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SHIFT IN INSOLVENCY OBJECTIVES FROM CORPORATE REVIVAL TO PROJECT COMPLETION

~ Naman Dudhoria & Khushi Choudhary

ABSTRACT

The Insolvency and Bankruptcy Code of 2016 was established with a singular, creditor-focused aim to salvage the corporate debtor as a viable going concern entity. However, the real estate industry, with its multitude of retail homebuyers, pre-sold but undelivered housing units, and corporate structures involved in multiple projects, consistently highlighted the shortcomings of this generic model. This paper contends that Indian insolvency law is experiencing a change: transitioning from corporate revival as the primary goal to project completion as the key criterion in real estate insolvency. This change, recorded in several Supreme Court rulings from Pioneer Urban Land & Infrastructure Ltd upholding homebuyers as financial creditors to Mansi Brar Fernandez, establishing homebuyer rights under Article 21 by holding that homebuyers are not risk-taking lenders, they are individuals who have invested their lifetime savings in housing. This paper warns against an unexamined embrace of the change. Currently, project-completion insolvency functions without explicit statutory approval, leaving resolution applicants legally exposed, and threatening the finality doctrine. Judicial innovation, despite good intentions, cannot replace a clear legislative framework.

INTRODUCTION

In Indian insolvency law, the Insolvency and Bankruptcy Code, 2016[1] (henceforth referred to as 'the Code' or 'IBC') was a significant turning point. For many years, the Companies Act[2], the Sick Industrial Companies (Special Provisions) Act, 1985[3], the Recovery of Debts Due to

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[1] Insolvency and Bankruptcy Code 2016

[2] Companies Act 1956

[3] Sick Industrial Companies (Special Provisions) Act 1985

Banks and Financial Institutions Act, 1993[4], and the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002[5], comprised India's disjointed, inefficient and often antagonistic and a fragmented framework.

The objective of this IBC framework was intended to streamline, recalibrate, and unify all the aforementioned laws. As stated in the preamble, the primary aim was to resolve insolvency as quickly as possible while maximizing asset value, promote entrepreneurship, make credit available, and balance the interests of all parties concerned. This paradigm's basic tenet is that the insolvent company is a single, integrated 'Corporate Debtor' (CD) and that its best course of action is to be revived "as a going concern". Financial creditors sit on the 'Committee of Creditors' (CoC), oversee the settlement process, and vote on proposals meant to assist the CD in improving their life because this model is creditor focused.

However, this fundamental presumption encounters an unsettling reality when it comes to real estate entities. Developers of real estate frequently work on multiple projects simultaneously. Every project benefits dozens or even hundreds of homebuyers who have made sizable down payments often their entire life savings in return for a guarantee that the project will be completed on time. The fundamental right of common people to a place to reside is impacted when a developer files for bankruptcy, in addition to their balance sheets and the order of their creditors.

This research paper talks about how the law has changed from focusing on corporate revival as the main goal of bankruptcy to focusing on project completion as the main goal in real estate cases.

THE FOUNDATIONAL FRAMEWORK OF THE IBC

The IBC established the Corporate Insolvency Resolution Process (CIRP) as a structured, time-bound mechanism for resolving corporate insolvency. The CIRP is initiated upon the admission of an application by a financial creditor, an operational creditor, or the CD itself. Once admitted, an Insolvency Resolution Professional (IRP) is appointed, the management of the CD vests in the IRP, and a moratorium is declared under Section 14[6] of the Code that shields the debtor's assets from any recovery action.

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[4] Recovery of Debts Due to Banks and Financial Institutions Act 1993
[5] Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002
[6] Insolvency and Bankruptcy Code 2016, s 14

The Constitution of the CoC as the supreme decision-making body in the CIRP is essential in deciding the fate of the company, which is entirely based on its “Commercial Wisdom”. The CoC is composed entirely of financial creditors who upon the evaluation of resolution plan submitted by Resolution Applicant (RA) approve it by a majority vote of sixty-six percent[7]. According to section 31(1)[8] IBC when a Resolution Plan, once approved by the CoC and affirmed by the National Company Law Tribunal (hereinafter ‘NCLT’ or ‘Adjudicating Authority’), binds all stakeholders including dissenting creditors and operational creditors; and extinguishes all prior claims against the CD. This was in line with the Supreme Court ruling in Ghanashyam Mishra case[9]. The preamble of the Code emphasizes maximisation of value of the assets of the debtor so that they are efficiently run as going concerns, this was also reflected in the Supreme Court judgement in Swiss Ribbons[10].

The aforementioned framework is based on the concept of a unified corporate identity. The CD, irrespective of the variety of its businesses or the multitude of projects it engages in, is regarded as a singular entity. Its assets are consolidated, its liabilities combined, and the resolution plan functions at the corporate level in its entirety. This strategy is suitable for a manufacturing firm or a service organization when the enterprise is the primary source of production. However, it is less applicable in the real estate sector, where distinct housing projects function as separate units, where purchasers of Apartment Project ‘X’ have little to no interest in the outcome of Apartment Project ‘Y’, and where the assets associated with specific projects may be completely viable even when the parent company’s finances are struggling.

HOMEBUYERS IN THE HOUSE: A MAJOR SHIFT

The IBC did not specifically include and identify homebuyers as financial creditors in 2016. In the case of Nikhil Mehta & Sons in 2017[11], the judgement of National Company Law Appellate Tribunal (NCLAT) brought a major change. It officially recognized homebuyers as financial creditors. In 2018, an amendment[12] to the IBC added an explanation to Section 5(8)(f)[13] that made it clear that homebuyers were included. This gave them the right to file a Section 7[14] application and have an authorized representative represent them in the CoC.

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[7] Insolvency and Bankruptcy Code 2016, s 30(4)
[8] Insolvency and Bankruptcy Code 2016, s 31(1)
[9] *Ghanashyam Mishra And Sons Pvt Ltd v Edelweiss Asset Reconstruction Co Ltd* (2021) 9 SCC 657
[10] *Swiss Ribbons Pvt Ltd v Union of India* (2019) 4 SCC 17
[11] *Nikhil Mehta And Sons v AMR Infrastructure Ltd* (2018) 2 Comp Cas OL 88
[12] Insolvency and Bankruptcy Code (Second Amendment) Act 2018
[13] Insolvency and Bankruptcy Code 2016, s 5(8)(f)
[14] Insolvency and Bankruptcy Code 2016, s 7

In the 2019 case of Pioneer Urban Land & Infrastructure Ltd[15], the Supreme Court ruled that this inclusion was constitutional. It held that homebuyers who pay advances for temporary use in construction with the expectation of getting a flat or apartment are engaged in transactions with the "commercial effect of a borrowing", since both developers and buyers are in it to make money.

Another amendment that took effect in late 2019[16] added a threshold to Section 7(1)[17] that said that at least 100 homebuyers of the same project or 10% of the total allottees, whichever is less, must support a CIRP initiation by homebuyers. The Supreme Court upheld this numerical threshold as constitutionally valid in Manish Kumar v. Union of India[18]. to keep one homebuyer from putting the interests of all other allottees at risk and to effectively balance individual rights with the effects on the project as a whole.

THE EMERGENCE OF PROJECT- COMPLETION JURISPRUDENCE

A. RERA and the Legislative Context

The judicial developments under the IBC are significantly framed by the Real Estate (Regulation and Development) Act, 2016[19] (RERA). The IBC and RERA were both passed in 2016 to address India's dysfunctional real estate market, but they take very different approaches to the issue. To protect people who put their life savings at risk, RERA came into being, focusing on homebuyer rights through mandatory registration, transparency, and deadlines for finishing projects. On the opposite end, the IBC functioned more like an economic reset button- treating troubled companies not just as individual cases but as parts of a larger financial network. When firms struggled, the ripple showed up across banks, investors, and growth numbers. Fixing that meant creating a swift route for resolving corporate debt issues, which is exactly what the IBC aimed to do. Nowadays, project completion tends to matter more than rescuing troubled firms, a shift influenced by RERA's framework guiding court rulings. While IBC centres on creditor interests, consumer concerns are paramount under RERA. Judicial outcomes increasingly reflect this realignment, driven less by policy intent and more by institutional design. Efforts at clarity have come from the highest court, aiming to align differing legal principles. Though built for separate purposes, RERA and the IBC operate

[15] *Pioneer Urban Land and Infrastructure Ltd v Union of India* (2019) 8 SCC 416
[16] Insolvency and Bankruptcy Code (Amendment) Act 2020
[17] Insolvency and Bankruptcy Code 2016, s 7(1)
[18] *Manish Kumar v Union of India* (2021) 5 SCC 1
[19] Real Estate (Regulation and Development) Act 2016

side by side, sparking creative interpretations alongside uncertainty. Outcomes shift depending on which law gets emphasis, leaving room for debate in overlapping cases.

Though they operate in the same space, the IBC and RERA serve separate roles. When projects stall or builders face financial collapse, the IBC steps in as a final option for group-based solutions. On another hand, buyer-specific issues like late delivery, faulty builds, or demands for repayment, are handled first through RERA. To keep things balanced, legal rules block immediate access to the IBC for flat buyers. One must clear certain process-related hurdles before entering that path. This setup aims to prevent misuse, ensuring insolvency tools are not twisted into ordinary debt collection routes.

Since Mansi Brar judgement[20], courts now look closely at who someone really is before deciding what kind of help they can get after a builder fails to deliver. Whether that person expected fixed profits or had plans to move into the unit often makes a difference. One clue comes from missing promises like guaranteed resale terms, that hint it was never about living there. Real buyers usually want keys, not cash gains. When investors show up without such motives of actually moving in, their path leads through regular civil court or RERA filings aimed at financial fixes. Genuine buyers too land squarely within RERA's reach since its core purpose fits personal outcomes: getting homes, repayments, or fair amends. Success here depends less on labels than proof of intent shown early. Once rulings pass and enforcement follows, uncertainty fades quickly.

If RERA does not lead to project completion or real redress, recourse might shift toward IBC as a final option. Triggered typically by a unified request from either 100 buyers or ten percent of all purchasers under Section 7 IBC, the CIRP can unfold separately per development. Outcomes range from finishing construction to repayment via approved plans - or, if needed, winding down operations entirely. Only once informal efforts collapse does insolvency become justified, reserved for moments when coordinated intervention with the developer is unavoidable. Activation of IBC fits when payment delays exist and a substantial portion of buyers seeks restoration of a workable venture through creditor consensus. Courts draw lines based on reasoned distinctions: actual residents pursuing homes tied to life and dignity under Article 21[21]- Right to Shelter differ clearly from those treating units like traded assets using guaranteed profit models or resale promises.

[20] *Mansi Brar Fernandez v Subha Sharma* (2025) SCC OnLine SC 1972
[21] The Constitution of India 1950, art 21

B. Reverse CIRP

Beginning with Umang Realtech case[22] in 2020, the concept now known as Reverse CIRP took shape. This ruling marked a turning point, not through bold declarations but quiet reinterpretation - guiding IBC's purpose away from reviving companies broadly toward finishing stalled projects. Although the law originally emphasized sustaining businesses intact and maximizing asset worth, context reshaped its path. The housing sector operates differently; its financial patterns and public impact make standard insolvency tools less effective. Recognizing this reality, the NCLAT adjusted how the code applies within real estate, allowing outcomes better suited to its structure.

Construction halts when leadership exits under regular CIRP, often leaving projects frozen. Because outside parties take time to step in, delays deepen losses across stalled sites. As held in Umang oversight stays with the IRP, yet fresh funds arrive through the original promoter acting as creditor, flipping traditional process on its head. Rather than erase past roles entirely, involvement shifts form without full replacement. Physical homes matter more to buyers than balance sheets; courts now recognize completion outweighs corporate continuity.

Though once handled at corporate level, insolvency now shifts focus to individual ventures under the "Project-wise" insolvency model. The NCLAT, during the Umang case, observed how property firms manage separate developments- each carrying unique buyers, lenders, and clearances. Restricting proceedings to only troubled units allow working projects continue without disruption. This approach focuses on the struggling venture; resources like money, workers, and monitoring shift while stronger initiatives continue without interference. When problems are boxed in this way, the process lines up with the IBC's core goal - preventing minor setbacks from individual entities from snowballing into total company collapse.

What stands out is the shift brought by the Umang framework- IBC now operates with sharper intent, focused less on breaking up companies and more on shielding essential projects. Shelter becomes a metaphor here as assets are seen not as abstract figures but as spaces with presence and occupancy. From the transfer of authority emerges one clear result - an effort aligned with the Code's original aim, where justice shows itself in tangible effects. Practicality walks alongside fairness, holding steady to commitments owed to all affected parties.

LATEST DEVELOPMENTS

[22] *Flat Buyers Association Winter Hills-77 Gurgaon v Umang Realtech Pvt Ltd* (2020) 12 Comp Cas OL 174

A fresh look at real estate troubles emerged in April 2026, when the Insolvency and Bankruptcy Board of India (IBBI) committee report[23] shared findings. Focused not on entire companies but individual projects, the approach shifts emphasis where it might matter most. Since every construction effort faces distinct financial flows and hazards, isolating them supports more precise fixes. When builders stumble, buyers frequently bear the cost, they are left waiting, sometimes for years. Earlier strategies viewed development firms as unified bodies; this time, scrutiny lands squarely on single housing initiatives. By zooming in closely, resolutions could arrive quicker, avoiding spillover into unaffected holdings.

Most problems ripple outward, affecting entire clusters of projects once a single one stumbles. Still, containment matters, when clear approval paths exist, working developments avoid getting tangled in legal holdups. Funds tied to construction costs remain confined to each project's own financial stream if kept apart. Keeping finances split relies on separate bank accounts, something the report has pointed out clearly. Outcomes then unfold independently, shaped only by local conditions. One reason funds stay separate is that each project site needs its own bank access. Because expenses link strictly to a specific place, withdrawals should only cover just land purchases or construction work there. Money meant for homes stays on track this way. If timelines slip, giving buyers equity or refunds lines up solutions with real priorities.

Homebuyers gain more clarity from the Supreme Court's January 2026 judgement in Elegna Co-Op Housing[24]. It was held here that, decisions taken by the CoC during exceptional situations require a clear explanation showing why they were made. Every applicant deserves complete transparency- facts once hidden must now appear fully within the Information Memorandum. When handing over property seems unworkable under Regulation 4E[25] of the CIRP Rules, the committee cannot act silently; reasons must be given on paper. A move towards liquidating the CD would according to the report demand a documented analysis. Thoughtful weighing of alternatives becomes proof of sound judgment, aligning actions with IBC objectives. Most times, property-related financial collapses get handled one development at a time, this approach tends to protect functioning projects and honest buyers from wider fallout. Because of findings seen in Mansi Brar case, broad corporate defaults are now treated

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[23] Insolvency and Bankruptcy Board of India, *Report of the Committee on Framing Guidelines for Insolvency Proceedings in the Real Estate Sector* (2026)

[24] *Elegna Co-Op Housing and Commercial Society Ltd v Edelweiss Asset Reconstruction Co Ltd* (2026) SCC OnLine SC 82

[25] Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, reg 4E

separately unless conditions clearly demand otherwise. Shielding active homes and stable ventures becomes easier when resolution stays focused narrowly where needed.

COMPARATIVE UK HOUSING INSOLVENCY MODEL

The United Kingdom's 'Housing Administration' framework, introduced under Part 4, Chapter 5 of Schedule 5 to the Housing and Planning Act 2016 (HPA 2016)[26]. It is a specific judicial system that deals with insolvency. It was formed because the housing market was getting more complicated and less stable, as shown by the near collapse of the Cosmopolitan Housing Group[27].

Its framework was meant to help huge enterprises or private registered providers of social housing, like companies, registered societies, and charitable incorporated organizations, get out of bankruptcy[28]. The secretary of state or the social housing regulator is the only one who may start the process. During the administration period, the Housing and Regeneration Act 2008 makes it illegal for creditors to hire an administrator or pursue enforcement actions on their own[29].

Therefore, a time-limited process safeguard functions as a brake, preventing abrupt mass claims against floating security and rapid asset loss[30]. After being appointed, the housing administrator assumes complete control of the provider's operations for a maximum of one year, with the possibility of an extension, under the direction of two distinct legal obligations[31]. Their primary responsibilities under Section 97(1) of the HPA 2016 are to preserve the organization as an operating entity, provide greater returns for creditors than liquidation would provide, or appropriately convert property into monies for secured or priority claimants[32]. In addition, Section 98 imposes another obligation including maintaining social housing under state supervision to keep them out of unregulated hands[33]. In order to allow market-value valuation bases and avoid sector-wide asset cover defaults, Section 96(2) clearly states that the primary financial objective takes absolute precedence over the secondary preservation objective, even though the administrator must attempt to accomplish both goals concurrently.

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[26] Housing and Planning Act 2016 (UK), Pt 4, ch 5, sch 5
[27] 'Housing Administration: A New Insolvency Regime for Social Housing Providers' (2016) Journal of Housing Law 19, no. 2: 34-38
[28] Housing and Planning Act 2016 (UK), s 96
[29] Housing and Regeneration Act 2008 (UK)
[30] Housing and Planning Act 2016 (UK), Pt 4, Ch 5
[31] Housing and Planning Act 2016 (UK), s 96(2)
[32] Housing and Planning Act 2016 (UK), s 97(1)
[33] Housing and Planning Act 2016 (UK), s 98

Ultimately, the UK system offers a highly relevant comparative blueprint for Indian insolvency jurisprudence by emphasizing the ongoing development and continued occupation of dwellings over generic asset liquidation[34]. A parallel, sector-specific 'Housing Administration' statute, which would enable the completion of stalled real estate projects under stringent judicial supervision and prevent the systemic value destruction inherent in generic corporate liquidation, is being pushed by Indian legal commentators in light of this model processes[35].

CONCLUSION

Insolvency in India's real estate sector fundamentally went through a lot of changes over the years. In the beginning the priority was helping creditors and was focused on individual companies under the IBC. It has been reshaped through different judgement, amendments and reforms from regulators have transformed into a system that specifically is focused on homebuyers and looks at project specific, placing individual's need to buy a home at the heart of insolvency issues.

The fundamental change that introduced the human dimension of insolvency into the institutional framework of the Code was the recognition of homebuyers as financial creditors, which was first recognized by the court in the case of Nikhil Mehta & Sons v. AMR Infrastructure Ltd. and then explained through the 2018 amendment. The right to initiate insolvency proceedings was made meaningful and protected from individual abuse by the Supreme Court's constitutional verdict of this inclusion in Pioneer Urban Land & Infrastructure Ltd. and the numerical threshold upheld in Manish Kumar v. Union of India.

The Mansi Brar judgement made an important doctrinal contribution by giving us a logical way to tell the difference between real homeowners and investors who are only looking to make money.

Homebuyers seeking personal occupancy are expected to explore RERA remedies fully prior to turning to the IBC, the Court noted. Shelter falls under fundamental rights via Article 21, which shaped this approach. Only once a builder has clearly defaulted - where revival of the entire project hangs in balance - should insolvency proceedings begin. Such cases must not

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[34] Ian Fletcher, 'The Law of Insolvency' (5th edn, Sweet & Maxwell 2017) ch16
[35] Umakanth Varottil and Wan Wai Yee (eds), 'Restructuring Insolvency and Dissolution Law in Asia' (NUS Press 2019)

become common debt recovery tools. The ruling draws a line: collective stakes matter most when survival of housing projects is at stake.

Recognizing that real estate's going-concern worth lies in handing over completed homes - not in preserving a developer's legal form - shifted focus toward individual projects instead of entire firms, as seen in the Umang Realtech ruling on Reverse CIRP. One failing venture no longer drags down others when safeguards isolate each development's financial fate. When the Supreme Court ruled in Elegna Co-Op Housing (2026), it tied approval decisions directly to accountable reasoning, requiring clear records whenever buyer interests are impacted. Oversight now follows consequence, not convenience.

Despite court rulings shaping gradual change, the IBBI Committee's 2026 suggestions emerged- project-level entry rules, distinct financial accounts, and buyer options for either ownership or refund. Though courts often shape law by past rulings, here those patterns become official rules.