RESEARCH QUESTION

"What remedies does a homebuyer in India have when a builder delays possession, how does a RERA complaint for refund or interest work, and what have courts held about the buyer's choice between RERA, consumer forums, and insolvency proceedings?"

Remedies for Delayed Builder Possession and the Choice of Forums under RERA, Consumer Law, and Insolvency Proceedings

TL;DR

Homebuyers in India possess concurrent, non-exclusive remedies under the Real Estate (Regulation and Development) Act, 2016 (RERA), the Consumer Protection Act, 1986/2019, and the Insolvency and Bankruptcy Code, 2016 (IBC). As established by the Supreme Court of India in *Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors.* (2019), these remedial regimes operate in parallel spheres, giving homebuyers the elective choice to seek individual refund or interest (via RERA or consumer forums) or to trigger corporate insolvency as financial creditors (via the IBC) when seeking systemic project rehabilitation as a last resort.

VERIFIED CASES	STATUTES	LATEST RULING
17	5	2025
9 High Courts · 8 SC		*Supreme Court of India*

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I. Detailed Analysis

KEY PRINCIPLES ESTABLISHED

01 **Unqualified Right to Withdraw or Seek Interest**

Under Section 18(1) of RERA, when a developer delays possession, the allottee holds an absolute and unqualified right to either withdraw from the project and claim a full refund with interest, or remain in the project and demand monthly interest for the period of delay, as confirmed in *M/s Man Global Ltd. v. Mr. Jitendra Jain & Ors.* (2023).

02 **Constitutional Validity of Retrospective Interest**

The statutory obligation of a developer to pay interest under Section 18 is compensatory, not penal, meaning that calculating delay interest based on antecedent facts occurring prior to the enactment of RERA is constitutionally valid and does not violate Articles 14, 19(1)(g), or 20 of the Constitution, as held in *Neelkamal Realtors Suburban Pvt. Ltd. v. Union of India* (2017).

03 **Compensatory Parity in Interest Rates**

The interest rate levied on the developer for delaying possession must be equitable and non-arbitrary, which is effectively satisfied when matched to the exact interest rate that the developer charges homebuyers for delayed payment installments, as affirmed in *Lucknow Development Authority v. Upasana Duggal* (2023).

04 **Restitutionary Standard for Interest Accrual**

In cases where refunds are ordered by consumer commissions or RERA, the interest must be calculated from the exact dates on which the individual installments were deposited by the homebuyer rather than from the date of the developer's default, ensuring complete financial restitution, as held in *Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroor* (2022).

05 **Rights of Subsequent Purchasers**

A subsequent purchaser who steps into the contractual shoes of the original allottee is equally entitled to seek a refund and interest for inordinate construction delays, with interest accruing from the date the developer acknowledged the property transfer, as ruled in *Laureate Buildwell Pvt. Ltd. v. Charanjeet Singh* (2021).

06 Non-Ouster of Alternative Fora

RERA's bar on civil court jurisdiction under Section 79 does not apply to consumer forums or arbitration, as they are not "civil courts," and Section 88 explicitly preserves concurrent remedies, as held in *Priyanka Taksh Sood v. Sunworld Residency Pvt. Ltd.* (2022) and *Pallab Ghosh v. Simplex Infrastructures Limited* (2024).

HOW THE COURTS HAVE APPLIED THIS

SUPREME COURT POSITION ON FORUM CHOICE AND SPECULATIVE INVESTORS	The Supreme Court has clarified that while homebuyers have parallel remedies, RERA is the primary forum for individual grievances, whereas the IBC is a forum of last resort aimed at project revival rather than debt recovery. To prevent systemic abuse, the Court has drawn a clear distinction between genuine homebuyers and speculative investors (e.g., those with buyback/assured-return clauses or double-digit purchases), barring the latter from initiating corporate insolvency proceedings under Section 7 of the IBC, as established in *Mansi Brar Fernandes v. Shubha Sharma and Anr.* (2025). Furthermore, if a homebuyer successfully obtains a RERA refund decree, they do not lose their classification as "financial creditors" under Section 5(8)(f) of the IBC and cannot be treated less favorably than non-decree-holding allottees under a resolution plan, as ruled in *Vishal Chelani & Ors. v. Debashis Nanda* (2023).
HIGH COURT VARIATIONS ON CONSUMER FORUM COMPLAINTS	High Courts have consistently dismissed developers' arguments that the establishment of RERA excludes the consumer commissions' jurisdiction, holding that remedies under the Consumer Protection Act and RERA run in parallel and can be elected at the homebuyer's discretion, as illustrated by the Delhi High Court in *M/s M3M India Pvt Ltd & Anr v. Dr. Dinesh Sharma & Anr* (CM(M)/1183/2019).
INSOLVENCY PROCEEDINGS AND MORATORIUM BOUNDARIES	When a corporate insolvency resolution process (CIRP) is triggered, a moratorium under Section 14 of the IBC stays all execution proceedings against the corporate developer, but this moratorium does not protect the individual promoters of the development company from personal liability or ongoing settlement proceedings, as clarified in *Anjali Rathi v. Today Homes & Infrastructure Pvt. Ltd.* (2021). In circumstances where the developer and a majority of homebuyers reach a settlement aimed at completing the project, the Supreme Court may exercise its powers under Article 142 to permit the withdrawal of the insolvency petition to serve the larger interests of the allottees, as seen in *Amit Katyal v. Meera Ahuja and Others* (2022).

UNSETTLED AREAS OR CAVEATS

Compensation vs. Flat Interest Rates

Under historical consumer law precedents, courts have noted that consumer commissions cannot mechanically award a flat rate of interest (e.g., 18%) across all disputes; instead, compensation must be dynamic and based on specific proof of loss, actual rent paid during the period of delay, or documented mental harassment, as cautioned in *H.U.D.A. v. Prem Kumar Agarwal & Anr.* (2008).

II. Statutory Provisions

5 PROVISIONS

SECTION 18, REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 — RETURN OF AMOUNT AND COMPENSATION

Establishes the promoter's liability to return the amount received with interest and compensation if they fail to complete or give timely possession of an apartment, plot, or building, or to pay monthly interest for delays if the buyer does not withdraw from the project.

> "(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed." *Cited in*: raised in the research question

SECTION 19, REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 — RIGHTS AND DUTIES OF ALLOTTEES

Entitles real estate allottees to claim physical possession of the property, or to demand a refund of the amount paid with interest and compensation if the developer fails to comply with the agreement for sale.

> "(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas... (4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder." *Cited in*: raised in the research question

SECTION 79, REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 — BAR OF JURISDICTION

Bars civil courts from entertaining any suit or proceeding regarding matters that the RERA Authority, adjudicating officer, or Appellate Tribunal are empowered to determine.

> "No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act." *Cited in*: raised in the research question

SECTION 5, INSOLVENCY AND BANKRUPTCY CODE, 2016 — DEFINITION OF FINANCIAL DEBT

Deems any amount raised from a real estate allottee under a housing project as having the commercial effect of a borrowing, thereby classifying home buyers as financial creditors.

> "(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and (ii) the expressions, 'allottee' and 'real estate project' shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016" *Cited in*: Amit Katyal v. Meera Ahuja and Others, Mansi Brar Fernandes v. Shubha Sharma and Anr., Anjali Rathi v. Today Homes & Infrastructure Pvt. Ltd., Vishal Chelani & Ors. v. Debashis Nanda

SECTION 7, INSOLVENCY AND BANKRUPTCY CODE, 2016 — INITIATION OF CORPORATE INSOLVENCY RESOLUTION PROCESS BY FINANCIAL CREDITOR

Provides the mechanism and thresholds for financial creditors, including real estate allottees, to jointly initiate insolvency proceedings against a defaulting corporate debtor.

> "7. Initiation of corporate insolvency resolution process by financial creditor .—(1) A financial creditor either by itself or jointly with [other financial creditors...] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred. Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed [jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less]" *Cited in*: Amit Katyal v. Meera Ahuja and Others, Mansi Brar Fernandes v. Shubha Sharma and Anr., Anjali Rathi v. Today Homes & Infrastructure Pvt. Ltd., Vishal Chelani & Ors. v. Debashis Nanda

III. Cases Discussed

17 CASES · SUMMARY TABLE

#	CASE TITLE	COURT	YEAR	KEY HOLDING
01	*Pallab Ghosh v. Simplex Infrastructures Limited* GAHC010133652023	GAUHATI HIGH COURT	2024	Section 79 does not bar consumer forums or arbitration; remedies are concurrent and non-exclusive.
02	*M/s Man Global Ltd. v. Mr. Jitendra Jain & Ors.* HCBM010333732022	BOMBAY HIGH COURT	2023	Allottees can seek either refund with interest or monthly interest for delay under Section 18.
03	*Mansi Brar Fernandes v. Shubha Sharma and Anr.* ESCR010004132025	SUPREME COURT OF INDIA	2025	Identifies speculative investors under IBC; RERA remains primary grievance forum, IBC is last resort.
04	*Vishal Chelani & Ors. v. Debashis Nanda* ESCR010006852023	SUPREME COURT OF INDIA	2023	Homebuyers holding RERA refund decrees remain financial creditors under Section 5(8)(f) of the IBC.
05	*Lucknow Development Authority v. Upasana Duggal* UPHC020479432019	ALLAHABAD HIGH COURT	2023	Section 18 delay interest is compensatory and applies prospectively to ongoing pre-RERA projects.
06	*M/s M3M India Pvt Ltd & Anr v. Dr. Dinesh Sharma & Anr* DLHC010328442019	HIGH COURT OF DELHI	2019	RERA does not exclude consumer forum jurisdiction; remedies run concurrently.
07	*M/s M3M India Pvt Ltd & Anr v. Dr Dinesh Sharma & Anr* DLHC010215292019	HIGH COURT OF DELHI	2019	Enactment of RERA does not oust jurisdiction of consumer forums for homebuyers' complaints.
08	*Priyanka Taksh Sood v. Sunworld Residency Pvt. Ltd.* DLHC010278592021	HIGH COURT OF DELHI	2022	Section 79 does not bar consumer disputes or arbitration; remedies are fully concurrent.
09	*Anjali Rathi v. Today Homes & Infrastructure Pvt. Ltd.* ESCR010005132021	SUPREME COURT OF INDIA	2021	Moratorium under Section 14 IBC protects corporate debtor but not individual promoters.
10	*Amit Katyal v. Meera Ahuja and Others* ESCR010003822022	SUPREME COURT OF INDIA	2022	Permitting withdrawal of CIRP under Article 142 if settlement serves larger interest of homebuyers.
11	*Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroor* ESCR010004422022	SUPREME COURT OF INDIA	2022	Delay interest must be calculated from date of deposit to be compensatory and restitutionary.
12	*Neelkamal Realtors Suburban Pvt. Ltd. v. Union of India* HCBM020185292017	BOMBAY HIGH COURT	2017	Obligation to pay interest under Section 18 is compensatory and holds constitutional validity.

#	CASE TITLE	COURT	YEAR	KEY HOLDING
13	*H.U.D.A. v. Prem Kumar Agarwal & Anr.* ESCR010008232008	SUPREME COURT OF INDIA	2008	Award of delay interest must be based on actual facts and loss rather than uniform rate.
14	*M/S M3M India Pvt Ltd v. Dr. Dinesh Sharma* DLHC010249692019	HIGH COURT OF DELHI	2019	Homebuyers have concurrent parallel remedies under CPA, RERA, and insolvency laws.
15	*Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors.* ESCR010000302019	SUPREME COURT OF INDIA	2019	Classifies real estate homebuyers as financial creditors under Section 5(8)(f) of the IBC.
16	*M/s M3M India Pvt Ltd v. Dr. Dinesh Sharma* DLHC010194242019	HIGH COURT OF DELHI	2019	Consumer forum jurisdiction is not ousted by RERA provisions, offering parallel pathways.
17	*Laureate Buildwell Pvt. Ltd. v. Charanjeet Singh* ESCR010003392021	SUPREME COURT OF INDIA	2021	Subsequent buyers have rights to refund with interest for prolonged delays.

IV. Case Details

17 CASE FILES

01 Pallab Ghosh v. Simplex Infrastructures Limited

GAUHATI HIGH COURT · 2024-06-13 · ARB.P./21/2023

The petitioners sought the appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996, due to a delay in the delivery of an apartment by the respondents. The respondents contested the application, arguing that the dispute was non-arbitrable because the Real Estate (Regulation and Development) Act (RERA) provides a comprehensive mechanism for resolving such disputes.

HELD The Gauhati High Court allowed the arbitration petition, affirming that RERA remedies are not exclusive and do not bar arbitration or consumer forum remedies. The court ruled that the bar under Section 79 of RERA only applies to civil courts and does not affect the jurisdiction of special tribunals, statutory forums like consumer commissions, or consensual arbitration proceedings.

> “The Supreme Court thus held that the preliminary intent was clear, that a choice or discretion was given to the allottee, whether he wishes to initiate appropriate proceedings under the CP Act or to file an application under the RERA Act.”

GAUHATI HIGH COURT · 2024 | SOURCE GAHC010133652023

02 M/s Man Global Ltd. v. Mr. Jitendra Jain & Ors.

BOMBAY HIGH COURT · 2023-07-10 · SA/108/2023

This case involves a batch of Second Appeals filed by a real estate developer, M/s Man Global Ltd., challenging orders passed by the Maharashtra Real Estate Appellate Tribunal. In one group of appeals, the developer contested orders awarding interest to allottees for delays in handing over possession, arguing that delays were due to administrative hurdles in obtaining municipal certifications and claiming that allottees had agreed to extensions. In a second group, the appeals challenged the dismissal of the developer's earlier appeals by the Tribunal due to non-compliance with the pre-deposit requirements mandated under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016.

HELD The Bombay High Court held that Section 18 of RERA grants homebuyers an absolute, unqualified right to withdraw from a delayed project and seek a complete refund of their deposited money with interest and compensation. Alternatively, if the buyer chooses to remain in the project, the developer has a mandatory obligation to pay monthly interest for every month of delay until actual physical possession is delivered.

> “Section 18 of the said Act, inter alia, clearly provides that if there is a delay in handing over possession of an apartment, the allottee can seek refund of the amount by withdrawing from the project and such refund is to be made together with interest as may be prescribed and in addition to that, the allottee can claim compensation.”

BOMBAY HIGH COURT · 2023 | SOURCE HCBM010333732022

03 Mansi Brar Fernandes v. Shubha Sharma and Anr.

SUPREME COURT OF INDIA · 2025-09-12 · 2025 INSC 1110

This case clarifies the distinction between 'genuine homebuyers' and 'speculative investors' under the Insolvency and Bankruptcy Code (IBC). The Supreme Court held that allottees whose agreements focus on assured returns, buyback clauses, and profit-sharing rather than actual possession are speculative investors and cannot initiate insolvency proceedings under Section 7 of the IBC. While such investors may pursue other legal remedies, they cannot misuse the insolvency resolution process meant for homebuyer protection. The Court further ruled that amendments introducing threshold requirements for filing IBC applications apply to pending cases where orders were not yet reserved at the time of the law's enactment.

HELD The Supreme Court held that RERA remains the primary forum for individual homebuyers' grievances, whereas the IBC is a remedy of last resort intended for project rehabilitation. The Court laid down rigorous criteria to weed out "speculative investors" from initiating corporate insolvency, noting that those seeking refunds with unusually high interest, holding commercial buy-back options, or purchasing double-digit units are speculative, though they are not barred from filing financial claims in ongoing CIRP.

> “RERA remains the primary forum for redressal of homebuyers’ grievances; • The IBC is a forum of last resort, intended to secure revival and completion of viable projects, not to serve as a debt recovery mechanism”

SUPREME COURT OF INDIA · 2025 | SOURCE ESCR010004132025

04 Vishal Chelani & Ors. v. Debashis Nanda

SUPREME COURT OF INDIA · 2023-10-06 · 2023 INSC 913

The appellants, home buyers who had obtained refund orders from the Real Estate Regulatory Authority (RERA), challenged a resolution plan that treated them differently—and less favorably—than other home buyers who had not sought RERA remedies. The Resolution Professional argued that by obtaining a decree, these buyers ceased to be in the same class as other allottees.

HELD The Supreme Court ruled that homebuyers who have obtained a refund decree from RERA do not lose their legal status as "financial creditors" under Section 5(8)(f) of the IBC. The Court set aside the resolution plan that treated decretal homebuyers differently, holding that such a distinction is artificial, highly inequitable, and unconstitutionally discriminatory.

> "Under explanation to s.5(8)(f) home buyers and allottees of real estate projects were included in the class of "financial creditors", because financial debt is owed to them… Underlying claim of an aggrieved party is crystallized in the form of a Court order or decree, that does not alter or disturb the status of the allottees as financial creditors"

SUPREME COURT OF INDIA · 2023 SOURCE ESCR010006852023

05 Lucknow Development Authority v. Upasana Duggal

ALLAHABAD HIGH COURT · 2023-11-30 · RERA/266/2019

This case involved a dispute regarding delayed possession of a residential flat by the Lucknow Development Authority. The allottee sought interest for the delay under the Real Estate Regulation & Development Act, 2016. While the initial authority awarded interest at a lower rate, the Appellate Tribunal modified the order, directing the developer to pay interest at 15% per annum, matching the rate the developer charged allottees for delayed payments under their brochure terms. The Court upheld this decision, relying on Supreme Court precedent confirming that the Act of 2016 applies to ongoing projects and that promoters cannot avoid obligations based on pre-existing contract terms that shift the burden of delay onto the allottee.

HELD The Allahabad High Court held that interest under Section 18 of RERA is purely compensatory in nature and cannot be classified as penal. The court ruled that it is equitable to levy delay interest on the promoter at the same rate that the promoter itself charges allottees for delayed installment payments, even if the delay occurred prior to RERA's enactment.

> "The payment of interest under Section 18 is compensatory in nature… The interest payable under Section 18 is as per the definition of "interest" under Section 2(za) Explanation (ii), the same interest that would have been payable by the flat purchaser for delay in payment."

ALLAHABAD HIGH COURT · 2023 SOURCE UPHC020479432019

06 M/s M3M India Pvt Ltd & Anr v. Dr. Dinesh Sharma & Anr

HIGH COURT OF DELHI · 2019-09-04 · CM(M)/1183/2019

This case involved a series of petitions challenging whether home buyers could initiate proceedings against real estate developers under the Consumer Protection Act, 1986, following the enactment of the Real Estate (Development and Regulation) Act, 2016 (RERA). Developers contended that RERA superseded the jurisdiction of consumer forums.

HELD The Delhi High Court held that the remedies provided under RERA and the Consumer Protection Act run parallel. Pointing to Section 71(1) of RERA as an illustration, the court held that RERA was never intended to oust the jurisdiction of consumer commissions for either pending or future consumer complaints.

> "While examining the operation of remedies under RERA and IBC, the Supreme Court has drawn on Section 71(1) as another illustration that the remedies under RERA were not intended to be exclusive, but to run parallel with other remedies."

HIGH COURT OF DELHI · 2019 | SOURCE DLHC010328442019

07 M/s M3M India Pvt Ltd & Anr v. Dr Dinesh Sharma & Anr

HIGH COURT OF DELHI · 2019-09-04 · CM(M)/703/2019

This case involved a batch of petitions challenging the maintainability of consumer complaints filed by home buyers against real estate developers following the enactment of the Real Estate (Development and Regulation) Act, 2016 (RERA). The petitioners argued that RERA precluded the jurisdiction of consumer forums.

HELD The Delhi High Court held that RERA and the Consumer Protection Act are complementary, concurrent remedies. The court ruled that consumer forums are not "civil courts" under Section 79 of RERA, thereby leaving homebuyers completely free to choose their preferred forum.

> "Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code."

HIGH COURT OF DELHI · 2019 | SOURCE DLHC010215292019

08 Priyanka Taksh Sood v. Sunworld Residency Pvt. Ltd.

HIGH COURT OF DELHI · 2022-04-19 · ARB.P./868/2021

The petitioners sought the appointment of a sole arbitrator to resolve a dispute arising from a Flat Buyer Agreement with the respondent developer, following the cancellation of a flat allotment and a failed refund request. The respondent challenged the petition, arguing that the dispute was not maintainable due to deficient stamp duty, the lack of an actual dispute, and the contention that the Real Estate (Regulation and Development) Act (RERA) granted exclusive jurisdiction to the regulatory authority.

HELD The Delhi High Court held that Section 79 of RERA does not bar proceedings under the Consumer Protection Act or the initiation of arbitration. The Court noted that under Section 88, RERA is in addition to and not in derogation of other laws, thus saving the homebuyer's right to pursue concurrent contractual remedies.

> "Since it gives a right "without prejudice to any other remedy available", in effect, such other remedy is acknowledged and saved subject always to the applicability of Section 79."

HIGH COURT OF DELHI · 2022 | SOURCE DLHC010278592021

09 Anjali Rathi v. Today Homes & Infrastructure Pvt. Ltd.

SUPREME COURT OF INDIA · 2021-09-08 · 2021 INSC 460

The petitioners were homebuyers who obtained an NCDRC order directing the developer to refund their money. Execution proceedings were stalled when the developer was subjected to the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, triggering a statutory moratorium. The Supreme Court observed that a resolution plan submitted by a consortium of homebuyers was awaiting approval from the Adjudicating Authority. The Court declined to order the attachment of the promoters' personal properties while the resolution plan was pending, directing the parties to raise any objections before the Adjudicating Authority. It further clarified that while the moratorium protects the corporate debtor, it does not prevent petitioners from pursuing proceedings against the promoters regarding settlements.

HELD The Supreme Court held that while the moratorium under Section 14 of the IBC bars any active or new execution proceedings against the corporate debtor itself, it does not apply to the company's personal promoters. Homebuyers remain legally free to initiate or continue proceedings against the individual promoters of the builder company.

> "Since the moratorium declared in respect of the first respondent continues to operate under s.14 of the IBC, no new proceedings can be undertaken or pending ones continued against the Corporate Debtor – Petitioners would not be prevented by the moratorium under s.14 of the IBC from initiating proceedings against the promoters of the first respondent in relation to honoring the settlements reached before this Court."

SUPREME COURT OF INDIA · 2021 | SOURCE ESCR010005132021

10 Amit Katyal v. Meera Ahuja and Others

SUPREME COURT OF INDIA · 2022-03-03 · 2022 INSC 260

The case involved a dispute between home buyers and a real estate developer (the Corporate Debtor) due to an eight-year delay in project completion. Home buyers had initiated insolvency proceedings under the Insolvency and Bankruptcy Code (IBC). During the appeal, the parties reached a settlement where the developer committed to completing the project and providing refunds to the original applicants. Given that the majority of home buyers supported this settlement, the Supreme Court invoked its powers under Article 142 of the Constitution to permit the withdrawal of the insolvency proceedings. The Court emphasized that the objective of the IBC is to keep a company as a going concern rather than pushing it into liquidation, which would harm the interests of unsecured home buyers.

HELD The Supreme Court held that the main objective of the IBC is to maintain a corporate debtor as a going concern, not to force it into liquidation. In delayed housing projects, if a vast majority of homebuyers settle with the builder to complete construction, the Court will invoke Article 142 of the Constitution to allow withdrawal of the CIRP in the larger interest of the homebuyers.

> “Even the object and purpose of the IBC is not to kill the company and stop/stall the project, but to ensure that the business of the company runs as a going concern.”

SUPREME COURT OF INDIA · 2022 | SOURCE ESCR010003822022

11 Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroor

SUPREME COURT OF INDIA · 2022-04-07 · 2022 INSC 404

This case concerned a developer's failure to deliver an apartment within the stipulated timeline in the buyer's agreement. The National Consumer Disputes Redressal Commission ordered a refund of the deposited amount with interest, finding the agreement's terms one-sided, oppressive, and constituting unfair trade practices. The Supreme Court upheld this decision, affirming that consumer forums have the jurisdiction under the Consumer Protection Act to order refunds in such circumstances. The Court further held that the Consumer Protection Act and the Real Estate (Regulation and Development) Act operate concurrently, offering remedial choices for consumers. Additionally, the Court ruled that interest on the refunded amount must be calculated from the date of deposit to ensure it is fully compensatory.

HELD The Supreme Court upheld that consumer forums are empowered under Section 14 of the Consumer Protection Act to order a complete refund of amounts paid with interest and compensation. To ensure the interest is truly restitutionary, it must be calculated from the exact dates on which the individual deposits were made by the homebuyer.

> “For the interest payable on the amount deposited to be restitutionary and also compensatory, interest has to be paid from the date of the deposit of the amounts. The Commission in the order impugned has granted interest from the date of last deposit. It does not amount to restitution.”

SUPREME COURT OF INDIA · 2022 | SOURCE ESCR010004422022

12 Neelkamal Realtors Suburban Pvt. Ltd. v. Union of India

BOMBAY HIGH COURT · 2017-12-06 · WP/2708/2017

This batch of petitions challenged the constitutional validity of various provisions of the Real Estate (Regulation and Development) Act, 2016 (RERA), arguing they violated fundamental rights and constitutional principles. The petitioners contended that several sections regarding project registration, definitions of promoters, and penalties were arbitrary, ultra vires, and unconstitutional. The High Court rejected these challenges, upholding the constitutionality of the RERA. The court held that the legislation was enacted to protect the interests of consumers, ensure accountability, and bring transparency and standardisation to the real estate sector. The court affirmed that the law serves a legitimate public purpose and balances the rights of both promoters and homebuyers.

HELD The Bombay High Court upheld the constitutional validity of Section 18 of RERA. The court held that the developer's obligation to pay interest for delayed possession is compensatory and not penal. It further held that applying this provision to ongoing projects based on antecedent facts does not make the law impermissibly retrospective.

> “The requirement to pay interest under Section 18 is not penal since payment of interest is compensatory in nature due to delay suffered by the flat purchasers (Alok Shanker Pandey vs. Union of India (Supra). Even assuming that the interest is penal in nature, levy of interest is not retrospective but is only based on antecedent facts; it operates prospectively.”

BOMBAY HIGH COURT · 2017 | SOURCE HCBM020185292017

13 H.U.D.A. v. Prem Kumar Agarwal & Anr.

SUPREME COURT OF INDIA · 2008-01-17 · 2008 INSC 61

This case involved a dispute over the rate of interest awarded by the National Consumer Disputes Redressal Commission against the Haryana Urban Development Authority (HUDA). The Commission had awarded interest at a flat rate of 18% per annum to an allottee who was forced to accept an alternative plot due to the authority's failure to provide the originally allotted one. The Supreme Court set aside the 18% interest rate, reiterating that compensation must be determined based on the facts of each case rather than a rigid, uniform rate. Following previous precedents, the Court ruled that interest should reflect current market rates and reduced the award to 12% per annum, noting that this rate had been previously stayed by an interim order.

HELD The Supreme Court held that consumer forums cannot mechanically apply a flat 18% per annum interest rate across all delay disputes. Compensation must be custom-tailored to the specific facts of each case, factoring in actual rental costs paid by the buyer, potential rent loss, and documented physical or mental harassment.

> “Award of compensation must be under different separate heads and must vary from case to case depending on the facts of each case.”

SUPREME COURT OF INDIA · 2008 | SOURCE ESCR010008232008

14 M/S M3M India Pvt Ltd v. Dr. Dinesh Sharma

HIGH COURT OF DELHI · 2019-09-04 · CM(M)/864/2019

These petitions addressed whether homebuyers could initiate proceedings against developers under the Consumer Protection Act, 1986, following the enactment of the Real Estate (Development and Regulation) Act, 2016 (RERA). The petitioners argued that RERA excluded the jurisdiction of consumer forums, while respondents contended that the remedies were concurrent. Relying on the Supreme Court's decision in Pioneer Urban Land and Infrastructure Ltd. v. Union of India, which established that remedies for allottees under the Consumer

Protection Act, RERA, and the Insolvency and Bankruptcy Code are concurrent, the Delhi High Court found the petitioners' arguments untenable. Consequently, the court permitted the consumer proceedings to continue.

HELD The Delhi High Court dismissed the developers' challenges to consumer complaints, affirming that the remedies under the Consumer Protection Act, RERA, and the IBC are parallel and concurrent. The enactment of RERA does not take away a homebuyer's right to seek relief under consumer legislation.

> “Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.”

HIGH COURT OF DELHI · 2019 | SOURCE DLHC010249692019

15 Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors.

SUPREME COURT OF INDIA · 2019-08-09 · 2019 INSC 889

This case addressed the constitutional validity of the 2018 amendment to the Insolvency and Bankruptcy Code, which classified real estate home buyers as 'financial creditors.' The Supreme Court upheld the amendment, reasoning that the legislature has broad discretion in economic policy. The Court clarified that home buyers contribute significant funds to construction and are thus entitled to initiate insolvency proceedings to protect their interests and participate in the Committee of Creditors. The Court further held that the Code and the Real Estate (Regulation and Development) Act (RERA) should be read harmoniously, with the Code prevailing in the event of a conflict. Home buyers possess concurrent remedies, allowing them to pursue relief under RERA, the Consumer Protection Act, or the Insolvency Code.

HELD The Supreme Court upheld the constitutionality of the 2018 IBC amendment declaring homebuyers as "financial creditors" under Section 5(8)(f). The Court ruled that because homebuyers finance real estate projects through advances, they are entitled to trigger the insolvency process, which functions as a beneficial tool alongside concurrent remedies under RERA and the CPA.

> “Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.”

SUPREME COURT OF INDIA · 2019 | SOURCE ESCR010000302019

16 M/s M3M India Pvt Ltd v. Dr. Dinesh Sharma

HIGH COURT OF DELHI · 2019-09-04 · CM(M)/621/2019

This batch of petitions addressed whether home buyers could initiate proceedings against real estate developers under the Consumer Protection Act (CPA) after the enactment of the Real Estate (Development and Regulation) Act (RERA). The court examined whether RERA ousted the jurisdiction of consumer forums. Following the Supreme Court's ruling in Pioneer Urban Land and Infrastructure Ltd. v. Union of India, which established that remedies for flat allottees under the CPA, RERA, and the Insolvency and Bankruptcy Code are concurrent, the court found the issue settled. Consequently, it was held that the jurisdiction of consumer forums is not ousted by the provisions of RERA.

HELD The Delhi High Court held that the protective jurisdiction of consumer forums is not ousted by the passage of RERA. The court reaffirmed that homebuyers have the parallel choice of pursuing consumer forum remedies alongside RERA remedies, as both statutes are designed to operate concurrently.

> “While examining the operation of remedies under RERA and IBC, the Supreme Court has drawn on Section 71(1) as another illustration that the remedies under RERA were not intended to be exclusive, but to run parallel with other remedies.”

HIGH COURT OF DELHI · 2019 | SOURCE DLHC010194242019

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17 Laureate Buildwell Pvt. Ltd. v. Charanjeet Singh

SUPREME COURT OF INDIA · 2021-07-22 · 2021 INSC 347

This case concerns the rights of a subsequent purchaser of a flat to seek a refund when a developer fails to deliver possession within the stipulated timeframe. The builder contended that the purchaser, having entered the contract later, was aware of project delays caused by external factors and therefore was not entitled to a refund. The Supreme Court held that while a subsequent purchaser steps into the shoes of the original allottee, they cannot be forced to wait indefinitely for completion. The Court ruled that equities should be moulded by directing the builder to refund the principal amount with interest, starting from the date the builder acknowledged the transfer of the property to the new purchaser.

HELD The Supreme Court held that subsequent homebuyers are entitled to seek a refund with interest when a builder delays delivery. The Court ruled that while subsequent purchasers step into the original allottee's contract, they cannot be held hostage to infinite delays, and interest must be paid from the date on which the developer formally recognized the transfer of the apartment.

> “The Court ruled that equities should be moulded by directing the builder to refund the principal amount with interest, starting from the date the builder acknowledged the transfer of the property to the new purchaser.”

SUPREME COURT OF INDIA · 2021 | SOURCE ESCR010003392021