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"Lead from Hear, not head".

➤ **Many Delhi-NCR projects in bankruptcy court, IBC changes key for buyers**

If the changes recently proposed in the Insolvency and Bankruptcy Code (IBC) come through, there would be few places where homebuyers would be more relieved than in NCR. Currently, there are 31 insolvency cases from Noida and around 20 from

Gurgaon at NCLT, the bankruptcy court, involving developers of housing projects. Since several of these are large projects - Jaypee's Wish Town, for example, is one - the number of flats caught in the tentacles of long drawn corporate insolvency resolutions would run into several thousand if not over a lakh.

The main changes being considered - to allow registries while resolution is on and delink other projects of a developer from the one in insolvency - are most relevant to the two NCR cities because of their huge real estate markets and chronic problems of delayed handovers and incomplete amenities.

In Noida, registries are anyway stuck because of the deadlock over dues between the Noida Authority and builders, to which insolvency proceedings have added another layer of complication. Of the 31 cases in the insolvency court, 14 are from Noida and 17 from Greater Noida. Other than Jaypee, projects of big developers like Supertech, Logix, Ajnara find themselves in the NCLT.

Homebuyers and lawyers fighting cases at the NCLT, appellate court NCLAT and the Supreme Court agree the need for amendments in the IBC have been felt for a while. In the current scheme of things, buyers have often struggled to get the committee of creditors (CoC) - the body that comprises financial, operational and other creditors, drives the insolvency resolution and conducts voting - to play to their terms. ML Lahoty, a senior lawyer representing homebuyers, said, "The proposed changes are welcome steps that will be appreciated by homebuyers across the board."

At present, homebuyers are in big trouble in cases where one or two projects out of 10-15 projects of a big company are stuck. The capital involved in all projects of a big company might be, for example, Rs 50,000-60,000 crore wherein banks, financial institutions and consortiums have about 60-70% of the share while the homebuyers' share is minuscule. So, they will not dominate CoC and IBC proceedings."

But if only a particular project of a builder that is not doing well is taken into isolation, it will give homebuyers a dominant role, Lahoty explained. "We have submitted these arguments in a few cases in NCLAT and the Supreme Court and they realised that whatever we were arguing needed to be considered," he said.

Referring to the other proposed change of allowing registries with CoC approval, Lahoty said in instances where homebuyers are ready to complete the projects themselves, there should not be any hindrance.

"Homebuyers have, in some cases, come forward with a resolution plan, giving details about how they want to complete a project, where the money will come from, and how much time it will take to the NCLT," he said Kumar Mihir, who represents homebuyers at various courts, said real estate resolution plans needed to be looked at differently and the changes could help do that.

"A resolution plan for a real estate project cannot be the same as that of, say, a cement company or a power company where there are no third-party interests. At present, if a builder goes into insolvency, then its net worth-positive projects that are doing well and are profitable also get stuck. Subsequently, a big CoC is formed and homebuyers of those projects that have very few units have no say at all. In such cases, members of other projects decide their fate," he said. "Moreover, it will also be easier to find investors (resolution applicants) project-wise," he added.

Mihir said in the current structure, a resolution is difficult to reach. "Approval of resolution plans after a case is admitted in the NCLT would just be around 10%. I'm aware of very few," he added. Prashant Thakur, senior director of real estate consultant Anarock, said if insolvency proceedings are initiated only against specific projects that have defaulted, rather than the entire company, it would minimise the disruption to a company's operations and potentially preserve value for stakeholders.

"Additionally, it may help increase the chances of a successful resolution as the focus can be on specific distressed assets rather than the broader company," he said Ajay Kaul, a Jaypee homebuyer, however, wondered if bringing in the changes would be adequate. "I think an altogether new set of bankruptcy codes for homebuyers must be considered that will ensure flats can be delivered to homebuyers in the quickest possible time," he said.

Source: Times of India

Read Full news at: <https://timesofindia.indiatimes.com/city/noida/many-delhi-ncr-projects-in-bankruptcy-court-ibc-changes-key-for-buyers/articleshow/97263444.cms?from=mdr>

➤ **Don't expect much from insolvency code tweaks**

The vexed phenomenon of sickness, bankruptcy and recovery of industrial units has dogged the government and regulators for over 40 years now. India's promulgation of the Insolvency and Bankruptcy Code (IBC) in 2016 was meant as a magic bullet for a sustainable, legally-sound, democratic and utilitarian solution to a persistent problem that had defied resolution. The Code was hailed as an example of the Centre's resolve to craft meaningful policy and untangle knotty problems that had eluded us for long. What the Code did not envisage and then fell prey to was India Inc's ingenuity in not only influencing policy but also subverting due process through legal means. India's flawed campaign finance system has also allowed wilful defaulters and interlopers to bend and game the system. Add to it India's capacity problems at the administrative and judicial levels. It is not surprising that the ministry of corporate affairs has proposed a raft of changes to the IBC. Two shortcomings, however, still threaten to stymie it from becoming an effective piece of legislation.

A major anxiety seems to imbue the ministry's note: a capacity deficit in the IBC process that leads to delays and results in sub-optimal outcomes. But it also seems like an attempt to improve the efficiency and speed of the resolution process without addressing head-on the issue of vacant benches or better-qualified adjudicators. As a second-best option, it instead proposes rule changes so that lenders—mostly commercial banks—can recover their dues, or at least part of it, and get on with the job of fresh credit creation, a task vital for economic growth. But in trying to do so, the proposals leave wide gaps for creative interpretation by all parties. For example, the suggestion that adjudicators should be "empowered" to penalize those filing "frivolous" applications before the bench fails to define what would qualify as such. This would grant excessive power to adjudicators, and, going by recent examples, could even result in miscarriage of justice. Even the suggestion to redesign the fast-track corporate insolvency resolution process looks like a slippery slope that could be twisted to favour one set of applicants over another.

The second flaw lies in the way IBC proposals try to recast the adjudication process to reduce the legal agency of operational creditors, especially individuals. This is visible in a suggestion for resolving real-estate insolvencies; the logic of ring-fencing a real estate company's ongoing projects from the resolution process initiated by families in another beleaguered project betrays an institutional bias towards the sector. It is bizarre if a builder is allowed to plead insolvency for a specific realty project, but has a legal okay to deploy funds on other projects. It also illustrates the bureaucracy's yen for an extreme form of utilitarianism, one in which some homebuyers can be allowed to suffer so that a larger

cohort is relieved. Even the ministry's recommendation that operational creditors must forage for complete information on the defaulter from institutions—which can be like rolling a boulder uphill—before filing for resolution seems retrograde, shifting the onus on the wronged rather than the wrongdoer. In the final analysis, there is no getting away from the fact that resolving bankruptcy cases efficiently will require us to tackle the system's human capacity deficit to bring about the step-change that administrators appear bent on achieving through proxy methods.

Source: Mint

Read Full news at: <https://www.livemint.com/opinion/online-views/dont-expect-much-from-insolvency-code-tweaks-11674405936369.html>

