

# Despite IBC, RERA, no relief to homebuyers

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The recent Supreme Court judgment allowing the Centre to take over the management of the beleaguered real estate firm Unitech has once again put the spotlight on the issues concerning homebuyers and their disputes with builders.

A sense déjà vu prevailed: Around a decade back, the government had to similarly step in to rescue fraud-hit Satyam. While many stakeholders celebrated the SC's order in Unitech, it raised questions on the efficacy of the regulatory and redress mechanisms under the Real Estate Regulation Act (RERA) and the Insolvency and Bankruptcy Code (IBC).

According to the apex court, the Unitech matter was prima facie concerned with siphoning off funds by the promoters. However, the court did not allow the matter to go to insolvency proceedings, keeping homebuyers' interest in mind. Though the IBC gives homebuyers the status of financial creditors, it doesn't put them on a par with other financial creditors. This creates apprehension on the mind of homebuyers stuck in such cases.

Homebuyers come under the category of "unsecured creditors". This means though homebuyers can seek to initiate insolvency proceedings under the IBC, the unsecured creditor status may have implications on priority of the payments made when a company dissolves. Secured creditors, which have an investment backed by collateral, such as banks, will be high on the list. If a company does go into insolvency, the homebuyers may not get a sizeable chunk of the pie, even though they are part of the committee of creditors (CoC).

In the CoC, homebuyers may face other challenges. One can be that the resolution professional has to ascertain the stage of the negotiations between homebuyers and the developer company, points out Aradhana Bhansali, partner, Rajani Associates.

A recently proposed amendment to the Code appears to make it tougher for homebuyers to even institute a case in the first place. The amendment seeks to stipulate that at least 10 per cent or 100 homebuyers — whichever is less — can trigger action under the IBC. Moreover, any pending matter in the court has to comply with these pro-

## THE CHALLENGES

- **RERA faces implementation problems on the ground**
- **States have failed to appoint adjudicating officers**
- **As homebuyers are unsecured creditors, they get proceeds after secured creditors under the IBC**
- **Under the new IBC Ordinance, only 10% or 100 buyers can start insolvency proceedings**
- **Details of homebuyers in a project are not public. This makes homebuyers' right practically unenforceable**

visions within 30 days.

When this latest amendment comes into effect, homebuyers may find it difficult to invoke the Code for redressal of their woes. First, there is no document in public which has details of every homebuyer of a project. The presence of such a document,

many can argue, will be a violation of the right of privacy. "This makes the right under the amendment practically unenforceable," says Satya Prakash, senior consultant, Fox & Mandal.

The Supreme Court recently granted relief to homebuyers who appealed against the Ordinance limiting their rights. The apex court stayed the provision, which asked pending applications to comply within 30 days. However, the judgment has not granted relief to any future applications.

Analysts point out the Real Estate Regulatory Authority, too, has not been able to stem the litany of woes faced by homebuyers in financially stressed projects. The Act is well-intentioned to provide relief to homebuyers by ensuring timely completion of projects, refunds, possession, etc. However, the authority's efficacy as a regulator has been uneven across states. "The execution of RERA in several states seems to be beset with teething problems," notes senior advocate Arvind Nayar. Experts say many a time builders don't comply with the authority's orders, and even force homebuyers to take possession of a house, instead of a refund.

"The biggest issue is lack of adjudicating officers," says Aditya Parolia, partner, PSP legal. The court, too, has expressed concern over the implementation track record of the authority's orders and observed the growing need for appointing adjudicating officers. It is also noteworthy that RERA has multiple stages of appeals — an appellate authority, a high court and then the Supreme Court. Experts point out an aggrieved homebuyer has the option to simultaneously file a case against a builder under the IBC and RERA, and with the consumer forum. He/she can even a criminal proceeding (for cheating, misappropriation of funds, etc).

Parolia is of the view that a homebuyer is better off approaching the consumer forum as it can handle both civil and criminal matters. Moreover, the order can only be challenged in the SC, which makes it easier for the distressed parties. But other experts throw in a word of caution. "On initiation of moratorium under the IBC, RERA's authority will be rendered redundant. Also, homebuyers may lose their claim to interest which RERA provides," says Poornima Advani, founding-partner at The Law Point.