

Revolutionizing Corporate Insolvency Resolution in Real Estate: The Emergence of Reverse CIRP in India



Through an amendment in 2018, homebuyers were provided the status of financial creditors under the IBC, thereby enabling them to file insolvency petitions against the CD and participate in the meetings of the CoC. This triggered a spurt in CIRP petitions against real estate companies causing another amendment in the IBC in 2020 wherein the law introduced a minimum threshold limit for homebuyers to file CIRP petition. Furthering the interest of homebuyers, the NCLAT in the matter of Flat Buyers Association Winter Hills vs. Umang Real tech (2020) recognized the concept of 'Reverse CIRP'.

*The article provides an insightful overview of Reverse CIRP including its jurisprudence, advantages, and shortcomings in implementation. Further, the author also suggests a legal framework to address these issues, emphasizing the need for a balance between protecting the interests of homebuyers and ensuring a fair and transparent resolution process. **Read on to know more...***



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1. Introduction

The Reverse CIRP (Corporate Insolvency Resolution Process) in real estate refers to a mechanism by which distressed real estate projects or companies undergoing insolvency proceedings are revived or resolved. Unlike the original CIRP, which involves the resolution of insolvent companies through restructuring or liquidation, the reverse CIRP focuses specifically on real estate projects.

The uniqueness of homebuyers' positions and concerns led to the introduction of Reverse CIRP, which allows them to prioritize possession of their units over other financial creditors' who are interested in repayment of their debts.

However, the concerns about the potential drawbacks of Reverse CIRP are particularly related to the porous nature of project funds. It highlights the requirement under Section 4(2)(I)(D) of the Real Estate (Regulations and Development) Act (RERA), mandating that 70% of the funds for a real estate project be kept in a separate account for project costs. Though there have been violations to this provision by real estate companies.

The Reverse CIRP is to be run under the able monitoring of the Interim Resolution Professional (IRP)/Resolution Professional (RP) to protect the interest of all the stakeholders. If under the Reverse CIRP the promoters

fail to bring funds, then normal CIRP is conducted. This shift is seen as crucial for effective Reverse CIRP, overcoming potential self-serving tendencies of promoters, and introducing predictability to the process.

The driving force behind the adoption of Reverse CIRP lies in addressing a key concern- the inability of allottees (considered financial creditors) to accept a reduced settlement, commonly known as a “haircut,” which is a standard practice under CIRP). Courts, through various judgments and orders, have endorsed the Reverse CIRP route, deeming it a more efficient and suitable option for all parties involved in real estate insolvency cases.

2. Shortcomings in the Current Regime

The proposed Amendment to the Insolvency and Bankruptcy Code (IBC), introducing a 'project-wise resolution' for real estate, offers relief to both developers and allottees. However, concerns arise due to the undefined nature of the process, particularly in terms of monitoring mechanisms. In the matter of *Anand Murti vs. Soni Infratech Pvt. Ltd.*¹. (2022), the Supreme Court upheld the followings:

- i. Furnishing of affidavit by promoter explaining the timelines for completion of project, funds to be infused, that the cost of the flats will not be escalated, and BBA signed by previous management will be honored. (Para No. 19)
- ii. IRP shall submit quarterly reports to the NCLAT with respect to the progress of the housing project. [Para No. 24(E)]

The Supreme Court in the matter of *Anand Murti vs. Soni Infratech Pvt. Ltd.* (2022) endorsed the Reverse CIRP, without mandating compliance with the 70% fund requirement under the RERA.

Thus, the aforementioned case has endorsed the Reverse CIRP, without mandating compliance with the 70% fund requirement under the RERA. Furthermore, the NCLAT in the matter of *Flat Buyers Association vs. Umang Realtech*² (2020) provided extensive monitoring guidelines on Reverse CIRP³:

¹ *Anand Murti vs Soni Infratech Pvt. Ltd.*, Civil Appeal Nos. 7534 of 2021, Supreme Court judgement. dated April 27, 2022.

² *Flat Buyers Association Winter Hills – 77, Gurgaon vs Umang Realtech, Company Appeal (AT) (Insolvency) No. 926 of 2019*, NCLAT judgment dated February 04, 2020.

- (a) Agreement between promoter and allottees to let the promoter act as a financial lender of the project. (Para No. 13 of the order).
- (b) Promoter to remain outside CIRP but to ensure that allottees get possession during CIRP without intervention of any “third party”. (Para No. 13)
- (c) Promoter to give time frame for project completion and for providing common area. (Para No. 15)
- (d) The promoter also provides details of amounts due from allottees and defaults committed by them. (Para No. 15)
- (e) The amount paid by promoter and the amount generated from dues of allottees during CIRP are to be deposited in the account of the Corporate Debtor (CD) to keep it going concern (Para No. 26).
- (f) The above amounts to be utilized only through issuance of cheque signed by authorized person of CD and counter signed by the IRP. (Para No. 26)
- (g) Amount deposited in a bank account should be utilized only for a specific project. (Para No. 26)
- (h) Banks will allow cheques for encashment only with counter signature of IRP.
- (i) Financial institutions/banks to be paid simultaneously. (Para No. 27)
- (j) Allottees to pay their dues by given date (Para No. 27).
- (k) Allottees allowed to form RWA to empower them to claim common areas (Para No. 28).
- (l) Resolution cost including the IRP fee to be borne by the promoter. (Para no. 29)
- (m) Unsold flats/apartments to be transferred to promoter only after getting the certificate of completion from IRP and Adjudicating Authority (AA). (Para No. 29).
- (n) Option with IRP to sell unsold inventory even during CIRP, via tripartite agreement between purchaser, IRP/RP, and promoter (Para No. 30).

2.1. Amendment to the Insolvency and Bankruptcy Code, 2016 (IBC) in 2018 and Subsequent Developments

The IBC underwent significant amendments in 2018, addressing the inclusion of homebuyers in the category of ‘Creditors in a Class’. This amendment, based on the recommendations of the Insolvency Law Committee, aimed to recognize amounts raised from allottees under real estate projects as ‘financial debt’. However, the legal landscape surrounding this amendment saw subsequent challenges and refinements.

(a) *Pioneer Urban Land and Infrastructure Limited vs. Union of India (2019)*

The real estate companies challenged the provisions of 2018 amendment in the case of *Pioneer Urban Land and Infrastructure Limited vs. Union of India*. The Supreme Court upheld the amendment, emphasizing that amounts raised from homebuyers contribute significantly to the development of flats/apartments. However, the court clarified that speculative investors not genuinely interested in purchasing a flat/apartment could be excluded from the definition of financial creditors.

The Supreme Court in the case of *Pioneer Urban Land and Infrastructure Limited vs. Union of India*, clarified that speculative investors who are not genuine homebuyers could be excluded from the definition of financial creditors.

The court's decision led to an increase in CIRP applications, affecting development projects. In response to these practical challenges, the IBC (Second Amendment) Act, 2020, introduced a minimum threshold limit for homebuyers to initiate CIRP. This threshold required either 10% of the total number of creditors in the same class or 100 such creditors in the same class. The constitutional validity of this threshold

limit was challenged in the case of *Manish Kumar vs. Union of India*, but the Supreme Court upheld it, acknowledging the practical considerations and the need for a threshold requirement.

(b) *Bikram Chatterji vs. Union of India (Amrapali Case)*

In the case of *Bikram Chatterji vs. Union of India*, a writ petition was filed by homebuyers against the CIRP decision of the National Company Law Tribunal (NCLT). The case involved a major realty developer defaulting on a payment to the Union Bank of India for a construction project. Homebuyers expressed dissatisfaction as they were making payments without receiving possession of their flats and were forced to pay loans.

The Supreme Court, in this case, held that the claims of homebuyers take precedence over claims of other financial creditors and government authorities. This decision ensured that authorities and “secured financial creditors” would not proceed to sell the flats of homebuyers who were eagerly waiting for possession.

The amendments and judicial decisions highlighted the evolving nature of the IBC concerning real estate projects and homebuyers. While recognizing the financial contributions of homebuyers, the legal framework also sought to balance the rights and interests of various stakeholders, including developers and creditors. The threshold limit was introduced to streamline the CIRP process, considering the practical challenges faced in its implementation. The judicial decisions reinforced the importance of protecting the rights of homebuyers in insolvency proceedings.

3. The introduction of RERA provision in CIRP

The introduction of provisions from the RERA into the CIRP has been a topic of debate, with varying perspectives on its necessity and implications.

- (a) **RERA and Project Troubles:** It is argued that the failure of projects under RERA oversight should primarily be addressed within the framework of RERA itself. RERA was enacted to regulate the real estate sector, protect the interests of homebuyers, and ensure timely completion of projects. If a project faces difficulties or defaults under RERA, critics argue that it should be resolved within the purview of RERA regulations and mechanisms, rather than integrating it into the CIRP.
- (b) **IBC Overriding Provisions:** The IBC has overriding provisions on other laws, including RERA, to facilitate the resolution process for insolvent companies. This override is based on the principle that the objective of the IBC, i.e., the resolution of insolvency and maximization of value for creditors, supersedes conflicting provisions of other laws. However, this override has been subject to legal scrutiny and debate, with some arguing that it may undermine the specific objectives and protections provided under RERA.

The overriding provision of the IBC is based on the principle that the objectives of the IBC, i.e., the resolution of insolvency and maximization of value for creditors, supersedes conflicting provisions of other laws.

Thus, integration of RERA provisions into the CIRP and the override of RERA by the IBC are contentious issues that involve balancing the objectives of both laws and addressing the complexities of resolving distressed real estate projects. While some argue that RERA failures should be addressed exclusively within the RERA framework, others contend that the IBC's overarching objective of insolvency resolution justifies its overriding provisions. Ultimately, the effectiveness and fairness of these provisions depend on their application and interpretation in specific cases, as well as broader policy considerations regarding the regulation of the real estate sector and the resolution of insolvency.

4. Key Features of Reverse CIRP

- (a) **Promoter as Lender:** Under Reverse CIRP, promoters take on the role of lenders rather than promoters. This shift is designed to prioritize the completion of the real estate project, addressing the concerns of homebuyers.
- (b) **Project-Specific Approach:** The NCLAT, in subsequent judgments, emphasized that Reverse CIRP should be implemented project-wise. This project-specific approach acknowledges the unique nature of each real estate project and tailors the resolution process accordingly.
- (c) **Legislative Amendments:** The proposed amendments to the IBC are aligned to the concept of Reverse CIRP. As the IBC currently focuses on the resolution of an entire company, default in one project triggers the CIRP for the entire company. To overcome this limitation, the MCA has proposed amendments introducing 'project-wise resolution.'
- (d) **Addressing Difficulties:** The proposed amendments to the IBC aim to address challenges arising from the current IBC framework, ensuring a more nuanced and targeted approach to insolvency resolution in the real estate sector. 'Project-wise resolution' provides a mechanism to deal with defaults specific to individual projects without affecting the entire corporate entity.

In conclusion, Reverse CIRP emerges as a tailored solution to the unique challenges faced by homebuyers in the real estate sector. The project-specific nature of this approach, coupled with proposed legislative amendments, reflects a responsive effort to enhance the effectiveness of CIRP in the context of real estate projects, striking a balance between the interests of various stakeholders.

5. Key Judgments in Simplified Language

5.1. *Flat Buyers Association Winter Hills vs. Umang Real tech (2020)*, NCLAT

- (a) The NCLAT Delhi first recognized the concept of Reverse CIRP in this case.

- (b) The court permitted Reverse CIRP, where a promoter agrees to act as a financial creditor and infuse funds into the project to ensure its completion within the stipulated time frame set by the NCLAT.
- (c) The court directed that non-compliance or lack of cooperation by the promoter with the IRP/RP would lead to the completion of the CIRP by the NCLT.

5.2. *Anand Murti vs. Soni Infratech Pvt. Ltd. (2022)*, Supreme Court

- (a) The Supreme Court upheld the principle of Reverse CIRP in this case.
- (b) The NCLAT initially rejected a settlement modification application by the promoter, leading to the continuation of CIRP.
- (c) The Supreme Court, however, allowed Reverse CIRP, emphasizing its benefits to allottees and timely project completion.
- (d) The promoter assured, via affidavit, that flat costs would not increase, commitments made by the previous management would be honored, and funds were arranged promptly to commence the project without delay.
- (e) The Supreme Court noted that permitting CIRP might result in higher costs for homebuyers compared to the promoter's offer.

Upholding the idea of 'Reverse CIRP' in the case of *Anand Murti vs. Soni Infratech Pvt. Ltd. (2022)*, the Supreme Court noted that permitting CIRP might result in higher costs for homebuyers compared to the promoter's offer.

5.3. *Rajesh Goyal vs. Babita Gupta & Ors. (2020)*, NCLAT

- (a) Promoter Rajesh Goyal was allowed to act as a leader after a voting process among allottees, overseen by the IRP.
- (b) The promoter committed to infusing funds totaling ₹69.27 crores to sustain the Corporate Debtor as a going concern.
- (c) A time frame was established for allottees seeking refunds after surrendering their flats.
- (d) The procedure for Reverse CIRP mirrored that of Flat Buyers Association, Winter Hills.
- (e) The IRP had the authority to sell unsold flats/apartments through a tripartite agreement, utilizing the proceeds to repay banks, operational creditors, and interest to allottees awaiting refunds.
- (f) Non-compliance or lack of cooperation by the promoter with the court's directions or the IRP would result in NCLT completing the CIRP.



These judgments illustrate the application and acceptance of Reverse CIRP in various scenarios, emphasizing its efficiency and benefits, in the real estate sector. The courts' decisions prioritize timely project completion and protect the interests of homebuyers and other stakeholders.

5.4. Comparison between CIRP Vs Reverse CIRP

Sr. No.		CIRP	Reverse CIRP
1	Bidding Restrictions	Promoters are generally not allowed to bid, except in the case of Micro, Small, and Medium Enterprises (MSMEs). Third-party Resolution Applicants (RAs) are permitted to bid.	Promoter only submits the proposal, and no third-party bidding is invited.
2	Bidding Process	Involves third-party bidding, and the resolution process can face litigation related to the bidding process by the RAs.	No third-party bidding is involved, making the process less time-consuming.
3	Resolution Cost	The resolution cost, including fees for the IRP/ RP, is borne by the Corporate Debtor or the Committee of Creditors (CoC).	The resolution cost, including fees of IRP/RP, is borne by the promoter.
4	Time Consumption	CIRP is time-consuming due to the involvement of third-party bidding and potential litigation. This can result in delays in completing the project.	Reverse CIRP is less time-consuming, allowing for timely completion of the project by the promoter as committed before the court.
5	Familiarity with Real Estate	Third parties or Resolution Applicants (RAs) may not be familiar with the intricacies of the real estate sector. They need to acquaint themselves with the project, its status, and coordinate with sub-contractors and authorities.	The promoter has hands-on details of the project, making it easier for them to work and coordinate with sub-contractors and authorities.
6	Unsold Inventory	Unsold inventory remains with the Corporate Debtor.	Unsold inventory goes to the promoter after receiving a completion certificate from the IRP and approval of the NCLT.
7	Price Escalation	There is a possibility of price escalation of the flats, impacting the final cost for homebuyers.	The promoter may undertake that there would be no price escalation, providing more certainty to homebuyers.

6. Key advantages of Reverse CIRP

- (a) **Timely Completion:** One of the significant advantages of Reverse CIRP is its ability to ensure the timely completion of real estate projects. This is crucial for both homebuyers and promoters.
- (b) **Mitigation of Litigation Risks:** By avoiding the complexities and potential litigation associated with regular CIRP, Reverse CIRP provides a more streamlined resolution process.
- (c) **Protection of Homebuyers:** Homebuyers benefit from Reverse CIRP as they receive possession

of their flats without facing haircuts or price escalations, safeguarding their interests.

Homebuyers benefit from Reverse CIRP as they receive possession of their flats without facing haircuts or price escalations, safeguarding their interests. Besides, promoters are incentivized and empowered to complete unfinished projects.

- (d) **Empowering Promoters:** Promoters are incentivized and empowered to complete unfinished projects through Reverse CIRP, contributing to the resolution of distressed real estate.
- (e) **Lack of Legislation:** The absence of specific legislation for Reverse CIRP highlights its emergent nature within the legal framework, signifying the need for further development and clarity.
- (f) **Preventing Misuse:** While Reverse CIRP brings advantages, precautions are necessary to prevent defaulting promoters from exploiting it. Strict compliance with timelines, infusion of funds, and collaboration with the IRP are essential components.
- (g) **Unclogging Incomplete Projects:** Reverse CIRP is positioned as a valuable tool for unclogging incomplete projects entangled in extensive litigation, addressing a critical issue in the real estate sector.
- (h) **Balancing Interests:** It is emphasized that the implementation of Reverse CIRP should carefully balance the interests of all stakeholders, particularly prioritizing the rights and concerns of homebuyers.

7. Concluding Remarks

In the experimentation of Reverse CIRP, the NCLAT has demonstrated pragmatism in protecting the rights of homebuyers and addressing the unique challenges of real estate projects. However, the lack of specific guidelines and defined contours for the process poses potential risks.

The NCLAT's focus on prioritizing the needs of allottees is commendable, but the absence of clear guidelines may lead to unintended consequences. The risk of

fund siphoning jeopardizing the core tenet of the IBC, particularly Section 29A, which aims to keep erstwhile promoters at bay, is a concern.

To address these issues, policymakers are urged to consider the formulation of mandatory requirements, such as a RERA account, for promoters involved in Reverse CIRP. While proposed amendments acknowledge the need for 'project-wise resolution,' they lack specifics on how Reverse CIRP should be carried out. Merely mandating project-wise CIRP does not fully address the underlying problem of promoters benefiting at the expense of other stakeholders.

As Reverse CIRP continues to play a crucial role, it is essential to ensure its implementation in a manner that protects the interests of homebuyers and prevents misuse by default promoters.

The success and legitimacy of Reverse CIRP hinge on addressing these fundamental issues. Policymakers and regulators need to provide clear and detailed guidelines, ensuring independence between projects and safeguarding the interests of all stakeholders. The proposed amendments should be refined to offer a robust framework that prevents misuse, maintains transparency, and upholds the principles of the IBC. In doing so, Reverse CIRP can evolve into an effective mechanism for resolving distressed real estate projects, striking a balance between the interests of promoters, homebuyers, and other financial creditors.

The concept of Reverse CIRP in India is currently evolving, lacking specific legislation within the IBC. Despite this absence, it has been proven to be a beneficial mechanism for resolving distressed real estate projects. Unlike the original CIRP, Reverse CIRP facilitates timely project completion, minimizing delays and the litigation risks associated with standard procedures.

In conclusion, while Reverse CIRP lacks specific legislative backing, its positive impact on resolving incomplete real estate projects is evident. It represents an evolving mechanism that addresses the challenges posed by extensive litigation and delays associated with traditional insolvency resolution processes. As it continues to play a crucial role, it is essential to ensure its implementation in a manner that protects the interests of homebuyers and prevents misuse by default promoters.