

Good news for home buyers: Supreme Court thumbs-up to financial creditor status

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Homebuyers have the option to avail legal remedies before a consumer court, real estate regulatory authorities (RERA), as well as bankruptcy courts, it said.



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In a major boost to homebuyers, the Supreme Court on Friday upheld amendments to the Insolvency and Bankruptcy Code (IBC) that gave them the status of 'financial creditors'.

A three-judge bench led by Justice RF Nariman, while upholding the constitutional validity of the amendment brought in the Insolvency and Bankruptcy Code last year, said the amendment in Section 5(8)(f) is clarificatory in nature and it gave homebuyers additional platform on which they could raise their grievances against the builders. Homebuyers have the option to avail legal remedies before a consumer court, real estate regulatory authorities (RERA), as well as bankruptcy courts, it said.

With the amendment and now ruling, homebuyers will be treated at par with the lenders in recovering dues from the insolvent real estate companies. They will also have a place in the committee of creditors (CoC) overseeing the insolvency resolution process for such firms, besides the powers to initiate insolvency proceedings in case of any default by the real estate companies.

Prior to the amendment, only banks and financial institutions were recognised as financial creditors and they had the sole right to decide in the insolvency process.

The bench also said that the RERA Act, which regulates the real estate sector, should be read in harmony with the IBC amendments. "It is only in the event of conflict (between the two laws) that the Code will prevail over the RERA. Remedies that are given to allottees of flats/apartments are, therefore, concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code," Justice Nariman said in a 186-page order.

The judgement also assumes importance as the Insolvency and Bankruptcy Code (Amendment) Bill, 2019, which was passed by Parliament recently, granted more powers to CoC over the distribution of proceeds in the resolution process.

According to the judges, "like other financial creditors, be they banks and financial institutions, or other individuals, all persons who have advanced monies to the corporate debtor should have the right to be on the Committee of Creditors. True, allottees are unsecured creditors, but they have a vital interest in amounts that are advanced for completion of the project, maybe to the extent of 100% of the project being funded by them alone."

It agreed with the government's view that it would be manifestly arbitrary to omit allottees from the CoCs when they are vitally interested in the future of the corporate debtor as they have funded anywhere from 50% to 100% of the project in most cases.

"Despite this, banks are in a more favourable position under the Code since they are financial creditors. Moreover, the general practice is that these contracts are structured unilaterally by construction companies with little or no say of the home buyers. A denial of the right of a class of creditors based on technicalities within a contract that such creditor may not have had the power to negotiate, may not be aligned with the spirit of the Code," the SC said.