

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

Subject: Amendments to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and to Insolvency and Bankruptcy Board of India (Liquidation) Regulations, 2016

With the approval of Governing Board, a discussion paper proposing amendments to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and to Insolvency and Bankruptcy Board of India (Liquidation) Regulations, 2016 along with the draft amendment regulation was put up on the website of IBBI on 6th November, 2023, thereby, inviting the stakeholders to submit their comments on the same.

2. Till last date of receiving comments i.e., 28th November 2023, 250 comments were received. In addition, the division has also received comments from IPAs, IPs, IPEs etc. The proposals and the comments of the stakeholders thereon, along with the draft amendment regulations were discussed by the Governing Board at its meetings on 28th December 2023. In pursuance to the decision of the Governing Board, IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2024 was notified by the Board on 15th February 2024 and to the Insolvency and Bankruptcy Board of India (Liquidation) Regulations, 2016 was notified by the Board on 12th February 2024.

3. Regulation 4(3) of the IBBI (Mechanism for Issuing Regulations) Regulations, 2018 require the Board to upload on its website the public comments received on the draft regulations along with a general statement of its response on the same. In compliance with this requirement, the public comments received on the proposed amendments along with the general statement of response of the Board is placed at Annexure.

Gist of public comments on Discussion Paper on Real-Estate

Sl. No.	Proposal	No. of Comments	Gist of Comments / Suggestions	Comments of the Division
A.	<p>Mandatory registration and extension of projects under RERA</p> <p>Proposal: To expressly state that IRP/ RP must comply with the provision of the RERA Act and regulations framed thereunder. It is proposed to mandate the IRP/ RP to register all real estate projects under RERA or to extend the registration of the real estate project under RERA, wherein the registration is expired or about to expire.</p>	24	<p>Suggestions:</p> <p>(i) IBBI should also deliberate with RERA to relax the requirements of registrations in case of companies/projects under CIRP.</p> <p>(ii) As per RERA Laws, specifically, section 6 of RERA Act, provide for maximum extension of 1 year by RERA authority (apart from force majeure). However, the extension may require more than 1 year extension, specifically when the RERA registration has already expired long back. Hence, an amendment may be required in the RERA Act or special relaxation may be given to companies under CIRP to get the same extended with the limited data available with the RP.</p> <p>(iii) There are generally heavy penalties (upto 10% or 5% of the project cost- Sec 59 & 60 of RERA) for violations of RERA Laws, including quarterly compliance, are levied by the RERA authority for non-compliance or renew of the registration. Question arises (a) how such penalties shall be paid and (ii) Whether those penalty shall be part of CIRP cost as it</p>	The proposal has been put on hold for further examination.

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			<p>relates to period prior to CIRP and non-compliance by ex-management.</p> <p>(iv)The new registration requires complete plan, design, financial projection etc, whether they are not required to be approved by CoC. Before applying for the extension, we need to get the various licensed & approval renewed like, sanction map, license, pollution, insurance etc. which in most cases found expired. And renewal of such license and approval require to pay off the dues of competent authorities. (iv)In most of the cases, land dues are there of the authorities or another third parties, who does not support to provide NoC or other details. How the RERA registration shall be possible?</p> <p>(v) Inclusion of reciprocal provisions for authorities to allow registration if basic conditions are met.</p> <p>Against:</p> <p>(vi)Concerns about the onerous nature of the obligations imposed on RPs, especially if they are to assume the role and responsibilities of a 'promoter' under RERA.</p>	

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B.	<p>Operating a separate bank account for each real estate project</p> <p>Proposal: In line with the RERA provision for maintaining separate accounts for each project and to ensure transparency in the process, it is proposed that IRP/ RP should operate a separate bank account for each project undergoing CIRP.</p>	23	<p>Suggestions:</p> <p>(i) It is unclear whether the account proposed to be operated by the IRP/ RP is an account in addition to the account required under the RERA.</p> <p>(ii) Need for clarity on the relationship between accounts opened under RERA and those proposed for the CIRP, including whether new accounts are required and how funds should be apportioned.</p>	<p>(i) Each project to have one separate account. If the same has been opened under RERA, opening of another account shall not be required.</p> <p>(ii) Same as above.</p>
C.	<p>Execution of registration/sublease deeds with approval of CoC during CIRP:</p> <p>Proposal: To facilitate the smooth handover of occupied units or where possession has been transferred to home buyers, it is proposed to allow RP to handover the ownership of a plot, apartment, or building to the allottees through transfer during the resolution process, with the approval of CoC. Further, to avoid delays due to unnecessary holds-ups, it is also proposed that with the approval of the CoC, RP may also be permitted to hand over the possession of units to the allottees on 'as is where is' basis</p>	100	<p>Suggestions:</p> <p>(i) Usually, the project is completed under phased manner and even an occupation as well as completion certificate from the concerned authorities for that specific phase is also obtained in numerous projects. Therefore, stringent requirement of sixty six percent of total votes of COC may defeat the purpose and objectives of the said amendment hence the voting should only be conducted phase wise of a single project and not for the whole project under consideration.</p> <p>(ii) the term "in possession of the allottees" should be clearly defined as this term would have varied practical positions.</p>	<p>The proposal has been put on hold for further examination.</p>

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	or on payment of balance amount, if any, after taking in to account the funds due and funds required for completing the unit.		<p>(iii)after the words "facilitate registration", the following should be inserted "of the plot, apartment, or building, as the case maybe, subject to the issue of occupancy certificate for the apartment or building in accordance with local laws"</p> <p>(iv)In the proviso, after the words "possession of allottees", the following should be added "as date of issue of Request for Resolution Plan or such other date thereafter as the Committee of Creditors shall appoint"</p> <p>Against:</p> <p>(v) 'As is where is' basis transfer is tricky as it shifts the responsibility of safe completion of the units and its services to the homebuyer, who may not have the capability to undertake neither understands the risks of non-completion.</p> <p>(vi)While the proposed amendment caters to the interest of the homebuyers, it fails to consider that where a unit is handed over to the allottee without the common areas or other amenities of the project being complete as promised to the allottee at the time of booking, such allottee may continue to have claims against the developer/ promoter.</p>	

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D.	<p>CoC to examine and invite separate plans for each project</p> <p>Proposal: In view of the foregoing discussion that each project needs different treatment in terms of resolution, it is proposed to clarify that CoC on examination, may direct the RP to invite separate plan for each project. It would also encourage the association of allottees of a real state project to bring their own resolution plan and resolve issues in a specific project.</p>	17	<p>Favour: The proposal would help in more resolutions.</p> <p>Against:</p> <p>(i) Not clear how the liabilities of the lenders would be treated with receipt of partial resolution proceeds. Even there could be project specific lenders.</p> <p>(ii) Whether whole CoC would vote for the project plan or only project wise CoC shall be prepared?</p>	<p>(i) This is a clarificatory amendment. Such proposals have been dealt by market before.</p> <p>(ii) The entire CoC is to vote. No project-wise CoC has been envisaged.</p>
E.	<p>Exclusion of property in possession of homebuyers from the liquidation estate</p> <p>Proposal: Section 36 of the Code defines 'Liquidation estate' which states that for the purposes of liquidation, the liquidator shall form an estate of the assets which will be called the liquidation estate in relation to the corporate debtor. Clause (4) of section 36 of the Code states a list of assets which shall not be included in the liquidation estate and shall not be used for recovery in the liquidation. Section 36(4)(e) further provides power to the Board to specify any other assets which shall not form a part of the liquidation estate of the Corporate</p>	31	<p>Favour: The proposal would largely help distressed homebuyers.</p> <p>Suggestions:</p> <p>(i) Clarify the meaning of possession in this regulation. Given that the occupancy certificate is given after completion of the project, this regulation should be applicable subsequent to completion of the project.</p> <p>Against:</p> <p>(ii) Possession alone cannot be the criteria for excluding an asset from the liquidation estate of the CD. It is extremely important for the Liquidator to verify whether the</p>	<p>(i) The suggestion has been accepted to clarify that the assets will be excluded in such cases where the corporate debtor has given possession.</p> <p>(ii) Same as above.</p>

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	Debtor. Board may specify, under section 36(4)(e) that assets in possession of the allottee be excluded from the liquidation estate.		<p>possession is after full payment/ the possession is legal or not, whether the allottees have completed the necessary formalities to be done prior to taking the possession, etc.</p> <p>(iii)The exclusion of unregistered but occupied units from the liquidation estate, firstly, discriminates between the occupant of such units and non-occupants of similar units. Second, for the acquirer of liquidation estate, the provision exempts him from including such units within the completion plan and provide necessary services.</p> <p>(iv)If it would be separate from liquidation estate, then how the liability to get the registry done, shall be given the new buyer?</p> <p>(v) Allottee can mean who has paid 10% of the value of the property or 100% of the value of the property. There are too many cases in which the developer has sold the space flat / space multiple times. Assume that an allottee who has paid 10% is in possession or a buyer of a flat which has been sold for the third time (fraudulently the same flat sold for the third time) is in</p>	<p>(iii) The distinction is made basis possession and not on the basis whether the unit is currently under occupation or not.</p> <p>(iv) Registry shall be facilitated by the IP and the RA.</p> <p>(v) Lawful possession must be handed over by the CD after making the requisite payments. The provision does not intend to favour persons with illegal possession.</p>

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			<p>possession, wouldn't that be very unfair as well as very illegal as such. I doubt whether IBBI could make regulations regarding matters which could be subject matter of huge litigations.</p> <p>(vi) Suppose a flat is excluded from the Liquidation Estate and the CD is dissolved. As the flat was not registered in name of the occupant, he would never be the owner and would never be able to sell it in future.</p>	<p>(vi) Registry shall be facilitated by the IP and the RA.</p>
Total (including general comments and suggestions)		195		
