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## Recent Trend of Applicability of Insolvency Laws in Real Estate Sector: Curious Cases of Jaypayee & Unitech Builders

Monica Anand Kumar<sup>a</sup> Dr. Suman Paliwal<sup>b</sup>

<sup>a</sup>Faculty of Law, Jagannath University, Jaipur, India <sup>b</sup>Associate Professor, Faculty of Law, Jagannath University, Jaipur, India

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*'Homeownership is seen as a cornerstone of wealth, encompassing both financial prosperity and emotional stability,' a notion widely accepted as true. Many people aspire to own a home, a journey often characterised by a mix of anticipation, anxiety and excitement. However, the excitement of buying a home can quickly be overshadowed when faced with complex fraud schemes orchestrated by major real estate companies like Supertech, Vatika, Mantri, Jaypee, Unitech, and Amrapali. The recent increase in bankruptcies among builders has created significant challenges for homebuyers. The Insolvency and Bankruptcy Code, 2016<sup>1</sup> (the Code), was originally intended to aid businesses struggling to resolve their debts. They are using it as a tool to initiate insolvency proceedings against real estate developers for severe defaults. This paper examines the challenging circumstances of homeowners caught up in the bankruptcy proceedings of Jaypee and Unitech. It discusses the repercussions of their financial downfall and the ongoing lengthy legal battles unfolding in the Supreme Court. Given the complexities of the bankruptcy process, the paper seeks to critically assess whether the affected homeowners have seen any meaningful justice or relief. Through a detailed exploration of the events leading to the insolvency of Jaypee and Unitech, the focus is on the impact on distressed homeowners. The objective is also to assess the effectiveness of the legal framework in addressing the grievances of those affected by reviewing court decisions, legal precedents, and recent developments. By delving into the intricate details of these cases, the study aims to shed light*

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<sup>1</sup> Insolvency and Bankruptcy Code 2016

*on the evolving legal landscape of the real estate sector and discuss broader implications for real estate regulations and the protection of homebuyers' rights amidst bankruptcy proceedings.*

**Keywords:** *insolvency, real estate, law.*

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## INTRODUCTION

The recent downturn in the real estate sector has resulted in a dire scenario where numerous prominent developers, such as Unitech and Jaypee Infratech are unable to complete their residential projects and meet their commitments to homebuyers, leaving many in a difficult position. Jaypee Infratech was among the first developers to face insolvency proceedings. The case of Jaypee Infratech played a pivotal role in catalyzing a significant amendment to the Insolvency and Bankruptcy Code<sup>2</sup> through the Insolvency and Bankruptcy (Second Amendment) Act, 2018<sup>3</sup>. This amendment accorded homebuyers the status of financial creditors.<sup>4</sup>

This study focuses on two major builders Jaypee Group and Unitech Builders and their respective cases. The Supreme Court's involvement in these cases provides optimism for potential resolution. However, the extended duration of these proceedings highlights the challenges encountered by home buyers in insolvency scenarios and the necessity for stronger safeguards and more efficient processes to tackle such crises. The cases hold substantial importance in Indian real estate and insolvency law, potentially setting precedents for handling similar cases in the future, especially concerning the rights and protections of home buyers against financially distressed developers.

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<sup>2</sup> *Ibid*

<sup>3</sup> Insolvency and Bankruptcy (Second Amendment) Act 2018

<sup>4</sup> Ashwini Kumar Sharma, 'Jaypee case raises hopes of buyers in other projects' *Live Mint* (20 December 2019) <<https://www.livemint.com/companies/news/jaypee-case-raises-hopes-of-buyers-in-other-projects-11576035035978.html>> accessed 08 June 2024

## OVERVIEW OF JAYPEE GROUP CASE

Since its establishment in 2000, Jaypee Greens, the real estate division of the Jaypee Group, has focused on crafting opulent living experiences, spanning from upscale golf-centric residences to expansive townships. The group's first venture in real estate, Jaypee Greens in Greater Noida, has received numerous accolades on the international stage, affirming its reputation as one of Asia's foremost golf developments.<sup>5</sup>

The journey towards resolution appears to be drawing to a close for the homebuyers involved in various projects overseen by Jaypee Infratech Ltd, the real estate branch of Jaiprakash Associates Ltd. Insolvency proceedings were initiated against the company in August 2017 due to its inability to repay borrowed funds.

Jaypee Infratech, established as a special-purpose vehicle, was entrusted with the development, operation, and maintenance of the Yamuna Expressway in Uttar Pradesh, linking Noida and Agra. The company was also authorized to develop approximately 6,000 acres of land adjacent to the expressway for various uses, including institutional, commercial, residential, and recreational purposes. Commencing development on the Noida land parcel in 2008 and 2009, Jaypee Infratech launched numerous residential and commercial projects, most of which were slated for completion by 2012. In total, the company introduced more than 35,000 apartments across various projects, all of which experienced high demand and were quickly sold out. Nonetheless, the company began defaulting on its bank loan repayments and failed to deliver the projects within the promised timeline.

In May 2016, four years ago, the Insolvency and Bankruptcy Code<sup>6</sup> (IBC) was passed into law. In 2017, a group led by IDBI Bank initiated insolvency proceedings against Jaypee Infratech at the National Company Law Tribunal (NCLT) due to the company's defaults on loan. At that time, only about 20% of the company's projects had been completed for possession. It becomes crucial to ascertain whether homebuyers, categorised as unsecured creditors, will benefit from

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<sup>5</sup> 'Gated Townships' (Jaypee Group) <<http://jalindia.com/realesate.html>> accessed 08 June 2024

<sup>6</sup> Insolvency and Bankruptcy Code 2016

the insolvency process, especially considering that secured creditors, such as financial institutions, are prioritized for repayment.

### OVERVIEW OF UNITECH CASE

Established in 1971 by a group of engineers, Unitech Limited has emerged as one of India's leading real estate firms. Originally founded as a consultancy for soil and foundation engineering, it has since diversified its horizons to encompass a wide variety of products within the real estate sector. Presently, Unitech showcases an extensive portfolio spanning integrated residential developments hotels, shopping malls, golf courses, amusement parks, and high-end commercial spaces, as well as Special Economic Zones (SEZs) and IT/ITes parks. The company has completed over 100 residential projects, with Nirvana Country in Gurgaon standing out as a prominent integrated community featuring a blend of residences, apartments, commercial spaces, retail establishments, clubs, and schools.<sup>7</sup>

Buyers were drawn to Unitech's housing projects and Public Deposit schemes due to the assurance of timely delivery of high-quality homes and the favourable interest rates offered on Public Deposits. Between 2006–07 and 2014–15, many homebuyers and fixed deposit holders invested their funds in various building projects and fixed deposits. However, the said promoter-directors did not utilise the funds received for project execution activities and, as per the Forensic Auditor, indulged in the diversion of funds to its related onshore and offshore entities thereby resulting in significant delays in the construction of homes and non-refund of deposits. They also failed to invest the money received into project execution activities. Consequently, real estate buyers and fixed deposit holders lodged complaints before multiple forums and filed formal complaints and FIRs against the company and its former directors. When the cases involving fixed deposit holders and home buyers finally reached the Supreme Court of India, the Apex Court acknowledged the challenges faced by home buyers and, acting in the best interests of all parties involved, took action to ensure that Unitech Limited addressed the grievances of home buyers in the pivotal case, *Bhupinder Singh v Unitech Limited*<sup>8</sup>.

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<sup>7</sup> 'Overview' (Unitech) <<https://www.unitechgroup.com/about-us/the-company.asp>> accessed 28 July 2024

<sup>8</sup> *Bhupinder Singh v Unitech Limited* (2023) 7 SCC 719

To assess the satisfaction of buyers with the law and court action, it would be beneficial to acquire the data and order sheets.

### **IBC: EVOLUTION TO RESCUE DISTRESSED HOME BUYERS**

The Insolvency and Bankruptcy Code (IBC) 2016<sup>9</sup> was introduced in response to an escalating crisis of distressed debt across India, taking effect in the same year. This landmark legislation aimed at amalgamating various outdated insolvency and bankruptcy laws into a unified code, simplifying the insolvency resolution process for companies, partnerships, and Limited Liability Partnerships (LLPs). Initially, the IBC did not classify homebuyers or allottees as financial creditors, thus lacking certain rights reserved for financial creditors. It was only after the 2018 amendment that homebuyers were conferred with rights as financial creditors. Prior to this amendment, however, the Supreme Court had already acknowledged homebuyers as financial creditors in numerous rulings.

The Government enacted the Insolvency and Bankruptcy (Second Amendment) Act, 2018<sup>10</sup> in line with the recommendations from the Report of the Insolvency Law Committee<sup>11</sup>. The primary aim of this Ordinance was to address the concerns of homebuyers. It sought to harmonize the interests of various stakeholders within the framework of the Insolvency and Bankruptcy Code, 2016<sup>12</sup> ('IBC'), explicitly including those of house buyers.<sup>13</sup>

The Insolvency and Bankruptcy (Second Amendment) Act, 2018<sup>14</sup>, brought about a clarification under Section 5(8)(f)<sup>15</sup>. This clarification stipulated that payments made by an allottee for a real estate project are as financial debt, thereby categorising homebuyers as financial creditors. Financial debt encompasses among other things, any amount borrowed under any transaction

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<sup>9</sup> Insolvency and Bankruptcy Code 2016

<sup>10</sup> Insolvency and Bankruptcy (Second Amendment) Act 2018

<sup>11</sup> Ministry of Corporate Affairs, *Report of the Insolvency Law Committee* (2018)

<sup>12</sup> Insolvency and Bankruptcy Code 2016

<sup>13</sup> Karan Sahi, 'The saga of home buyers under insolvency and bankruptcy code' (*CA Club India*, 21 August 2018) <[https://www.caclubindia.com/articles/the-saga-of-home-buyers-under-insolvency-and-bankruptcy-code-34165.asp#google\\_vignette](https://www.caclubindia.com/articles/the-saga-of-home-buyers-under-insolvency-and-bankruptcy-code-34165.asp#google_vignette)> accessed 09 June 2024

<sup>14</sup> Insolvency and Bankruptcy (Second Amendment) Act 2018

<sup>15</sup> Insolvency and Bankruptcy (Second Amendment) Act 2018, s 5(8)(f)

reflecting the financial impact of borrowing, along with applicable interest and disbursements against the time value of money.

Due to this amendment, homebuyers obtained the authority to initiate a corporate insolvency resolution process against housing developers and real estate companies if the default amount surpassed INR 1 crore. Additionally, they could participate as members of the Committee of Creditors, actively participating in the insolvency resolution process. In cases where a company went into liquidation, it would also possess a higher claim on the proceeds from the sale of the company's liquidated assets.

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019<sup>16</sup>, issued by the President of India on December 28, 2019 introduced further modifications. This ordinance introduced three new provisions preceding the explanatory section of Section 7(1)<sup>17</sup> and amended Section 7<sup>18</sup> of the Code. According to the second provision, homebuyers, acting as allottees of a real estate project and seeking to collectively file for initiating a corporate insolvency resolution process against real estate and housing companies, were mandated to garner the support of at least 100 allottees or 10% of the total allottees in the project, whichever was less.

The third provision stipulated those applications by allottees, submitted prior to the ordinance but not yet accepted by the NCLT, had to be revised within 30 days following the ordinance's enactment to align with the criteria outlined in the second provision<sup>19</sup>.

The Apex Court in the matter of *Bikram Chatterji v Union of India*<sup>20</sup> and *Chitra Sharma v Union of India*<sup>21</sup>, noticing the deprivation of rights for homebuyers under the Code, acknowledged that the homebuyers should receive the same protection that other financial creditors have been granted under the IBC. As a result, the Apex Court mandated the completion of housing construction and demanded assurances to safeguard homebuyers' rights time and again.

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<sup>16</sup> Insolvency and Bankruptcy Code (Amendment) Ordinance 2019

<sup>17</sup> Insolvency and Bankruptcy Code (Amendment) Ordinance 2019, s 7(1)

<sup>18</sup> Insolvency and Bankruptcy Code 2016, s 7

<sup>19</sup> Surabhi Sharma, 'Insolvency and bankruptcy code: Impact on home buyers' (*iPleaders*, 23 July 2020)

<<https://blog.ipleaders.in/insolvency-bankruptcy-code-impact-homebuyers/>> accessed 15 June 2024

<sup>20</sup> *Bikram Chatterji v Union of India* (2019) OnLine SC 901

<sup>21</sup> *Chitra Sharma v Union of India* (2018) 18 SCC 575

## ROLE OF JUDICIARY

**1. Jaypayee Group:** The primary petition, CP (IB)- 77/ALD/2017<sup>22</sup>, was filed by IDBI Bank Limited against the corporate debtor under Section 7<sup>23</sup> of the IBC, 2016, and was accepted by the Allahabad Bench of the NCLT on August 9, 2017. This initiated the Corporate Insolvency Resolution Process (CIRP) for the corporate debtor, with Mr. Anuj Jain appointed as the Interim Resolution Professional (IRP) on August 12, 2017. Mr. Jain, in line with the IBC 2016 provisions, took control of the management and operations of the corporate debtor, JIL, on that day.

Meanwhile, homebuyers of JIL filed a writ petition against Chitra Sharma & Ors. v Union of India & Ors.<sup>24</sup>, at the Supreme Court of India, contesting certain aspects of the IBC 2016<sup>25</sup> and the August 9, 2017, order by the Allahabad branch of the tribunal. The Supreme Court, in its judgment dated August 9, 2018, ordered the resumption of the CIRP for JIL.

Subsequently, the IRP constituted the Committee of Creditors (CoC) on September 7, 2018, granting homebuyers 56.62% of the voting rights. After several deliberations and applications at the NCLT in Allahabad and Delhi, the resolution plan proposed by NBCC (India) Ltd. was accepted by the NCLT, Delhi, with modifications on March 3, 2020.

NBCC (India) Ltd. appealed this decision on March 3, 2020, at the NCLAT<sup>26</sup>. On April 22, 2020, The NCLAT issued an interim directive instructing the IRP to establish an Interim Monitoring Committee (IMC) to supervise the execution of the approved resolution plan, pending the appeal's outcome. The IMC was to comprise the successful resolution applicant, NBCC, and three primary financial institutions from the CoC: IDBI Bank Limited, Indian Infrastructure Finance Company Limited, and LIC of India.

Meanwhile, the Supreme Court, through an order dated August 6, 2020, in the matter of Jaypee Kensington Boulevard Apartments Welfare Association & Ors v NBCC (India) Limited<sup>27</sup>,

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<sup>22</sup> *IDBI Bank v Jaypayee Infratech Limited* (2017) 8 SCC 586

<sup>23</sup> Insolvency and Bankruptcy Code 2016, s 7

<sup>24</sup> *Chitra Sharma v Union of India* (2018) 18 SCC 575

<sup>25</sup> The Insolvency and Bankruptcy Code 2016

<sup>26</sup> *Jaypee Kensington Boulevard Apartments Welfare Association & Ors v NBCC (India) Limited* (2020) 12 SCR 603

<sup>27</sup> *Ibid*

temporarily halted the operation of the NCLAT's order from April 22, 2020, and instructed the IRP to oversee the corporate debtor's management. Additionally, it directed the transfer of all appeals related to the March 3, 2020, tribunal order from the NCLAT to itself.

In its judgment dated March 24, 2021, in the case of Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v NBCC (India) Limited<sup>28</sup>, (henceforth referred to as Jaypee Kensington), the Supreme Court overturned the Tribunal's order from March 3, 2020, and sent the case back to the CoC, ordering the completion of the CIRP for the corporate debtor within 45 days. Only Suraksha Realty and NBCC were allowed to submit resolution plans.

Substantial advancements have been achieved in the ongoing insolvency proceedings of Jaypee Infratech Ltd (JIL) and in addressing the challenges encountered by its homebuyers, with various proposals being made for resolution. Leading the way, Suraksha Group and NBCC (National Buildings Construction Corporation) have offered bids to acquire the distressed real estate developer and to finalise its pending projects.

NBCC (India) Limited unveiled its updated resolution plan on June 4, 2021, followed by Suraksha Realty, which submitted its revised plan along with an amendment on June 7, 2021. Suraksha Group's proposal involved an initial payment of Rs 125 crore to finish the projects and an investment of Rs 3,000 crore within 90 days post-approval to restart the halted projects, committing to deliver all pending housing units within 42 months. Conversely, NBCC proposed creating separate SPVs (Special Purpose Vehicles) for the Yamuna Expressway and JIL's real estate projects, with a similar 42-month timeframe for completing the remaining projects. Despite these proposals, the process has encountered setbacks due to delays and legal complexities, including objections from some homebuyers to NBCC's plan and requests for additional time to submit bids<sup>29</sup>.

During the 24th Committee of Creditors (CoC) meeting on June 10, 2021, members deliberated on and assessed the resolution plans and supplementary documents submitted by NBCC (India)

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<sup>28</sup> *Ibid*

<sup>29</sup> Sunita Mishra and Sneha Sharon Mammen, 'Jaypee insolvency: Factsheet and latest news update' (*Housing*, 07 March 2023) <<https://housing.com/news/sc-asks-allahabad-nclt-deal-insolvency-proceedings-jaypee-group/>> accessed 12 June 2024



Limited and Suraksha Realty. After the review, the plans were subjected to a voting process that occurred from June 14 to June 23, 2021. According to the Applicant/IRP, the plan from NBCC (India) Limited garnered 98.55% of the CoC votes, while the resolution plan from Suraksha Realty received 98.66% of the votes. Consequently, the CoC endorsed the resolution plan presented by M/s. Suraksha Realty Limited and M/s. Lakshdeep Investments and Finance Private Limited noted that the admitted claims of homebuyers amounted to Rs. 12,806 crores as of May 29, 2021.

**The resolution plan submitted by the ‘Suraksha Realty’ includes key measures to address the defaults by the Corporate Debtor as follows:<sup>30</sup>**

- a) Limiting and resolving the debt obligations of the Corporate Debtor;
- b) Infusing additional working capital;
- c) Taking control of all the business activities by terminating concerned related party agreements/ contracts;

On March 7, 2023, the NCLT sanctioned the resolution plan proposed by the SRA, emphasizing the necessity for the SRA to strictly adhere to the timelines set forth in the Resolution Plan as sanctioned by this Authority, for timely delivery or handover of the units to the Home Buyers/Allottees. It was further specified that the Monitoring Committee would oversee the progress of the unit constructions and the associated infrastructure, providing monthly reports to this adjudicating authority.

Prioritizing the best interests of home buyers, the NCLT also denied a universal withdrawal of all claims against the Corporate Debtor filed across various forums, including judicial, quasi-judicial, and regulatory bodies, by Home Buyers (including those filed before RERA), Financial Creditors, Operational Creditors, and Landowners (farmers). Notably, the NCLT found the SRA request for the Lenders of Home Buyers to forgive past defaults related to the projects lacking in merit and outside its jurisdiction, and thus, it was not approved.

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<sup>30</sup> *IDBI Bank v Jaypayee Infratech Limited* (2017) 8 SCC 586

Although the NCLT granted approval to Suraksha Group's resolution plan in March 2023, construction on the property has not yet commenced. In a recent development on March 8, 2024, the NCLAT directed the Suraksha Group to promptly initiate development on Jaypee Infratech Limited's (JIL)'s property. Despite the resolution plan being approved by the NCLT and YEIDA, the UP government has not yet sanctioned the resolution plan, leading to a halt in construction activities. As a result, homeowners find themselves adversely affected.<sup>31</sup>

Throughout this narrative, the innovative concept of a 'bad bank' has emerged in India, marking Jaypee Infratech Limited being the inaugural acquisition by India's pioneering Bad Bank. This signals a new era in managing distressed assets. The Bad Bank is structured as a duo comprising the National Asset Reconstruction Company Limited (NARCL) and the India Debt Resolution Company Limited (IDRCL). This framework was established to streamline the resolution process of large-scale and intricate non-performing assets (NPAs), aligning with the announcement made by the Hon'ble Finance Minister in the Union Budget of February 2021<sup>32</sup>. The transfer of Jaypee's debt to the Bad Bank has provided a ray of hope to lenders, who have been grappling with the challenge of recovering their outstanding loans, and to the eagerly awaiting home buyers, who have been yearning for a resolution. This scenario has brought attention to broader issues within the real estate sector, such as the failure of ambitious projects and a regulatory framework that struggles to tackle the industry's complexities. Jaypee's insolvency case, impacting around 20,000 home buyers in the 'Wish Town' township awaiting their homes, highlights the legal and financial intricacies of managing large-scale real estate bankruptcies in India. It underscores the intricate task confronting buyers, developers, and the judiciary in striking a balance between adhering to project timelines and ensuring fair financial settlements<sup>33</sup>.

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<sup>31</sup> 'NCLAT asks Suraksha Group to start work on Jaypee Wish Town project' *Money Control* (08 March 2024) <<https://www.moneycontrol.com/news/business/real-estate/nclat-asks-suraksha-group-to-start-work-on-jaypee-wish-town-project-12425951.html>> accessed 12 June 2024

<sup>32</sup> Kajal Bhatia, 'Bad Bank kicks off with Jaypee for systemic resolution of large complex' (*IBC Laws*, 07 March 2023) <<https://ibclaw.in/bad-bank-kicks-off-with-jaypee-for-systemic-resolution-of-large-complex-assets-by-ms-kajal-bhatia-legal-analyst-at-india-debt-resolution-company-ltd/>> accessed 12 June 2024

<sup>33</sup> Dhirendra Tripathi, 'The Jaypee Jigsaw: Filling the final pieces' (*Live Mint*, 31 July 2019) <<https://www.livemint.com/news/india/the-jaypee-jigsaw-filling-the-final-pieces-1564511706124.html>> accessed 12 June 2024

**2. UNITECH Case:** Homebuyers initiated action against Unitech's misconduct by lodging numerous complaints against the company in consumer courts, F.I.R., and appeals before the Apex Court. Through its order dated September 8, 2017, in SLP Nos. 5978-5979/2017<sup>34</sup>, the SC appointed Mr. Pawan Shree Agarwal, an esteemed counsel, as an Amicus Curiae to help unify the Unitech matters. The SC authorised the amicus curiae to collect information from flat buyers who are interested in taking possession of the flats or who have already taken possession via an order dated September 15, 2017<sup>35</sup>. In light of this, the Ld. Amicus curie produced a chart and established the [www.amicusunitech.in](http://www.amicusunitech.in) Link, a Unitech Buyers Claims Submission Portal. He reported that up to September 21, 2017, the petitioners had taken up 74 projects, of which 16300 homeowners had been given possession of 61 of the projects. There are 23931 flats in the 61 projects.

In the case of *Bhupinder Singh v Union of India*<sup>36</sup>, the Apex Court through its order dated 07.12.2018 ordered M/s. Grant Thornton to conduct a forensic audit of Unitech Limited's accounts of the 74 residential projects to ascertain any potential wrongdoing on the part of these promoter-directors. According to the interim report submitted by the Forensic Auditor presented to the SC, it was revealed that 29,800 home buyers paid Unitech Limited Rs. 14,270 crores, of which the Unitech Group did not use nearly 40% for project construction or completion. Moreover, it was disclosed that Unitech Limited failed to use 42% of the Rs. 1,805.86 crores borrowed from financial institutions for development purposes. Indications were found from forensic auditors that funds from the Unitech Group may have been diverted. Consequently, it was categorically stated that the mentioned promoter Directors had misappropriated the funds received from home buyers, transferred them to tax havens, and entered into transactions with undisclosed and disclosed related entities.

Given the aforementioned circumstances, the Supreme Court firmly asserted that the Union of India ought to intervene promptly and suspend the management of Unitech Limited, appointing Independent Directors to assume control of the company. The management of Unitech Limited and its subsidiaries has committed acts of commission and omission that have directly

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<sup>34</sup> *Sanjay Chandra v State Govt. of NCT of Delhi* (2011) 1 SCC 40

<sup>35</sup> *Ibid*

<sup>36</sup> *Bhupinder Singh v Union of India* (2018) 8 SCC 531

contributed to the distressed situation to which the house buyers have been reduced. In light of this, the SC instructed the Union of India to take all necessary measures to ensure that Unitech Limited's management is transferred to an impartial board of directors and that law enforcement agencies conduct the appropriate investigations.

Following the submission of a comprehensive proposal by the Union of India to the Supreme Court for the appointment of Independent Directors. The proposal was approved by the Supreme Court on January 20, 2020, and consequently, the previous existing Board of Unitech Limited was replaced by the newly constituted Board of Directors as per the Union Government's proposal. In accordance with the court decision, Yudvir Singh Malik, an IAS official from the Haryana cadre, was appointed as the company's chairman and managing director. The board comprises seven additional members. Prabhakar Singh has been immediately appointed as the central government's nominated director on the board of directors of Unitech Ltd. To achieve the goal of having an independent and professional Board of Directors to manage the company – that is, to avoid the serious issues that have emerged in the company's business as a direct result of the previous management's misconduct – the SC, however, declined to appoint Ramesh Chandra, the founder of Unitech Group, as a member of the new board. The SC emphasised that the objective of ensuring the timely completion of real estate projects in order to meet the commitments made to home buyers will not be facilitated by appointing a representative of the previous management. Additionally, the SC provided a moratorium on the filing of lawsuits against Unitech Limited and its affiliates. The SC also directed the new Board instructions to develop a comprehensive Resolution Framework, considering all outstanding issues and ongoing projects, and to make recommendations based on their discretion. The New Board submitted the Resolution Framework on July 16, 2020, and its amended versions were subsequently submitted to the SC on February 5, 2021, and August 8, 2022.

The financial situation of the Unitech Group was dire when the new Board assumed control of the company's operations. Major liabilities for Unitech include 86 unfinished projects that have approximately 17,000 homebuyers waiting for possession (or a refund of more than Rs. 12,000 crores in the event that construction is not undertaken); additional liabilities include over Rs.

18,000 crores owed to financial institutions, statutory authorities, and other stakeholders. The Group's book value of assets is barely Rs. 3,700 crores, significantly lower than its liabilities of almost Rs. 30,000 crores.

Accordingly, the homebuyers, creditors and all the stakeholders would only receive a small part of 10- 15% of their claim and this would likely occur after several years, once the assets are realized after the sale. Therefore, fulfilling the completion of Units of Homebuyers, which has been accorded top priority by the SC, is sought to be achieved for which different stakeholders must cooperate to provide approvals within specified timeframes.

New Board, appointed by this Hon'ble Court, is committed to the delivery of possession of plots/ villas/ flats to homebuyers. It has been proposed in the Resolution Framework that:

- Homebuyers will receive their units at the original booking rate/price, despite the significant increase in the cost of construction materials, labour, fuel, etc., since the bookings were made between 2007 and 2016;
- Homebuyers will not be subjected to any interest charges on delayed payments/balance dues up to the dates specified in the Revised Payment Plan. Additionally, there will be no requirement to reimburse any interest or penalty for late payment previously collected;
- The management will not provide any interest or compensation for delays to homebuyers, as the focus is on delivering the apartments at the price initially booked.

After the appointment of a new board of directors, the SC has regularly addressed various concerns and provided necessary guidance to empower new management in fulfilling its responsibilities. Additionally, to alleviate the plight of each stakeholder, the Hon'ble Court has concurrently issued directives directing refunds to individuals facing urgent medical needs. The aforementioned refunds to employees, fixed deposit holders, and property buyers are sourced from around Rs. 700 crores deposited in the SC Registry through the sale of some Unitech assets and other sources. In an order dated 24.03.2021, the SC instructed to assist the new Board with control and management. The SC granted permission to initiate the procedure of hiring Project Management Consultants (PMCs) to perform 'As-is-Assessments' of various projects that have

stalled and to estimate the costs of the remaining work required to finish the projects. This step is necessary to initiate the preparation of tender documents and the awarding of contracts for the commencement of construction work required to finalise the projects. The need arose because the partially constructed structures had remained inactive at various sites for several years. It was also imperative to determine the Bill of Quantities (BoQs) for the remaining tasks and assess the 'As-is-Status' of construction (stage and strength) before initiating any further work. In order to help the new Board, safeguard the Company's assets, additional directives were issued to all employees, state governments, and municipal administration. Finally, by order dated October 28, 2021, the SC authorised the new Board to proceed with hiring Project Management Consultants (PMCs) to handle the work of verifying the projects' status, aligning the necessary work, preparing detailed tender documents, determining cash flow requirements, developing layout plans/building plans, and finishing the bid management process. These tasks constituted essential groundwork that needed to be completed before the new Board could engage in any additional construction activity.

The SC was pleased to appoint Hon. Mr. Justice Abhay Manohar Sapre (Retd.) by order dated April 20, 2022, to support the Board in monetizing land assets under the auspices of the SC's directives and recommend any necessary changes to the Standard Operating Procedures (SOPs) that had been developed for the sale and monetization of the Company's land assets. The SC received Note Nos. 1 to 3 from Hon'ble Mr. Justice Sapre (Retd.) about the finalization of SOPs for the monetization of land assets, the tendering procedure, and the underlying financials, respectively. In accordance with this, the SC authorized the Land Sale Policy and mandated that the tendering process be finished in four to five lots via an order dated August 17, 2022. Additionally, the SC mandated that construction be funded by the remaining receivables from the house buyers and the revenues from the sale of unsold inventory. The existing homebuyers will be responsible for making the remaining payments, and timely receipt of this amount is crucial for cash flow to complete projects. As per the directives of this Honorable Court via order dated 17.08.2022, the company has uploaded a revised payment plan on its website, [unitechgroup.com](http://unitechgroup.com), and invited suggestions.

By order dated April 27, 2022, the SC ordered the reopening of a web portal that had previously been created to register claims, in order to allow home buyers and holders of fixed deposits who might have urgent medical needs that require payment refunds. This will allow these individuals to submit their claims for prompt reimbursements. Following a careful examination of all of these home buyers' and fixed deposit holders' claims for refunds due to medical emergencies, Hon'ble Mr. Justice Sapre submitted his Note No. 4, which persuaded the SC to direct, vide its order dated 13.10.2022, the return of principal amounts of Rs. 83.80 crores to 220 home buyers and Rs. 13.19 crores to Fixed Deposit Holders. It is pertinent to note that, as of September 30, 2023, 196 out of 220 homeowners had received refunds amounting to Rs. 74.18 crore, and 501 out of 548 FD holders had received refunds amounting to Rs. 12.90 crore on pro-rata basis.

The SC vide its order dated May 18, 2022 requested the Hon'ble Mr. Justice A. M. Sapre (Retd.) to carefully review all of the tender documents, including the underlying financials. Every phase of the tendering process that was supposed to be completed under his supervision involved him. Since then, the Hon'ble Mr. Justice Sapre (Retd.) has maintained a close relationship with and constant observation over the tender materials, bid invitations, and bid finalization for the purpose of contract award.

The SC vide its order dated October 9, 2023, instructed the relevant authorities – before whom the Board of Directors has submitted applications for the granting of environmental clearances – to handle the applications in compliance with the law and to finish the procedure no later than four weeks. As per the directives given on February 1, 2023, NOIDA will proceed with the processing of the 19 proposals that have previously been submitted. By order dated 03.11.2023, the Supreme Court allowed the government-appointed Unitech Limited Board of Directors to award contracts in accordance with Hon'ble Justice Mr. A M Sapre's recommendations.

### **CRITICAL EVALUATION: IS THE RELIEF REAL OR ILLUSIONARY?**

Recognizing home buyers as financial creditors undoubtedly marks a significant advancement, yet the entire matter remains beset with a range of practical challenges as outlined below.: -

**a) Challenges owing to the case-specific circumstances:**

**Jaypayee:** It took several years for NBCC and SRA to resolve the bidding war that resulted in the Resolution Plan. Finally, on March 7, 2023, the Resolution Plan was finally approved. The NCLT judgment dated 07.03.2023 that approved SRA's Resolution Plan did not bring an end to the tumultuous history of litigation. Multiple company appeals before NCLAT were filed by various companies, authorities or persons challenging the order dated 07.03.2023 of NCLT. However, the NCLAT recently denied the Company Appeal Nos. 548 & 559 of 2023 in a judgment dated February 21, 2024. The home buyers believe that this court struggle has gone on forever because planning and its legal complexity took several years to resolve.

**Unitech:** The government has consented to take over Unitech's management in accordance with the Supreme Court's suggestion. Since the government has stated that it will not be investing funds in Unitech, its participation will not be seen as a bailout. A board of directors selected by the government will strive to create a framework for the troubled company's resolution. This plan tackles a few difficult issues. Shadow banks and real estate have hindered the economy. There is a compelling argument to stop further shocks to the economic system given the loss of economic momentum and unfavorable attitudes. Government avoids the issue of moral hazard, which creates an incentive for immoral behaviour because the company escapes punishment, by declining to invest public funds in Unitech. When compared to other examples that are similar, Unitech's forensic audit does make one wonder about the role of auditors in India. External auditors are a bulwark for stakeholders and recent problems have a lot to do with their failures.<sup>37</sup>

**b) Justice delayed is justice denied:**

The plight of home buyers in Jaypee and Unitech, both insolvent builders, reflects a distressing saga of broken promises and legal limbo. Thousands of home buyers were left in a terrifying predicament when these companies went insolvent, their hard-earned money tied up in

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<sup>37</sup> 'Relief for homebuyers: Government's intervention in Unitech is a positive step and will mitigate shocks' *Times of India* (19 January 2020) <<https://timesofindia.indiatimes.com/blogs/toi-editorials/relief-for-homebuyers-governments-intervention-in-unitech-is-a-positive-step-and-will-mitigate-shocks/>> accessed 13 June 2024



unfinished or nonexistent properties. These home buyers' suffering has been made worse by the protracted legal dispute, which is currently pending before the Supreme Court. The delays in the construction projects have not only disrupted the lives of the affected individuals but have also underscored systemic issues within the real estate sector. The insufficiencies in regulatory frameworks and the requirement for stronger consumer protection measures have been exposed by the insolvencies of Jaypee and Unitech. The Jaypayee Group's irregularities came to light at Jaypayee, but despite the matter being on appeal before the Apex Court, construction under the Resolution Plan has not yet begun. Similarly, the Unitech Group came under scrutiny, however, the home buyers of Unitech have to face the same fate of endlessly waiting for the possession of their flat. The only hope for these homebuyers is that the Apex Court of India has taken up the case, but does that actually make the buyers feel better about having invested their hard-earned cash in their ideal properties? People frequently ask themselves if their income has been used to finance the EMIs of loans secured by properties on which building has not begun in more than ten years due to builder default or complex legal issues.

### **c) Harmonise the Interest**

How do you reconcile the interests of banks with those of homebuyers? Banks may lean towards liquidating the company to recover their funds at a discount, whereas some homebuyers might prefer to receive their homes, especially considering that property values have appreciated since their initial investment.

### **c) Status of Home Buyer as Unsecured Creditor?**

Besides being labelled as financial creditors, it's vital to consider the designation of secured creditor status. According to Section 53 of the IBC, secured creditors are given priority and are the first to be reimbursed. This is because the debtor has offered land as collateral for loans, elevating banks to the status of secured creditors and thus, placing them in a more advantageous position. Typically, resolution plans primarily cater to the needs of secured creditors. However, it is contemplated that home buyers might be assigned a distinct category within the waterfall mechanism outlined in Section 53 of the code. The 'Waterfall Mechanism' refers to the

hierarchical order in which proceeds from the sale of a liquidated entity's assets are distributed. Without additional measures, home buyers will not be left without recourse.

#### **d) The distinction between Home Buyer and Purchase of Commercial Property**

Furthermore, the government needs to clarify if a distinction will be made between residential homebuyers and commercial real estate purchasers, similar to the differentiation established in the Consumer Protection Act, of 2019<sup>38</sup>.

#### **e) Consumer Protection Act 2019, RERA, 2016 v IBC**

Section 89 of the Real Estate (Regulation and Development) Act<sup>39</sup> (RERA) stipulates that its provisions will apply despite any conflicting terms in any other legislation currently in effect. In a similar vein, Section 238 of the Insolvency and Bankruptcy Code<sup>40</sup> (IBC) asserts that the provisions of the IBC will prevail, overriding any inconsistencies present in other existing laws or any instruments enacted under such laws.<sup>41</sup>

Moreover, when home buyers seek remedies against builders through different forums such as courts or consumer commissions, Section 14 of the IBC<sup>42</sup> becomes a significant hindrance. For instance, should a bank, lender, or another group of buyers opt for redressal under the IBC against the same builder, a moratorium comes into effect, halting all proceedings against the builder. Consequently, numerous home buyers who had turned to RERA or the Consumer Court to address their grievances with the builder will find their cases paused. Additionally, Section 14 of the IBC serves as a substantial barrier for home buyers looking to obtain remedies against builders via other avenues, courts, or consumer commissions. This provision means that many home buyers, having sought resolution through RERA or Consumer Courts for their complaints against the builder, will encounter a suspension in their proceedings if any bank,

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<sup>38</sup> Consumer Protection Act 2019

<sup>39</sup> Real Estate (Regulation and Development) Act 2016

<sup>40</sup> Insolvency and Bankruptcy Code 2016, s 238

<sup>41</sup> Karan Sahi, 'Issues of homebuyers under Insolvency and Bankruptcy Code' (*Tax Guru*, 21 August 2018)

<<https://taxguru.in/corporate-law/issues-home-buyers-insolvency-bankruptcy-code-new.html>> accessed 13 June 2024

<sup>42</sup> Insolvency and Bankruptcy Code 2016, s 14

lender, or buyer group initiates redressal under the IBC against the same builder, due to the imposition of a moratorium on all legal actions against the builder.

## **SUGGESTIONS AND CONCLUSION**

In the intricate and extended insolvency cases of Jaypee Infratech Limited (JIL) and Unitech Ltd, the Supreme Court of India has been instrumental in seeking to offer relief and justice to distressed home buyers. The court's involvement in these matters highlights the difficulties of aligning the interests of diverse stakeholders under the Insolvency and Bankruptcy Code (IBC) and real estate regulatory laws.

**Jaypee Infratech Limited (JIL):** In the JIL case, the Supreme Court has undertaken significant measures to elucidate various provisions under the IBC. A key ruling included the rejection of the resolution plan proposed by NBCC India Limited for JIL, directing the case back to the Committee of Creditors (CoC) to finalize the corporate insolvency resolution process within a determined period. The Court underscored the authority of the CoC and curtailed the review jurisdiction of adjudicating bodies, stating that these entities cannot meddle in the CoC's commercial decisions but may return a resolution plan for reconsideration if it is found deficient. This strategy is designed to guarantee that the resolution procedure is legally sound and equitable for all stakeholders, home buyers included.

**Unitech Ltd.:** For Unitech Ltd, the Supreme Court's intervention has been more focused on providing direct relief to home buyers and other stakeholders. The Court provided a final chance for over 1,000 home buyers seeking refunds to reconsider their decision and opt for possession of their flats instead. This decision was part of broader efforts to address the financial irregularities and mismanagement within Unitech Ltd, which included the attachment of properties worth Rs 650 crore related to money laundering charges. Additionally, the Court directed the repayment of Rs 13.19 crore to 548 fixed deposit holders of Unitech for medical emergencies, demonstrating an effort to address the immediate financial needs of affected parties.

Here are some definite recommendations based on the intricacies and difficulties witnessed in the insolvency proceedings of Jaypee Infratech Limited (JIL) and Unitech Ltd, as well as the crucial role performed by the Supreme Court of India in bringing relief and justice to aggrieved home buyers.

**Improved Accountability and Transparency:** The real estate industry needs to improve accountability and transparency, especially with regard to financial disclosures and project management. Regulators must require developers to promptly inform prospective homeowners of the status of their projects, their financial situation, and any changes made to the initial plan.

**Boost Consumer Protection Mechanisms:** In order to protect the interests of home buyers, consumer protection procedures must be strengthened. This might entail tougher sanctions for developers found guilty of financial irregularities or mismanagement, the establishment of specialized grievance redressal procedures, and insurance coverage for home buyers in the case of developer insolvency.

**Streamline Insolvency Resolution Process:** To guarantee prompt resolution and balance the interests of several stakeholders, the IBC's bankruptcy resolution procedure needs to be simplified. This could entail imposing stringent deadlines on the resolution process, improving the Committee of Creditors (CoC) effectiveness, and reducing the amount of time that insolvency-related court cases are delayed.

**Encourage the Use of Alternative Dispute Resolution Processes:** Promoting the use of alternative dispute resolution processes, such as mediation and arbitration, can hasten the settlement of conflicts between real estate developers and purchasers. This strategy can provide a less harsh and quicker way to settle disputes, which will lighten the load on the legal system.

**Enhance Financial Oversight and Regulation:** To stop financial irregularities and mismanagement, regulators should bolster their financial oversight and regulation of real estate developers. This can entail more stringent project financing oversight, the enforcement of financial reporting standard compliance, and proactive steps to spot and handle indications of financial difficulty among developers.

**Enable Access to Justice:** Efforts ought to be undertaken to enable resentful homeowners, especially those who are experiencing financial difficulties as a result of the insolvency of the developer, to obtain justice. This can entail giving homebuyers legal aid and support, streamlining the court system and its documentation needs, and guaranteeing the prompt resolution of real estate-related problems.

**Promote Stakeholder Collaboration:** To solve the systemic issues affecting the real estate industry, it is imperative to promote cooperation and communication amongst stakeholders, including developers, purchasers of real estate, governmental agencies, and courts. Increased comprehension, confidence, and collaboration can result from this, which can help solve complicated problems more successfully.

Policymakers, regulators, and stakeholders may collaborate to tackle the issues brought to light by JIL and Unitech's insolvency proceedings by putting these ideas into practice, which will ultimately improve consumer protection, accountability, and openness in the real estate industry.

The Insolvency and Bankruptcy Code represents a unified piece of legislation that addresses the overall economic framework of the country. Previous attempts to formulate insolvency regulations were unsuccessful. Since its inception, the IBC has rapidly become a crucial piece of financial resolution legislation in India. However, initially, the IBC encountered challenges due to the lack of explicit inclusion of homebuyers within the code, which significantly impacted the Indian real estate sector through non-performing assets and unfinished projects. Nevertheless, thanks to the proactive measures taken by legislators and the judiciary, the code has made remarkable progress by streamlining the resolution process. With the 2018 amendment to the IBC, homebuyers were granted the right to initiate the insolvency process and were given representation in the Committee of Creditors, thereby bolstering the confidence of creditors and investors in the resolution processes.

There were several interconnected reasons that led to the insolvency of Jaypee and Unitech builders, such as poor project management, irregularities in the finances, delays in projects, and violations of regulations. Due to their incapacity to complete projects on schedule, both

businesses experienced financial issues, which damaged investor and consumer confidence. To remedy these difficulties, legal actions were started under the Insolvency and Bankruptcy Code (IBC). The Supreme Court's actions were especially significant since they aimed to maintain legal principles while balancing the interests of many stakeholders, particularly homebuyers. Nonetheless, there were a lot of difficulties because of the complexities peculiar to these two builders and the large number of parties involved. The insolvencies that affected the homebuyers resulted in extended periods of uncertainty, financial strain, and emotional suffering. Their experiences revealed a variety of viewpoints, ranging from frustration with refunds or project completion delays to disillusionment with the convoluted legal system. Many found it difficult to understand the complexities of the legal and regulatory systems, and they frequently felt excluded from choices that had a significant impact on their investments and way of life. Their expectations were for prompt, honest resolutions that put their rights as customers first. They urged more accountability from the businesses and from the government, highlighting the necessity of tighter control to avoid such disasters in the future. These incidents brought to light the human cost of corporate bankruptcy as well as structural flaws in the real estate industry. Comprehensive reforms that tackle the underlying reasons for these failures and give the protection of consumer interests in the legal and regulatory environment top priority are desperately needed going forward.

As a result, the study sheds light on the complex relationships and wide-ranging difficulties present in the situation of homeowners impacted by the bankruptcy of Jaypee and Unitech, two building firms whose cases have been thoroughly examined by the Supreme Court. The results highlight the significant effects of builder insolvency on homebuyers' lives and point to structural flaws in the real estate industry. The study shows that the impacted homebuyers' struggle for justice and relief continues despite the drawn-out judicial proceedings. Numerous homebuyers are in a condition of anxiety and financial suffering as a result of the interim measures that have been implemented in the absence of a complete settlement. The lengthy difficulties in resolving insolvency cases within the judicial system are indicated by the sluggish pace of justice delivery.

The need for ongoing regulatory changes and improved oversight is emphasized in the conclusion as a means of averting future catastrophes of this nature. The study also emphasizes how important it is to have open lines of communication and act quickly to help homebuyers who are affected by builders' insolvency. As the cases remain sub judice, the research serves as a critical evaluation of the ongoing challenges, offering insights that contribute to the discourse on real estate regulation, insolvency, and the imperative to safeguard the rights and well-being of homebuyers in an ever-evolving legal landscape.