



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



IBC AU-COURANT

Latest updates On Insolvency & Bankruptcy

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"Quality is not an act, it is a habit"

➤ **Govt strengthens role of resolution professionals**

The Insolvency and Bankruptcy Board of India (IBBI) has sought to strengthen the oversight of bankruptcy resolution professionals by codifying the norms applicable to them in the form of a regulation.

IBBI said it has subsumed three separate circulars issued in the past dealing with insolvency professionals into the regulations that govern self-regulatory bodies called insolvency professional agencies.

These self-regulators are set up by bodies like the Institute of Chartered Accountants of India (ICAI), the Institute of Cost Accountants of India and the Institute of Company Secretaries of India. They enrol, educate, monitor and regulate insolvency professionals. Chartered accountants, cost accountants, company secretaries and lawyers enrol as insolvency professionals.

These circulars deal with disclosure of relationships by insolvency professionals, annual compliance certificates issued to these professionals by their self-regulators and the penalties covering a list of contraventions by these professionals. Subsuming all these into regulations give the norms greater legal force, experts said.

By encapsulating earlier circulars on compliances, contraventions and monetary penalties on insolvency professionals, in the form of regulation, the Board has attempted to give greater strength to the contents of these circulars as circulars are treated to be guidelines, explained Yogendra Aldak, Partner, Lakshmikumaran & Sridharan Attorneys.

"Courts generally interpret circulars to be directory in nature unless it is specifically prescribed to be mandatory and binding. This step of the Board is likely to enable insolvency professionals to be more compliant with the contents of the circulars (now part of the regulation) which will result in effective insolvency resolution process," said Aldak.

IBBI gives special attention to the regulatory oversight of insolvency resolution professionals, hired by lenders to administer sick companies, as they are in charge of key tasks such as admission of claims made by various parties and in soliciting investors to stitch together corporate rescue plans.

Source: Mint

Read Full news at: <https://www.livemint.com/companies/news/govt-strengthens-role-of-resolution-professionals-11667408721345.html>

➤ **Litigation funding: An emerging solution to the challenges and disagreements faced by homebuyers**

The majority of individuals in the world's population have made their greatest single investment in a home. The real estate industry in India is vast, varied, and ambiguous. Where the relationship between the consumers and seller has always been a matter of concern and the redressal of the dispute has always been a time-consuming process. Homebuyers had to go to consumer court in the past if they wanted to file a complaint against unreliable builders.

Purchasing a house in India comes with several risks and challenges. Here are some of the problems faced by homebuyers:

1. There is a risk of disputes that might occur between the homebuyer and the builders.
2. To determine title, ownership and, possession of the property.
3. To determine if the property is free of charges, lawsuits, or obstruction. Failure to do so could get homebuyers in trouble shortly.
4. To determine the legal status of the property.
5. Check the documents to see if the registration and transfer are complete.

Above mentioned are some of the most common problems homebuyers face and resolving these issues has a lot of technicalities in it and is long delayed. Everything has changed in the recent past after the enactment of the Insolvency and Bankruptcy Code (IBC), 2016, and the Real Estate Regulation and Development Act (RERA), 2016.

The Insolvency and Bankruptcy Board of India (IBBI) by the way of an amendment in the code has given the status of "financial creditors" to the homebuyers, by this the homebuyers can now initiate the CIRP and can approach the NCLT to resolve disputes of default and delayed possession.

Litigation funding to the rescue In a country like India whose judicial system is rarely known for its speed and where a large number of property-related disputes are not heard promptly due to a lack of adequate funding, litigation funding emerges as an excellent alternative. Litigation funding is a method that pays for the costs of legal procedures to make it easier for people and businesses, especially those who are struggling financially to recover claims. In the case of homebuyers' litigation funding can help in a way that instead of the homebuyers bearing the expenses of the litigation, a funder does so in exchange for a portion of any recovery obtained via the proceedings.

This form of funding is frequently provided on a non-recourse basis, meaning that if the homebuyer's case gets unsuccessful he will not be obligated to pay back the litigation funder's legal expenses. Thus, the litigation financing agreement often stipulates that the

litigation funder assumes the majority of the risk, including the risk of losing a claim and the risk of any damages, levied as a consequence of the lawsuit involving the claim. Litigation Funding allows litigation funders to invest in specific claims according to their probability and to invest in multiple claims at the same time. To win a case against the builders, the homebuyers need to be adequately funded and not overwhelmed by the financial clout of large corporations.

With an overall increase in the real estate sector of India and the country's economic development, there ought to be more disputes between homebuyers and builders. The costs are covered by the funder and the application is processed by experts to ensure a logical conclusion is reached.

Litigation funding not only provides an important resource, but it can also provide important strategic benefits to homebuyers. Before selecting whether to accept a claim, the litigation funder's own risk assessment team that often evaluates each party and the claims made by them, and the financial status of the parties. However, a close assessment of the changes demonstrates that lawsuit financing benefits homebuyers. The legislation amendments are beneficial to buyers who are having issues with unfinished real estate developments. Project delays have an impact on homebuyers since they commit a sizeable amount of their funds to a down payment and an EMI on the loan while continuing to pay rent where they now live. The most recent change to the Code has now changed this scenario.

The enactment of RERA and IBC

It is very commonly witnessed in India where homebuyers are frequently deterred from starting legal actions to collect claims that could have the potential to be successful however, the passage of the RERA and subsequent IBC strengthened the legal rights of aggrieved home buyers in India and gave them various options to exercise their legal rights. According to several reports, commercial contracts in India are settled in around 1445 days, while it takes about 589.6 days in Organization for Economic Co-operation and Development (OECD) nations, according to the World Bank's Ease of Doing Business Report, 2020 the litigation expenses in India are about 31 per cent of the claim value, which is about 10 per cent more expensive than in OECD nations because of the high expenses involved in pursuing the claim.

Source: Financial Express

Read Full news at: <https://www.financialexpress.com/industry/litigation-funding-an-emerging-solution-to-the-challenges-and-disagreements-faced-by-homebuyers/2771065/>

