment) incorporated a provision that requires at least 100 homebuyers, or 10% of the total homebuyers, whichever is lower, to jointly file for insolvency against a builder.<sup>7</sup> This was made to ensure that insolvency proceedings are indicative of a more widespread problem affecting a significant number of buyers rather than being isolated cases.<sup>8</sup>

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[judicial-innovation-with-unintended-consequences/](https://www.mca.gov.in/Ministry/pdf/CrossBorderInsolvencyReport_22102018.pdf) > accessed 19 December 2024.

<sup>5</sup> *Insolvency and Bankruptcy Code (Second Amendment) Act 2018*, s 5(8).

<sup>6</sup> Insolvency Law Committee, ‘Report of the Insolvency Law Committee on Cross-Border Insolvency’ (*Ministry of Corporate Affairs, 2018*) <[https://www.mca.gov.in/Ministry/pdf/CrossBorderInsolvencyReport\\_22102018.pdf](https://www.mca.gov.in/Ministry/pdf/CrossBorderInsolvencyReport_22102018.pdf)> accessed 19 December 2024.

<sup>7</sup> *Insolvency and Bankruptcy Code (Amendment) Act 2020*, s 7.

<sup>8</sup> Sushil Kumar Antal, ‘Home Buyers under IBC’ (Taxguru, 5 February 2023) <<https://taxguru.in/corporate-law/home-buyers-ibc.html>> accessed 19 December 2024.

Much was left to be desired about the initial judicial interpretation of the status of isolated homebuyers under the IBC, which often left them in a vulnerable status vis-a-vis their position in insolvency proceedings. This part of the discussion looks into how the RERA and the IBC come together to ensure fairness, efficiency, and justice in bankruptcies, even in the midst of peculiarities arising out from the interpretations of the real estate regulations. The overlapping jurisdiction of these two landmark legislations has resulted in harmonisation as well as conflicts relating to the rights of homebuyers as financial creditors under the IBC.

This section would make way for Section 18 of the RERA, which grants homebuyers their statutory right to demand either compensation or cancellation of their bookings if builders miss the stipulated time or do not adhere to warranties, thus giving a strong foothold for consumer protection.<sup>9</sup> Section 53 of the IBC, however, establishes a waterfall mechanism in order to discharge the creditors during the liquidation proceedings, often relegating homebuyer claims to the second priority level in the list.<sup>10</sup> Such interpretation by courts has greatly affected homebuyers in the entire realm of such laws. However, despite waterfall mechanisms in place conferred by the provisions, conflicts often arise when RERA meets the IBC, especially in protecting individual consumer rights while at the same time dealing with the cumulative process of insolvency.

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<sup>9</sup> Sanjay Chaturvedi, 'Options under Section 18 of RERA Act 2016' (Real Estate Law Journal, 14 March 2022) <<https://realestatelawjournal.in/options-under-section-18-of-rera-act-2016/>> accessed 19 December 2024.

<sup>10</sup> Harshit Gupta, 'Waterfall Mechanism: Basic Structure of the Insolvency and Bankruptcy Code' (IBC Laws, 13 May 2024) <<https://ibclaw.in/waterfall-mechanism-basic-structure-of-the-insolvency-and-bankruptcy-code-2016-by-harshit-gupta/>> accessed 19 December 2024.

## **II. STREAMLINING RERA AND IBC DIVIDE: THE STRUGGLE FOR HOMEBUYERS' RIGHTS**

This part of the paper discusses significant judicial rulings and legislative changes that have influenced homebuyers' rights, pointing to the difficulties they still encounter in protecting their investments in the event of builder defaults and insolvency proceedings.

The real estate sector is an important engine of India's economy and is increasingly becoming a very popular area of investment.<sup>11</sup> In the last couple of years, it has been found that many builders fail to fulfil their promises for timely delivery of flats. Several buyers end up with a lot of uncertainty regarding the possession of their homes. Project delays, halted construction, builder fraudulent practices, and the financial crisis have made the dream of owning a home turn into a nightmare for many. Homebuyers often need to take a long and tedious legal route via consumer forums just to see justice done in relation to the failing and misbehaving builders.<sup>12</sup>

The Consumer Protection Act of 1986<sup>13</sup> has long offered remedies for homebuyers. However, it was not until the introduction of the RERA in 2016 that the real estate market saw systematic regulation. Previously, each state had its own laws governing the sector. The RERA centralised the same by creating the Real Estate Regulatory Authority, which

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<sup>11</sup> 'Indian Real Estate Industry' (India Brand Equity Foundation, 19 December 2024) <<https://www.ibef.org/industry/real-estate-india>> accessed 19 December 2024.

<sup>12</sup> Shweta Bharti and Jatin Chadda, 'Journey of Home Buyers under IBC' (Bar & Bench, 7 May 2024) <<https://www.barandbench.com/law-firms/view-point/journey-of-home-buyers-under-ibc>> accessed 19 December 2024.

<sup>13</sup> Consumer Protection Act 1986.

mandates compulsory registration of projects with detailed information on its site. Such transparency naturally enables homebuyers to make informed choices as well as provides effective reliefs for delays and other defaults.<sup>14</sup>

Navigating the IBC to ward off homebuyers' interests has proved difficult, with legal reforms required to protect their rights and financial interests in insolvency proceedings. The RERA also cannot be ignored in this regard, as it plays an important role in addressing delays and defaults by developers. Section 18 of the RERA<sup>15</sup> lays down that in case the developers are unable to deliver possession or complete a project in accordance with the terms of the agreement, then they have to refund the homebuyers with interest. Section 19(4)<sup>16</sup> provides homebuyers the right to get back possession or a refund with interest on account of default by the builder. Such statutory provisions prioritise the rights of homebuyers as consumers and hold builders accountable for construction and possession delays. Thus, these builders are bound to the commitment about specifications, amenities, and overall construction quality.

In contrast, the IBC provides a completely different treatment for homebuyers during insolvency proceedings. As per Section 53 of the IBC,<sup>17</sup> the waterfall mechanism for the distribution of liquidation proceeds prioritises secured creditors and other stakeholders over

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<sup>14</sup> Rachita Shah and Arundhati Diljit, 'Real Estate Developers and Homebuyers: Finding a Harmony Under the IBC' (2020) 6 NLSBLR 80, 88.

<sup>15</sup> Real Estate (Regulation and Development) Act 2016, s 18; *Imperia Structures Ltd v Anil Patni* [2020] 10 SCC 783; *Newtech Promoters & Developers (P) Ltd v State of UP* [2021] 18 SCC 1.

<sup>16</sup> Real Estate (Regulation and Development) Act 2016, s 19(4).

<sup>17</sup> Insolvency and Bankruptcy Code 2016, s 53.

unsecured creditors, including homebuyers. This hierarchy places homebuyers towards the bottom and raises financial recovery concerns about such proceedings from their point of view.

The ambiguity surrounding the status of homebuyers as creditors under the IBC was first examined by the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) in 2017 in *Nikhil Mehta and Sons v AMR Infrastructure Ltd*,<sup>18</sup> wherein the NCLT ruled that homebuyers were not financial creditors since their transactions lacked consideration for the time value of money. However, the NCLAT held that the investments by homebuyers were indeed financial debts under Section 5(8) of the IBC,<sup>19</sup> as they involved the time value of money and had the commercial effect of borrowing. This was supported by the annual returns filed by the respondent, categorising these amounts as ‘commitment charges’ under ‘financial cost’, thus establishing homebuyers as financial creditors under Section 5(7) of the IBC.<sup>20</sup> The Adjudicating Authority’s earlier view that these transactions were mere sale agreements was thus found to be a misinterpretation of their true commercial nature.

Similarly, in *Anil Mahindroo v Earth Iconic Infrastructure (P) Ltd*,<sup>21</sup> the NCLAT, referencing its judgment in *Nikhil Mehta and Sons v AMR Infrastructure Ltd*, held that the appellants were acting as investors. Their money was treated as a loan because it fulfilled the “disbursed against the consideration for the time value of money” condition, while

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<sup>18</sup> [2017] SCC OnLine NCLAT 377.

<sup>19</sup> Insolvency and Bankruptcy Code 2016, s 5(8).

<sup>20</sup> Insolvency and Bankruptcy Code 2016, s 5(7).

<sup>21</sup> [2017] SCC OnLine NCLAT 216.

the committed returns were viewed as ‘interest’, thus qualifying them as financial creditors under IBC.

However, these decisions altogether infused ambiguity with respect to the wider category of homebuyers under IBC. They suggested that an allottee could not be classified as either an operational creditor or a financial creditor unless assured returns were promised. This interpretation restricted homebuyers without assured returns to filing claims as ‘other creditors’ and barred them from initiating insolvency proceedings independently. For example, in *Pawan Dubey v JBK Developers (P) Ltd*,<sup>22</sup> it was held by the NCLAT that home-buyers without assured returns were neither financial creditors nor operational creditors and, as such, not entitled to initiate a Corporate Insolvency Resolution Process (CIRP). The reasoning whereby the NCLAT contended that the claims of such home-buyers lacked the characteristic of operational debt was that it did not involve the supply of goods or services, further adding to uncertainty about their rights under the Code.

In response to the concerns raised by homebuyers, the Insolvency and Bankruptcy Board of India (IBBI) introduced amendments in 2017 to address their grievances. The introduction of Form F for creditors other than financial and operational creditors has provided them with an avenue to file their claims with the Insolvency Resolution Professional (IRP).<sup>23</sup> Besides, amendments to the CIRP Regulations and Fast Track CIRP Regulations required resolution plans to contain statements

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<sup>22</sup> [2017] SCC OnLine NCLAT 865.

<sup>23</sup> Regulation 9A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, covers claims by creditors other than those covered by regulations 7, 8, or 9. These creditors must file their claims with proof to the IRP using Form F.

addressing all stakeholders' interests, including financial and operational creditors of the corporate debtor.<sup>24</sup> However, these measures were inadequate to safeguard homebuyers' interests. Categorising homebuyers as 'other creditors' provided minimal protection and failed to meaningfully address their unique position as significant contributors to real estate projects. The fundamental objectives of the Code, being the equitable treatment of creditors as well as effective resolution processes, are completely undermined by the exclusion of homebuyers from the categories of 'financial' or 'operational' creditors.

Since homebuyers are usually the biggest category of creditors in respect of the builder companies, their funds are deeply tied to the operations of the company. However, homebuyers were initially denied essential rights, such as initiating insolvency proceedings, participating in the Committee of Creditors (CoC), and securing at least the liquidation value under a resolution plan. The moratorium under Section 14 of the IBC has aggravatingly suspended all other recovery proceedings and thus left homebuyers without any recourse.<sup>25</sup> Further, the NCLT's limited role in investigating and approving resolution plans often disadvantaged homebuyers, making their concerns unheard and putting them at enormous financial risk.<sup>26</sup>

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<sup>24</sup> Regulation 38(1A) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, states that a resolution plan must include a statement that explains how it addresses the interests of all stakeholders, including financial and operational creditors.

<sup>25</sup> Insolvency and Bankruptcy Code 2016, s 14.

<sup>26</sup> The Code stipulates that once the CoC approves the resolution plan, it must then be approved by the NCLT. A preliminary reading of s 31 of the IBC suggests that the NCLT's power is limited to either approving the resolution plan if it

### **III. RERA MEETS IBC: HARMONISING THE FRAMEWORK FOR REAL ESTATE INSOLVENCY**

The interface between the IBC and the RERA continues to raise critical questions about the status and rights of homebuyers. This paper argues that the recent judgment in *Vishal Chelani v Debashis Nanda*<sup>27</sup> has given considerable clarity to the classification of decree-holder homebuyers under the IBC framework. In the present case, the court decided that decree-holder homebuyers are included in the definition of financial creditors. This case has generated significant attention due to its approach, which is aimed at bringing unity and greater harmony between the IBC and the RERA, highlighting ongoing challenges in balancing homebuyers' rights with the interests of other stakeholders in the insolvency process.

This recognition accorded to the homebuyers as financial creditors is deeply rooted in its earlier jurisprudence, beginning with *Jaypee Orchard Resident Welfare Society v Union of India*,<sup>28</sup> where the Supreme Court underscored the importance of safeguarding the interests of homebuyers in litigation. It elaborated on the homebuyers' critical contributions to real estate financing to establish the foundation for the recognition of homebuyers within the insolvency frameworks in India. Subsequently, the ILC has made a recommendation in its report that such homebuyers should be treated as financial creditors since the

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meets the criteria set out in s 30(2) of the IBC or rejecting it if it does not meet these criteria.

<sup>27</sup> [2023] 10 SCC 395.

<sup>28</sup> Writ Petition (Civil) No 854 of 2017.

funds provided by them satisfy the essential characteristics of financial debt.

Building on these recommendations, the government enacted the 2018 Ordinance, which formally granted homebuyers the status of financial creditors. This action was bolstered by a Supreme Court ruling in *Chitra Sharma v Union of India*<sup>29</sup> in which the reconstitution of the CoC was ordered according to the newly amended definition of financial creditors. The legislative and judicial collaboration culminated in the 2018 Amendment, which empowered homebuyers to initiate the CIRP under Section 7 of the IBC.<sup>30</sup>

The constitutional validity of the 2018 Amendment came into question in *Pioneer Urban Land and Infrastructure Ltd v Union of India*,<sup>31</sup> wherein the Supreme Court approved its validity, bringing allottees of real estate under the category of ‘financial creditors’ under Section 5(8)(f) of the IBC.<sup>32</sup> The Court interpreted Section 5(8)(f) of the IBC to provide that homebuyers and allottees were covered under the principal provision and that the Explanation of 2018 was inserted only to remove any doubt regarding their status. The Court also recognised that the proceeds collected by developers from homebuyers had the commercial colour of borrowing, thereby inferring that homebuyers would hold a strong position in the insolvency resolution process. The inclusion of allottees as financial creditors under the IBC brought in an intelligible distinction between financial debts and operational debts, which are

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<sup>29</sup> [2018] 18 SCC 575.

<sup>30</sup> Insolvency and Bankruptcy Code (Second Amendment) Act 2018, s 5(8).

<sup>31</sup> [2019] 8 SCC 416.

<sup>32</sup> Insolvency and Bankruptcy Code 2016, s 5(8)(f).

otherwise usually unsecured. This improved bargaining power, access to information, and resolution of claims of homebuyers.

Further elucidation was given in *SCSL Buildwell (P) Ltd v Pal Infrastructure and Developers (P) Ltd*.<sup>33</sup> The Court defined that all those payments made for the apartments would satisfy the definition of 'financial debt' under the IBC as they had a commercial effect of borrowing. Thus, the financial creditor was deemed entitled to file an insolvency petition against the developer.

Building on this enhanced recognition of homebuyers' rights, *Flat Buyers Association Winter Hills v Umang Realtech (P) Ltd*,<sup>34</sup> marked a turning point in insolvency jurisprudence for the real estate sector. The NCLAT, recognising the unique challenges posed by incomplete construction projects, introduced the concept of Reverse CIRP. As against the traditional CIRP, which focuses on the realisation of corporate insolvency by restoring the financial distress of the corporate debtor as a whole, Reverse CIRP introduced an innovative approach to prioritise completing ongoing real estate projects by transferring them to alternate developers. This new idea not only gave protection to the investments of homebuyers but also brought least interference with other projects along with protecting the livelihood of workers in the construction sector.

Although the amendments are progressive in nature, in reality the broad rights imparted to a homebuyer through the 2018 Amendment had unintended consequences. It virtually became possible for a single

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<sup>33</sup> Company Petition (IB) No 755(PB) of 2018.

<sup>34</sup> Company Appeal (AT) (Insolvency) No 926 of 2019.

homebuyer to set insolvency proceedings against a whole real estate company, resulting in increased filings creating needless hindrance to companies that are otherwise viably operating. To avoid such consequences, the Insolvency and Bankruptcy Code (Amendment) Act, 2020, has introduced a threshold for CIRP initiation under Section 7 of the IBC. The provision required that at least 100 homebuyers or 10% of all allottees, whichever is lower, file collectively.<sup>35</sup> This threshold was subsequently upheld by the Supreme Court in *Manish Kumar v Union of India*,<sup>36</sup> preventing frivolous actions. This indeed cut down the process to the point that it made it easy but protected homebuyers as well.<sup>37</sup>

Further jurisprudence emerged in *Vishal Chelani v Debashis Nanda*,<sup>38</sup> wherein the Supreme Court addressed the issue of whether decree-holder homebuyers fall within the ambit of financial creditors. It needs to be noted that the appellants herein are homebuyers who secured refund degrees against Bulland Buildtech Private Limited from UPRERA. Their application before the NCLT was to the effect that recognition be accorded to such claims as financial creditors rather than being categorised as other creditors. The claims were rejected by the NCLT on the ground that although recovery certificates issued by UPRERA render them as financial creditors, they cannot fall in the category of homebuyers. This order was upheld by the NCLAT.

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<sup>35</sup> Insolvency and Bankruptcy Code (Amendment) Act 2020, s 7.

<sup>36</sup> [2021] 5 SCC 1.

<sup>37</sup> M Ingawale and S Kulkarni, 'Deconstructing the Threshold Requirements for Homebuyers Under IBC' (SCC Times, 20 June 2021) <<https://www.scconline.com/blog/post/2021/06/20/homebuyers/>> accessed 19 December 2024.

<sup>38</sup> *Vishal Chelani* (n 27).

The Supreme Court ruled that decree-holder homebuyers must not be treated differently from other home buyers. The Court also stated that the homeowners who have been exercising their legal rights for obtaining refund decrees through mechanisms such as the RERA will not be put to any adverse consequences. Exclusion from the CoC or reclassification as ‘other creditors’ cannot be justified solely due to the inability to enforce claims during the IBC moratorium. Such reclassification will be against fairness and equity and will be in disregard of their financial interests.

It will also be contrary to the objective of the IBC, which, among other considerations, seeks to balance the rights of all stakeholders. The Court further held that additional classification within the category of financial creditors is arbitrary and unjust. According to the notification given by the Ministry of Finance, the recent updates to the Liquidation Regulations that took effect on February 12, 2024,<sup>39</sup> have greatly enhanced the rights of homebuyers under the insolvency regime. The most important improvement in this amendment is the explicit provision that the flats or apartments already transferred to homebuyers prior to the initiation of liquidation proceedings cannot be brought within the liquidation estate of the corporate debtor. This amendment protects homebuyers by guaranteeing that the properties they have already bought are not subjected to the liquidation process, thereby protecting their interests from claims by creditors. This change in law is a vital step in recognising homebuyers as real stakeholders in the

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<sup>39</sup> Regulation 46A of the IBBI (Liquidation Process) (Amendment) Regulations 2024, stipulates that whenever a corporate debtor hands over possession of an asset to an allottee in a real estate project, that particular asset will not be included in the corporate debtor’s liquidation estate as per s 36(4)(e) of the IBC.

insolvency process, appreciating their financial and personal investments.

By keeping such properties out of the liquidation estate of the corporate debtor, the amendment does not leave homebuyers open to the potential distribution of such assets for the benefit of creditors. Essentially, this amendment addresses a long-felt concern, giving homebuyers more legal certainty and assurance within the general scheme of the IBC.

#### **IV. BEYOND RECOGNITION: ADDRESSING THE CHALLENGES**

The progress in the IBC has notably made homebuyers stronger in insolvency proceedings by recognising them under financial creditors. Some of the landmark reforms, such as the inclusion of homebuyers under Section 5(8)(f) of the IBC, the introduction of Reverse CIRP, and the most recent Liquidation Regulation amendments denote the significant effort made to take care of their interests adjoining other stakeholders.

Despite these advancements, challenges remain. The NCLAT has identified procedural hurdles that impede homebuyers from filing claims during insolvency proceedings. Public announcements inviting claims are often limited to the corporate debtor's registered office jurisdiction, leaving many homebuyers unaware of the process and causing them to miss critical filing deadlines.<sup>40</sup> Thus, the NCLAT focused on the obligation of real estate companies to hand over possession of the homes for which payment has been made and also take care of other

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<sup>40</sup> *Puneet Kaur v K V Developers (P) Ltd* [2022] SCC OnLine NCLAT 245.

associated liabilities. This measure would reinforce the rights of home buyers and would prevent detriment of interest.<sup>41</sup>

Furthermore, certain unresolved issues, such as the position of homebuyers in relation to other financial creditors under Section 53, must be addressed, particularly in the context of liquidation. While the most recent amendments exclude flats transferred to homebuyers from being sold as part of the liquidation estate, there are still concerns about the fair treatment of all creditors. Homebuyers' preferential treatment in certain cases, along with their comparatively limited voting rights as unsecured financial creditors, hint to a more balanced approach.

It has also been observed that homebuyers frequently pursued individual grievances for bankruptcy petitioning rather than focusing on the overall resolution of the corporate debtor. Normally, allottees, being unsecured financial creditors limited in their voting rights, are not very well-versed with the details enshrined in corporate debtor sustainability evaluation and tend to favour possession of the property against its monetary recovery, which is no longer guaranteed in liquidation.

It has been hailed because the concept strikes a balance between various stakeholder interests, but critics see it as going beyond the jurisdiction of NCLAT and running the risk of being misused by homeowners against developers. Nonetheless, the introduction of Reverse CIRP shows the creative, innovative approach adopted by judges to address problems specific to a sector and emphasises the possible nuanced solution it may offer in the case of real estate insolvencies.

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<sup>41</sup> *Ashish Kumar v Dwarkadhis Projects (P) Ltd*, Company Petition (IB) No 281 (ND) of 2023.

## **V. A UNIFIED APPROACH: RECOMMENDATIONS FOR INTEGRATING IBC AND RERA PROVISIONS**

Harmonising the provisions of IBC and RERA is necessary to create a balanced framework that protects homebuyers while ensuring the smooth functioning of insolvency proceedings. The following suggestions would bridge the gaps between the two laws and aim to strengthen homebuyers' rights.

The most pressing issue, as pointed out previously in the paper, is the inconsistent categorisation of homebuyers in IBC, i.e., the inclusion of secured creditors under IBC, placing homebuyers at a very serious disadvantage.<sup>42</sup> This could be addressed through legislative amendments that further solidify the status of homebuyers as financial creditors so as to eliminate ambiguity. Clear criteria should be laid down so that homebuyers, even without assured returns, are classified for the purposes of this act as financial creditors. This would enable them to initiate proceedings under insolvency proceedings, thereby putting their financial interests into resolution processes.

In the process of synchronising RERA and IBC to create an equitably balanced space for home buyers, provisions of RERA should be made available to home buyers, even during the insolvency proceedings under IBC. RERA makes developers accountable for delays, while IBC proceedings typically supersede the claims of home buyers, leaving them frustrated.<sup>43</sup> Besides, we should have an insolvency framework

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<sup>42</sup> Bharti and Chadda (n 12).

<sup>43</sup> 'The Implications of RERA on Homebuyers' Rights and Protections: A Comprehensive Analysis' (TLJ Property, 1 March 2024) <<https://tljproperty.in/blog/the-implications-of-rera-on-homebuyers->

exclusively for the real estate sector, making it a statutory obligation for developers to ring-fence home-buyers funds. This should remove the advance payments for any other use and give priority in liquidation proceedings.

The *Vishal Chelani v Debasish Nanda* ruling<sup>44</sup> has significantly informed the distinction between decree-holder home buyers and financial creditors under the IBC. Statutory clarification still remains a pressing need to avoid inconsistent adjudicatory interpretations. A provision expressly recognising home buyers as financial creditors should be introduced in the IBC so that their claims, including refund decrees received under RERA, are treated uniformly across the board. Such a provision will safeguard against the exclusion of home buyers from the CoC or being treated as ‘other creditors’ in the bankruptcy resolution process, thereby ensuring their effective voice in decision-making.

Though the 2020 Amendment has set a threshold for initiating CIRP by homebuyers so that frivolous filings may be avoided, an exception arises whereby it is also open to builders to take insolvency proceedings, leaving homebuyers without remedy.<sup>45</sup> A provision must be incorporated to require prior consultation with homebuyers before initiating insolvency proceedings by the developer. From the insolvency proceedings standpoint, there should be ring-fencing of all obligations

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rights-and-protections-a-comprehensive-analysis-pritesh-rami-adv> accessed 19 December 2024.

<sup>44</sup> *ibid.*

<sup>45</sup> Shubham Mathur and Simran Sabharwal, ‘Homebuyers & IBC (Amendment) Act 2020: Upholding Threshold Limits’ (IBC Laws, 8 June 2021) <<https://ibclaw.in/homebuyers-ibc-amendment-act-2020-upholding-threshold-limits>> accessed 4 March 2025.

towards homebuyers so that the developers do not get to hide behind the veil of insolvency to dodge their binding obligations under RERA.

## VI. CONCLUSION

In conclusion, the recent jurisprudence protecting homebuyers as financial creditors is a commendable development. Innovative solutions like Reverse CIRP go a long way toward protecting homebuyers' interests while ensuring project completion. Nonetheless, challenges remain in progressing towards balancing the interests of different stakeholders in insolvency proceedings. This paper clearly points out that for the smooth realisation of the two statutes, harmonisation is a requisite. Striking the balance through judicial pronouncement involves the recognition of the dual existence of financial creditors vis-a-vis IBC and those entitled to adopting other remedial measures as stakeholders under RERA, which continues to be confronted with practical difficulties, such as the avoidance of overlapping jurisdiction as regard to the relief available to the aggrieved home buyer and other stakeholders.

The recent developments represent significant progress toward bridging these gaps and, most importantly, giving consumers a meaningful remedy. The coexistence of the RERA and the IBC still raises questions on how principles of consumer protection under the RERA will be harmonised with what is essentially the broad objective of insolvency resolution under the IBC.<sup>46</sup> Therefore, strengthening institutional mechanisms, promoting inter-regulatory coordination, and clarifying

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<sup>46</sup> Sweta Shoumya, 'Conundrum of Concurrent Remedies For Homebuyers Under RERA, 2016 Against The Consumer Protection Act And Arbitration Act' (2024) 4 IJIRL 788, 793.

legislative intent will open up the functions of these two laws, serving as central pillars to ensure that homebuyers will bring confidence into the real estate and insolvency frameworks, ensuring the efficiency and integrity of insolvency resolution processes through uniform alignment of objectives.