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IS CONSIDERING HOMEBUYERS AS FINANCIAL CREDITORS A BOON OR BANE

Introduction

Homebuyers are the person who wanted to buy the home and paid the money for it to the builders but some kind of cheating or mismanagement the homebuyers are not getting their money or position of the property or any kind of interest on their money so they are used to file a Suit against the builder for recovering of those money under real estate Regulation Act 2016 which is taken too much time for any kind of relief but after the Pioneer judgement in 2019 the home buyers are considered as financial creditor under section 5 clause (7) of insolvency and bankruptcy code 2016 so that they can getting their money as soon as possible or position of the property or any relief from the court but considering home buyer as a financial creditor is giving any advantage to the home buyers or it is makes disadvantage f them.

Who is a Homebuyer?

“Homebuyer” is the person who wanted to buy to home from the builders and paid the money to builders for complete the building and delivering of the position but they are cheated by the builders they are known as homebuyers the can claim their money or house from the builders or both under Real estate Regulation Act 2016. According to the real estate Regulation Act 2016 the homework is define as allottee under section 2D "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or

Indic Legal Law Journal

otherwise, but does not include a person to whom such plot, apartment or building, as the case may be, is given on rentⁱ

Homebuyers under IBC

After 2019 in the case of Pioneer urban land and Infrastructure Limited and another versus Union of India and Organisationⁱⁱ The homebuyers are considered as financial creditors under section 5 clause (7) IBC,2016. “Financial creditors” are the person who financially assistance of money or who financially help the builders to complete their buildings who is in debt. On 9th of August in Pioneer judgementⁱⁱⁱ the Supreme Court, validating the amendment in IBC,2016, conferring the rights of financial creditors on homebuyers, is a landmark judgment which will go a long way. The validation of the amendment by the Apex Court has undoubtedly brought relief to lakhs of disgruntled homebuyers who are and were immensely troubled by delayed possession or incomplete projects.

The amendment of IBC regarding the status of homebuyers being treated as financial creditor was introduced in August 2018. In reaction to this, more than 180 real estate companies filed petitions challenging the constitutional validity of the inclusion under Section 5(8)(f) of the IBC. The need of such an amendment was felt for an extended time because the homebuyers were being duped by fraudulent companies that swindled the funds, cheated them, and never delivered the promised property.

A three-judge bench headed by Justice R F Nariman, Sanjiv Khanna and Surya Kant, not only upheld the constitutional validity of the amendments of Section 5(8) of the IBC but also stressed that it “does not infringe” in anyway upon the rights of real estate developers and cannot be labelled as “arbitrary” or “discriminatory”.

Justifying the decision the three-judges bench very categorically stated, “This being the case, it had been important, therefore, to clarify that home buyers are treated as financial creditors in order that they can trigger the code under section 7 and have their rightful place within the Committee of Creditors when it involves making important decisions on the longer term of the building construction company, which is that the execution of the important estate project during which such home buyers are ultimately to be housed.

Indic Legal Law Journal

Homebuyers as Financial Creditors boon

It is important to notice that as per the new notification, homebuyers are going to be treated as financial creditors under IBC, There is ambiguity between builder's and purchaser upon delivering of flat such as same like selling of assets to different bankruptcy companies to another company After the Pioneer Judgment the homebuyers as financial creditor gets some advantages or profit

- i. Under real estate Regulation Act is very slow process it is take time to proceed so that homebuyers is not getting money or possession of property or any other relief from the builders side so the purchase are very freed up with RERA proceeding but after the Pioneer judgement the home buyer is treated as financial creditor and IBC provisions are applicable on them.
- ii. After considering homebuyers as a financial creditor under IBC they are getting relief under 180 days or any other satisfactory relief.
- iii. Under IBC the homebuyers getting their money back or position of the property or interest on their money or any other satisfactory relief.
- iv. According to Section 5 clause (8) sub clause (f) any amount raised under real estate project shall be or any transaction including sales or purchase agreement having the commercial effect of borrowing of money.
- v. the agreement between the builder and the homebuyers provides for assured returns to the homebuyer, the debt can be regarded as financial debt, as held in the case of Nikhil Mehta & Sons v. AMR Infrastructures Ltd^{iv}
- vi. when homebuyers as secured and unsecured financial consecrate then the are getting priority on payments upon liquidation.
- vii. homeowners should be treated as financial creditors within the proceedings concerning land businesses If this suggestion is implemented, homeowners could get some relief within the proceedings against unfinished land projects.

Homebuyers as Financial Creditor bane

After the 2019 Pioneer Judgment when homebuyers are considered as financial creditors it is making some disadvantages favour homebuyers and builders which lead to be negative approach for considering homebuyers as financial creditors.

Indic Legal Law Journal

- i. The application of claims by homebuyers Submitted under form-B IRP which deals with financial creditors if claims of home buyers is not covered then they are not considered as homebuyers^v.
- ii. With homebuyers treated on a par with financial creditors, lenders could be staring at a higher haircut on their construction loans should a developer go bankrupt. This could force the lenders to re-price their loans, leading to a higher interest rate burden on developers.
- iii. the resolution process now having to consider the interest of home buyers as well, banks could also be in for a problem. Lenders may have to take higher haircuts and this apprehension may prompt banks to charge higher interest rates from developers.
- iv. The home buyer has the right to submit their claim before the IRB as financial creditor under form C of the IBBI (insolvency resolution process for Corporate person) Regulation Act 2016.

Conclusion

To my opinion yes there is ambiguity/ mismanagement/ cheating existing between builder's and home buyers upon delivering of flat to remove those ambiguity the provisions are given under Real Estate Regulation Act 2016 which is take time as well Insolvency and bankruptcy Code 2016 after 2019 Amendment when homebuyers are considered as financial creditors they are getting relief within short period of time.

Under IBC, the homebuyers being considered as financial creditor is a positive aspect because they are getting relief live under 180 days. Every coin has two faces it is like the same it is hard to find that the home buyer as a financial creditor is a positive aspect or as well as negative aspect because both have a positive as well negative attitude.

The Centre's move to treat home buyers as financial creditors through an amendment in Insolvency and Bankruptcy Code (IBC), 2016 may seem good news for them, but it could have some adverse effects for buyers as well as lenders. Under Insolvency and bankruptcy court the new amendment 2019 made by government is seen to be good for financial creditors of home buyers but it is imposing negative effect upon homebuyers' lenders.

ⁱ Real estate Regulation Act 2016 section 2D.

ⁱⁱ 2019 in writ petition's civil number 43/ 2019.

ⁱⁱⁱ Pioneer urban land and Infrastructure Limited and another versus Union of India organisation.

^{iv} Nikhil Mehta & Sons v. AMR Infrastructures Ltd., 2017 Indlaw NCLAT 60.

^v Nikhil Mehta & sons v. AMR Infrastructure Ltd. 2017, Indlw NCLAT.