



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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RERA AND INSOLVENCY: PROTECTING HOMEBUYERS WHEN DEVELOPERS GO UNDER

BY: AARTI MEHTA

For middle-class families in India a home is the largest purchase that they will ever make. It is paid for in instalments that are saved over years. Then the builder stops picking up calls. The homebuyer learns that the company is in insolvency proceedings. At that point the family's biggest financial decision becomes its financial risk.¹

India has two laws that are meant to protect this homebuyer: the Real Estate (Regulation and Development) Act, 2016 (RERA) and the Insolvency and Bankruptcy Code 2016 (IBC). On paper these laws work together. In practice a homebuyer whose developer goes insolvent often does not know which forum to approach or how long the homebuyer will have to wait.

TWO LAWS TWO DIFFERENT JOBS

RERA was written to fix a problem. Before 2016 builders sold flats years before construction began moved money from one project to another and missed possession dates without any consequence. RERA introduced project registration and a rule that seventy percent of homebuyer's money must sit in an escrow account and must be used only for that project. It also set up an authority in every state, which can order a refund, compensation or possession under Sections 18 and 19.²

¹ Anuradha Mishra, *Affordable Housing Crisis: Middle Class Left in the Lurch*, Outlook Money (July 7, 2025), (last visited Sept. 28, 2026)

² Anurag Sodani, *RERA Act 2016: What It Is, Key Provisions, Homebuyer Rights and How to File a Complaint*, HomeFirst (Sept. 23, 2026), (last visited Sept. 28, 2026)

The IBC does something entirely. It is not a consumer law. It is a time-bound process that deals with a defaulting company, which is either revived through a resolution plan or liquidated so that its value does not drain away. A stalled housing project sits where the two laws meet. The homebuyer paid money expecting a flat, which makes the homebuyer a RERA allottee and since 2018 a creditor under the IBC.³

HOW HOMEBUYERS GOT A PLACE UNDER THE IBC

That was not the plan. When the IBC came into force homebuyers were barely treated as creditors. The Code had been written with banks in mind. The gap became impossible to ignore in 2017, when Jaypee Infratech was pushed into insolvency over a bank default leaving 32,000 flat buyers with neither a home nor a clear way to recover their money. One of them Chitra Sharma went to the Supreme Court arguing that ranking homebuyers as creditors behind the banks would leave them with nothing.⁴

In 2018 Parliament amended the IBC to treat homebuyers as creditors on the reasoning that instalments paid for an under-construction flat work like a loan. The Supreme Court upheld the amendment in *Pioneer Urban Land and Infrastructure Ltd. V. Union of India* (2019). Homebuyers now sit on the Committee of Creditors which decides whether a stalled project is completed, sold or liquidated.⁵

WHERE THE TWO LAWS PULL APART

a) A voice: When thousands of homebuyers hold individual claims they vote through a single authorised representative who follows the majority view. One homebuyer's concern rarely carries weight within the tight CIRP timelines.

b) Competing overrides: Section 89 of RERA and Section 238 of the IBC each say they prevail over laws. Once CIRP starts, the IBC's moratorium usually. It can freeze even a RERA refund or possession order the homebuyer had already obtained.

³ Raj Dev Singh & Pathik Choudhury, *Homebuyers Gets Status of Financial Creditors—Supreme Court Upheld IBC 2018 Amendment*, Mondaq (Nov. 1, 2019), (last visited Sept. 28, 2026)

⁴ Jaypee Infratech Insolvency: Supreme Court Stays NCLT Proceedings, Hope for 32,000 Home Buyers, Firstpost (Aug. 9, 2017)

⁵ Harshit, *Homebuyers as Financial Creditors Under IBC: An Analysis of Pioneer Urban Case*, Centre for Bus. & Fin. Laws, Nat'l L. Univ., Delhi (July 19, 2023)

c) A high bar to start the process: A single homebuyer cannot trigger CIRP. Section 7 requires at 100 allottees or 10% of all allottees in the project, whichever is less to file together. A homebuyer with a claim but no numbers is stuck.

d) Delay: CIRP is supposed to finish within 330 days. Large real estate cases run for years. The Jaypee case dragged on before NBCC finally took over the stalled towers and all that time homebuyers were paying rent and EMIs together.

WHAT THE COURTS AND COMMENTATORS SAY

Apart from Pioneer Urban, the Supreme Court held in *Newtech Promoters and Developers Pvt. Ltd. V. State of Uttar Pradesh* that RERA remedies do not exclude remedies and that RERA covers projects that were already under construction when the Act came into force. In the Jaypee matter the Court later held that consumer complaints can continue alongside insolvency proceedings. That gives homebuyers a route instead of forcing them to wait out the whole CIRP.⁶

COMMENTATORS MOSTLY SUGGEST THE FIXES:

A separate insolvency track for real estate so each project is resolved on its own and healthy projects are not dragged down along, with a builder's failing ones. Stricter and consistent enforcement of RERA's escrow rule so diversion of funds is caught before a project collapses. Treating allottees like secured creditors because allottees paid for a specific asset and allottees did not provide a general loan. Government-backed completion funds, like SWAMIH provide allottees a route than years of litigation.⁷

THE BIGGER PICTURE

Neither law has failed on its terms. RERA gave buyers a voice that buyers did not have before 2016 and the 2018 amendment gave buyers a seat at a table that Parliament had first forgotten to set for buyers. The trouble lies at the seam between the two. One law is a consumer protection law built around possession and the other law is a corporate insolvency code built around recovering money for creditors. For a family that has paid instalments on a half-built flat behind

⁶ *M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. & Ors.*, IBC Laws (Sept. 2, 2021),

⁷ Navya Shekhar, *Resolving Real Estate Insolvency: Safeguarding Homebuyers' Interests While Ensuring Project Completion*, IBC Laws (2025)

a locked gate that seem decides everything for that family. That family may get a home. ⁸May receive a refund years later or may find a place in a queue behind the banks with almost no say. Closing that gap is still one of the urgent pieces of unfinished work, in Indias real estate and insolvency reforms.

⁸ *What Is RERA and How Is It Changing Real Estate in India*, RELOY (Apr. 10, 2023)