

RISING CASES OF IBC WORRISOME FOR THE SECTOR

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IN THE RECENT YEARS THERE HAVE BEEN AN INCREASING NUMBER OF DEVELOPERS COMING UNDER INSOLVENCY AND BANKRUPTCY CODE PROCEEDINGS. REALTY+ SPOKE TO THE LEGAL EXPERTS FOR THEIR OPINION ON THE REASONS AND TO UNDERSTAND THE WAYS TO ADDRESS THE PROBLEM.

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Thousands of homebuyers have been affected by the insolvency proceedings against some of the well-known and established developers. And the cases are wide spread across the country. With big names of the industry falling, the economic impact could be much wider. In case a realty firm is able to continue to discharge its liabilities, homebuyers can turn to a recourse available under RERA or the Consumer Protection, however once a company is declared insolvent, Insolvency and Bankruptcy Code (IBC) is the only effective means of a redressal.



Vivek K Chandy, Joint Managing Partner, J. Sagar Associates agreed, "One of the primary reasons of increasing cases of IBC in real estate is the slow pace of implementation RERA Act, pan India. RERA in nutshell, seeks to protect the interests of home buyers with an aim to create an equitable and fair transactions between the seller and the buyer of properties, and to make real estate purchase simpler, by bringing in better accountability and transparency especially in the primary market and thereby boosting investments in the real estate sector.

Even though the RERA Act requires real estate projects within defined parameters to be registered with the respective state's RERA, including those where the completion certificate or occupancy certificate has not been issued, as of last available statics (end of 2021), only about 71307 projects have been registered. Model sale agreements are not yet being enforced or implemented or followed in letter and spirit. Developers continue to have their own versions which could be one-sided. Further, to prevent diversion of funds promoters are required to park 70% of all project receivables in a separate reserve account. The proceeds of such account can only be used towards land and construction expenses and will be required to be certified by a professional. However, funds are nonetheless being diverted. Smaller projects and those before the RERA Act came into force are excluded for purview. At a practical level, implementing RERA orders is also a challenging task.

Shounak Mitra, Partner, Khaitan & Co was of the view that simple answer is the advent of IBC, RERA and the amended Consumer Protection Act. "Previously, the homebuyers or the bankers had very limited options to raise their grievances on account of delay or in repayment of their loans etc. and more so the same were all expensive as well as time consuming. With different layers in the legal system, justice was delayed. With the coming of IBC and RERA, a trust and belief has come in the mind of the homebuyers and bankers. Even the Hon'ble SC has now put the homebuyers at a much higher pedestal compared

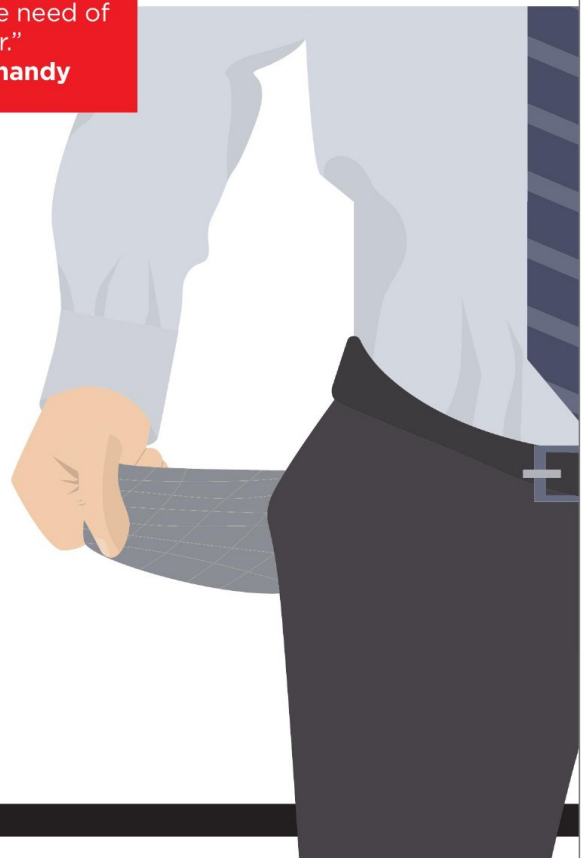


"Steps need to be taken for a more stringent implementation of RERA. Further there are some states which are lagging in the creation of RERA website for uploading all relevant information to become RERA compliant. A single window clearance for construction related approvals is the need of the hour."

- Vivek K Chandy

to others and in some cases over and above the Banks. This has actually led confidence in the mind of the hapless homebuyers who had invested their entire savings for building their dream home."

Saurav Kumar, Partner, IndusLaw expressed that a sharp increase in institution of cases against developers has emerged as an outcome of the uplifting of the relief packages provided by the Government during the initial stages of Covid-19. "For the lead banks, rejection by Supreme Court for extension of the moratorium on payment of instalments beyond August 31, 2020, has allowed banks to declare all loans, which not been repaid as per schedule beyond the said date, as



non-performing assets. Such rejection of extension of moratorium has acted as a catalyst for initiation of IBC proceedings against the developers. With respect to the homeowners, the state RERA authorities had provided certain extensions to the developers for the completion of the project due to the restrictions imposed on constructions during the first phase of Covid-19. However, largely such extensions are no longer available and therefore, homebuyers are now approaching the RERA authorities for initiating cases against the developers for delay in possession.”

Rajesh Narain Gupta, Managing Partner, SNG & Partners sums up the fundamental reasons for increasing number of cases of property



IBC has provided a tool in the hands of the homebuyers to be a part of committee of creditors and this should help homebuyers to protect their interest by having their say as a financial creditor to protect their interests and negotiate on the amounts to be received under their resolution plan.
- **Rajesh Narain Gupta**

developers being taken to court by homeowners or by the banks -

Liquidity Crunch - Statistics show that the residential sales volume has dipped across the country. The reasons possibly is liquidity crunch at the end of the homebuyers resulting into non-selling of the housing units and leading to liquidity crunch with the developers. This results in non-payment of loans by the developers to the banks and also non-completion of the projects by the developers. Covid has also played a vital role in increasing the liquidity issue. Things post Covid are now again improving.

New Statutes- The real estate sector, in the wake of RERA has started to transform into an organised sector. The transformation phase has led to abandoning of projects by small-time developers resulting into default by them in their projects and towards banks and homeowners are suffering.

Lack of Bonafide- Another reason for increasing number of cases against developers is the lack of bona fide

of the developers in delivering the timely projects. Funds have been siphoned off / diverted by the developers which has led to non-completion of the projects. The loans taken from the banks due to be utilised for the projects have not been utilised for the same and rather defaulter been committed in repayment of such loans. Numerous homebuyers are suffering on account of the inactions and omissions of unscrupulous developers.

IS THERE A REQUIREMENT OF SEPARATE PROCEDURES FOR REAL ESTATE INSOLVENCIES?

In view of **Shounak Mitra** IBC has been adequately amended to take care of the homebuyers. “The judiciary has done and been doing their best to protect their interests, for e.g., the judiciary has also come up with the novel idea of reverse CIRP to facilitate the project completions.

Saurav Kumar concurred, “The IBC regime, being the umbrella legislation for insolvency resolution of all