



IMPACT OF IBC ON THE REAL ESTATE INDUSTRY

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Introduction

Real estate industry is a key engine which helps to bring about tremendous change in nation's economy and infrastructure. It has been regarded as the most constructive pathway for investors in India. Over the past few years, the real estate industry sunk into a mess of incomplete and delayed deliveries. Investors were discouraged to invest in real estate due to delay in the completion of projects and proposals haemorrhaging their investments. The real estate industry was eminently uncontrolled and disintegrated. There was a lack of regulatory tool which had made real estate sector very delicate. IBC came into existence in 2016 and has been amended repeatedly since then. The Insolvency and Bankruptcy (Second Amendment) Act, 2018, had included 'real estate allottees' within the definition of financial creditors. This change had made delays in delivery of real estate projects literally 'unaffordable' for real estate companies. Hence, they challenged the said amendment, whose constitutionality was then upheld by the Supreme Court. In this article, we shall examine how IBC has impacted the real estate sector in these past few years.

Homebuyers as Creditors Under IBC

The IBC (Second Amendment) Act, 2018 had placed homebuyers within the definition of financial creditors. This amendment was challenged by the real estate companies, but the Supreme Court in the judgement of **Pioneer Urban Land and Infrastructure Limited and Anr. V. Union of India**¹ held the IBC (Second Amendment) Act to be constitutionally valid. Hence, homebuyers came within the ambit of financial creditors.

The IBC allows creditors, both operational and financial, to initiate insolvency proceedings against the corporate debtor. Financial creditors have the right to vote on a) resolution of the insolvency of the company b) In the absence, of a resolution plan, on the liquidation of the company. Homebuyers as financial creditors implied that even if a single homebuyer who was disillusioned by the

¹Writ Petition (Civil), 43 of 2019



delays being caused, gave an insolvency application and the same got accepted, the real estate company would have to undergo the entire insolvency process. The IBC (Second Amendment) Act, opened up floodgates of petitions by homebuyers. Between June, 2018 and November, 2019 more than 1800 cases were filed by homebuyers. An insolvency resolution application can be given for 'default' in the debt to be repaid. The courts repeatedly held that the delay in handing over the real estate project will amount to default under the IBC². In fact, in the decision of Emaar MGF, the court held that the developer will have to return the money of the homebuyer, if the former does not hand over the project within the agreed timeline.

This led to problems for both the real estate developers and to a certain extent for the homebuyers. The former had to deliver on their promises without delay, if they did not want an insolvency resolution process initiated against them. Whereas, the latter were acting individually and hence, even if one homebuyer initiated an insolvency petition, all the homebuyers got embroiled. This was not always a win-win situation as the timelines under IBC are not always strictly followed. Moreover, if a company is undergoing a resolution process then a moratorium is imposed, which means that all other cases or suits against the corporate debtor will be stayed. If the insolvency resolution process takes long, then, the homebuyers who were not involved in filing the said insolvency resolution application will get stuck without a remedy.

In order to iron out the aforementioned creases, the government came up with another amendment in 2019, the IBC (Second Amendment) Bill, 2019. This Bill has introduced additional requirements for homebuyers to trigger the insolvency resolution process. This Bill states that an insolvency resolution can be triggered by homebuyers only when either 10% of the homebuyers or 100 homebuyers, whichever is less, initiate an insolvency resolution process against the real estate company. This has come as a major relief to real estate companies and is also important from the point of view of deterring frivolous applications for insolvency resolution.

However, despite this change, IBC has had a great impact on the real estate sector. We shall now move on to examine this impact and examine the question that was it necessary to bring homebuyers under the ambit of IBC, given that RERA or Real Estate (Regulation and Development) Act, 2016, has already been enacted and it deals primarily with delays in real estate projects.

²Alka Agarwal Vs. Parsvanath landmark Developers Pvt. Ltd. (IB)-1229(PB)/2018 and Neeraj Gupta Vs. Emaar MGF Land Ltd. (IB) – 1403(PB)/2018

Impact of IBC on Real Estate Sector

IBC has paved a new pathway in the sector of Indian Real Estate. It provided remedy to the investors and home buyers who had not yet been able to resolve the issue of non-payable assets as well as other unclear dues. This was possible only after the initiation of IBC as they left no ambiguity among the investors and debtors that might cause delay in insolvency resolution mechanism.

CIRP Cases in Real Estate

Time Period	Closed	Ongoing	Total
Jul.-Sept. 2019	201	299	500
Apr.-Jun. 2019	164	257	421
Jan.-Mar. 2019	128	231	359
Oct.-Dec. 2018	87	148	235
Jul.-Sept. 2018	68	141	209

Source: IBBI

According to this data provided by Insolvency and Bankruptcy Board of India, it can be seen from the table above that the insolvency resolution rate is increasing from past three years. Similarly, talking about the trends on real estate industry, the number of cases has increased from 209 (including both closed as well as ongoing cases) in Jul.-Sept. 2018 to 500 in 2019. This acknowledges that closed cases have been three times more than that of the last year. In 2018, total number of closed cases were 68 whereas in the period of 2019, the number of closed cases has raised to 201 out of 500 cases. From this, we can easily say that IBC has been the fastest mode for resolving the problems related to bankruptcy and insolvency in the real estate sector.

However, this brings us to another question, which is, is IBC required in the realm of real estate? RERA is the primary legislation which deals with delays in the real estate sector. It mandates real estate developers to obtain a compulsory registration and also envisages penalties, in the event of delay in delivering of projects. However, with homebuyers now being able to initiate insolvency proceedings under IBC, RERA may get sidelined. Having two legislations dealing with the same issue, may cause confusion. It may also encourage forum shopping and increase the burden of authorities under RERA as well as NCLT. IBC is for the purposes of resolving insolvent companies. If homebuyers keep filing cases for delay in deliverance, the real estate projects would get delayed further. Apart from the numerical threshold, a timeline for delay, the amount paid to the real estate developer etc. should also be considered. While, IBC has proved to be an effective tool in resolving real estate delays, it should not be



misused. With the existence of RERA, the government should think, if IBC is actually required by homebuyers or they can just approach the authorities under RERA.

Conclusion

Having said the aforementioned, it cannot be denied that IBC has had a major impact on the real estate sector. If the IBC (Second Amendment) Bill, 2019, is passed, then it will help in streamlining the availability of IBC as a tool in the hands of homebuyers.