

## The latest IBC amendment is good news for home buyers when developers don't deliver

Home buyers often face many nightmares in their quest for a dream home. For instance, imagine paying advance and other payments to find out later that there are bankruptcy proceedings against the developer. The risk of such happenings has been on the rise, with the property market in the doldrums and developers under financial distress. Some examples of realtors facing insolvency proceedings include Jaypee Infratech and Amrapali Group.

In these cases, buyers were left in the lurch and had little hope of recovering any money. But this could well change now.

### Financial creditors

The Insolvency and Bankruptcy Code has now been amended to classify home buyers as financial creditors. In the past, they were not part of any category of creditors — operational or financial. The code defines operational creditor as anyone to whom a debt with respect to operations — for goods and services — is owed. A financial creditor is one to whom a financial debt is due. Only these two classes of debtors can initiate bankruptcy proceedings. Financial creditors such as banks and NBFCs are typically given the first priority in recovering dues. Earlier, home buyers were sixth in the priority list of recovery, only ahead of shareholders. With the latest change, they have been moved up to the fourth position, says PS Suman, of AK Mysamy and Associates.

Also, home buyers can now initiate bankruptcy proceedings against a developer and would be treated on par with lenders, aiding refunds. Starting the proceedings would entail a filing fee of ₹25,000 and charges for a lawyer. If proceedings are ongoing, adding your claim could be done without a filing fee.

### Benefit for buyers

The change is clearly an advantage for home buyers as their bargaining position would be strengthened if the developer defaults. In the past, as buyers were considered unsecured creditors, they did not have any charge on the assets of the bankrupt firm. Not just that, financial creditors would take ownership of the homes for which buyers had paid money. These would have been auctioned off and the money would have been used to pay off outstanding loans.

Home buyers were kept last in the pecking order, without much rights. For instance, when bidders for bankrupt firms were evaluated, financial creditors usually selected the ones that gave them the best return, while a home buyer may have preferred a bidder who could complete the project.

In the Jaypee Infratech case, for instance, about 32,000 home buyers are in a state of distress as their rights are not protected.

Now, by becoming financial creditors, home buyers get ahead in the priority line to get a refund. As a home buyer, you would also have the right to be represented on the committee of creditors, and have a say in the plan that would be drawn up to manage the bankruptcy process.

### Operating issues

That said, there are operational issues to consider. One, what constitutes a default is not very clear, and it is likely that the definition used in RERA (Real Estate (Regulation and Development) Act)

would be applied. For instance, non-delivery of a house as given in the agreement would be default, says Romita Sekar of AK Mylsamy and Associates. As there are many circumstances of how a default can happen — such as developers agreeing to pay EMI during the construction period and defaulting on these — you must check with a lawyer to see if the developer could be considered to have defaulted.

Two, as there are likely to be many home buyers in a project, the application can be filed individually or jointly as a group, says KK Balu of AK Mylsamy and Associates. Filing individually, especially if you initiate proceedings at early stages, can help bring the developer to the negotiation table and help get a quick settlement. But this depends on the financial position of the developer. If there is deeper trouble and there are proceedings that have already been initiated, a joint filing by home buyers can help reduce costs — for legal fee and hiring an insolvency professional to represent the buyers in the resolution committee.

Three, it takes about two weeks from filing to getting a go-ahead on the case from the National Company Law Tribunal (NCLT), and it may take three-nine months (depending on whether the case is fast-tracked and if there is an extension) to get a consensus on a resolution plan. This is then ratified by NCLT. Home buyers must be prepared for this process.

Four, to make your case, it is important to have a record of payments, says AK Mylsamy of AK Mylsamy and Associates. For example, the copy of the agreement with the developer, receipts for payments made, etc, must be shown as proof.

-MEERA SIVA

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