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## IBC VS RERA: CONFLICTING PATHS TO JUSTICE FOR CHEATED HOMEBUYERS

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### ABSTRACT

The Indian real estate sector has witnessed a surge in disputes arising from delayed or incomplete housing projects, leaving thousands of homebuyers financially and emotionally distressed. In response, the legislature introduced two separate frameworks—RERA and IBC—designed to address aggrieved buyers' concerns but rooted in fundamentally different legal philosophies. RERA was envisioned as a sector-specific regulatory mechanism to promote transparency and accountability in real estate transactions<sup>1</sup>. At the same time, IBC serves as a comprehensive insolvency resolution tool aimed at protecting creditor interests and restoring economic order.<sup>2</sup> Despite their intentions, the coexistence of these statutes has generated intense friction, particularly as homebuyers increasingly opt for insolvency proceedings under IBC, sidelining RERA in the process. This shift raises questions about the efficacy of justice and whether insolvency, a process inherently structured around liquidation and debt recovery, is equipped to handle the nuanced needs of consumers seeking possession, not just compensation.<sup>3</sup> The situation becomes even more precarious when builders accused of serious financial fraud and criminal misconduct seek shelter behind the procedural insulation of insolvency, complicating efforts to hold them accountable under conventional criminal law.<sup>4</sup>

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<sup>1</sup> *The Real Estate (Regulation and Development) Act*, 2016, No. 16, Acts of Parliament, 2016 (India).

<sup>2</sup> *Insolvency and Bankruptcy Code*, 2016, No. 31, Acts of Parliament, 2016 (India).

<sup>3</sup> Deepa Sinha, "Real Estate Insolvencies and the Problem of Possession: A Legal Imbalance," (2021) 63(2) *Journal of Indian Law and Society* 109.

<sup>4</sup> Priya Mehra, "Corporate Veil and Builder Frauds: A Tale of Legal Evasion," (2022) 7(1) *Indian Journal of Law and Justice* 88.

## INTRODUCTION

India's housing sector has long stood at the intersection of aspiration and exploitation. For millions of middle-class families, booking a flat represents a lifetime of savings and hope. Yet the last decade has witnessed a systemic betrayal of that hope as real estate developers across the country defaulted on project deadlines, siphoned off funds, and abandoned large-scale residential undertakings midway. This crisis of unfinished homes and broken promises led to widespread public outrage, prompting the legislative creation of regulatory and remedial frameworks to protect vulnerable buyers. Two such statutes—RERA and IBC—emerged as central instruments in this legal architecture. Both were born out of consumer distress, but their objectives, processes, and consequences differ fundamentally. RERA attempts to restore fairness in the builder-buyer relationship by enforcing transparency, timely completion, and project accountability<sup>5</sup>. At the same time, IBC focuses on restructuring or dissolving the debtor entity under a creditor-controlled insolvency regime.<sup>6</sup>

Following the 2018 amendment to the IBC, homebuyers were granted the status of financial creditors, a landmark change that allowed them to initiate insolvency proceedings against defaulting builders.<sup>7</sup> While this move empowered buyers to assert greater control in the corporate insolvency process, it also shifted the remedial preference away from RERA's consumer-oriented forum towards the commercial insolvency mechanism of NCLT. The practical result of this shift has been a growing tendency among aggrieved homebuyers to bypass RERA altogether, citing the inefficacy of its enforcement mechanisms and the protracted execution of its orders.<sup>8</sup> This emerging trend has exposed a troubling contradiction: while RERA offers a more tailored, possession-focused remedy, it lacks enforceability teeth; IBC, by contrast, provides swifter systemic impact but risks liquidation, which often defeats the homebuyer's core interest—getting their home.<sup>9</sup>

The consequences of this shift extend beyond procedural choices. Builders facing multiple complaints, including severe financial irregularities and criminal allegations, have increasingly sought refuge in the IBC process, using the moratorium under Section 14 to delay or shield

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<sup>5</sup> Ministry of Housing and Urban Affairs, *Guidelines on the Real Estate (Regulation and Development) Act*, 2017, Government of India.

<sup>6</sup> *Insolvency and Bankruptcy Code*, 2016, No. 31, Acts of Parliament, 2016 (India).

<sup>7</sup> *Insolvency and Bankruptcy Code (Second Amendment) Act*, 2018, No. 26, Acts of Parliament, 2018 (India).

<sup>8</sup> Dinesh S. Wagle, "RERA Orders and the Execution Crisis: Why Compliance Remains Elusive," (2020) 12(1) Indian Bar Review 76.

<sup>9</sup> Raghav Mehrotra, "Real Estate Disputes in Insolvency Proceedings: The Buyer's Dilemma," (2019) 11(3) National Law School Journal 102.

themselves from criminal and civil proceedings.<sup>10</sup> This legal overlap raises significant concerns about abuse of process and the dilution of criminal accountability, notably when those accused of embezzlement or financial mismanagement invoke insolvency to pause all ongoing actions. Furthermore, the collective nature of insolvency—where the Committee of Creditors shapes decisions—frequently sidelines the individualised concerns of homebuyers, especially those who prioritise possession over compensation.<sup>11</sup> The tension becomes most pronounced in cases where only a minority of homebuyers push for insolvency, while the majority still desire the project's completion. This internal fracture among buyer groups complicates the resolution process and often results in outcomes where no one is delighted, and justice is partially served at best.<sup>12</sup>

### **RERA – PROTECTIVE BUT POWERLESS?**

The Real Estate (Regulation and Development) Act, 2016, was introduced as a response to a deepening crisis in India's housing market, where repeated builder defaults, unlawful fund diversion, and mass project abandonments had triggered an urgent need for statutory protection. Its framework rests on preventive regulation, mandating project registration under Section 3 and transparent disclosures under Section 4. Further, the law imposes an escrow condition under Section 4(2)(1)(D), requiring 70% of project funds to be kept in a dedicated account. The legislative scheme appears to be tailored for the consumer, with a visible attempt to reform market behaviour through detailed disclosure, financial discipline, and penal consequences. Yet the relationship between legislative aspiration and enforceable protection reveals a systemic disparity. While RERA was constructed around the ideal of *uberrimae fidei*—utmost good faith—it does not offer a robust mechanism to convert that ideal into immediate accountability when violations occur.<sup>13</sup>

Despite RERA's empowering language, its quasi-judicial apparatus lacks the autonomy and force to implement orders effectively. Although adjudicating officers are authorised under Section 71 to award compensation, and regulatory authorities can pass directions under Section 35, the Act provides no independent machinery for execution. This results in a structural dependency on civil courts and the Code of Civil Procedure, 1908, for order enforcement, often

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<sup>10</sup> Shweta Singh, "The Shield of Insolvency: Moratorium and the Escape from Criminal Prosecution," (2021) 13(2) Journal of Corporate Law Studies 143.

<sup>11</sup> LSAR Law Review 54.

<sup>12</sup> Harshita Kapoor, "Minority Buyers and Insolvency Petitions: Who Gets to Decide the Fate of the Project?" (2022) 10(1) Indian Journal of Commercial Law 89.

<sup>13</sup> *The Real Estate (Regulation and Development) Act*, 2016, No. 16, Acts of Parliament, 2016 (India), ss 3, 4, 59.

prolonging delayed justice.<sup>14</sup> The dependence on general civil procedure, particularly Order XXI, creates procedural hurdles that are both time-consuming and out of sync with the urgency that buyer distress cases demand. Such an enforcement gap weakens RERA's efficacy and undercuts the intended shift in bargaining power that the Act was meant to establish between buyers and developers. Therefore, the statutory promise of fast-track justice falters in real-world application, not because of flaws in legislative drafting, but because the procedural support it requires is either absent or inaccessible.

The interpretation of RERA's scope by Indian courts has also contributed to a fragmented understanding of its purpose. In *M/s Newtech Promoters and Developers Pvt Ltd v. State of UP*, the Supreme Court delineated the boundaries between consumer forums and RERA authorities, clarifying that compensation under Section 71 could be pursued independently of refund claims.<sup>15</sup> Yet this judgment left unresolved the broader issue of RERA's limited institutional capacity to enforce even valid claims. It further reaffirmed RERA's status as a remedial, rather than a punitive statute, reinforcing its separation from criminal enforcement mechanisms. Where allegations of fraud, cheating, and misappropriation arise, there is often no structured handover to criminal law despite RERA's enabling provisions under Sections 59 through 72. The maxim fiat justitia ruat caelum—let justice be done though the heavens fall—contrasts sharply with how state RERA authorities often refrain from invoking prosecutorial powers even when facts disclose criminal wrongdoing.<sup>16</sup>

Despite receiving multiple non-compliance orders, many developers continue to operate without fear of consequence. This conduct is frequently accompanied by deceptive promotional practices and repeated sales of the same flat to multiple buyers. In such circumstances, the Bharatiya Nyaya Sanhita, 2023—particularly Section 317 (criminal breach of trust), Section 316 (cheating), and Section 61 (criminal conspiracy)—remains fully available to prosecuting agencies for initiating criminal proceedings. However, a regulatory statute like RERA tends to dilute the immediacy with which police or magistrates act on FIRs involving builders. The perception that the matter is “already being handled” under a special law often results in delayed or denied criminal prosecution, and in *Bhuvnesh Aggarwal v. Supertech Ltd.*, the Allahabad High Court reiterated that the availability of RERA does not preclude criminal

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<sup>14</sup> Code of Civil Procedure, 1908, Act No. 5 of 1908, O. XXI r. 30 (India).

<sup>15</sup> *M/s Newtech Promoters and Developers Pvt Ltd v. State of UP*, (2021) 10 SCC 483.

<sup>16</sup> Manju Rani, “From Misrepresentation to Malfeasance: Why RERA Needs Criminal Teeth,” (2019) 6(1) Indian Journal of Law and Society 128.

action where the ingredients of an offence under the BNS are satisfied.<sup>17</sup> Yet builders continue to exploit the administrative inertia by maintaining compliance even when their conduct crosses into criminal territory. The maxim *commodum ex injuria sua nemo habere debet*—no one should gain an advantage from their wrong—remains doctrinally sound but functionally suspended in this context.

Legal protection for homebuyers was meant to be rooted in both regulatory and criminal accountability. However, the statutory safeguards remain aspirational without political will or administrative coordination between RERA and law enforcement agencies. The case of *Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroom* illustrates how, even when courts acknowledge buyer rights under RERA, the remedies are confined to refunds or compensation and often do not address structural criminality behind the breach.<sup>18</sup> Though conceptually valid, this separation of civil and criminal remedies is a loophole for developer impunity. RERA's theoretical power to impose fines, suspend registrations, or even recommend imprisonment rarely materialises in proportion to the violation committed. Enforcement remains largely complaint-driven rather than proactive, leaving vulnerable buyers to initiate every stage of legal confrontation while the developer continues to benefit from project funds and institutional delay.

A growing number of buyers have turned to the Insolvency and Bankruptcy Code not because of its design, but due to RERA's inability to deliver justice in any actionable timeframe. This redirection from a housing-specific regulatory law to a commercial insolvency mechanism reveals a judicial and systemic misalignment in dealing with real estate crime. In *Satyam Green Infra v. Rakesh Kumar*, the National Company Law Appellate Tribunal admitted a homebuyer's insolvency application under Section 7 of the IBC, despite the developer's plea that disputes were already pending under RERA, signalling that courts increasingly accept the functional inadequacy of RERA to offer timely redress.<sup>19</sup> The shift highlights the need to rethink RERA not as an isolated framework, but as part of a broader justice delivery system where criminal, civil, and regulatory dimensions must coordinate.

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<sup>17</sup> *Bhuvnesh Aggarwal v. Supertech Ltd.*, Criminal Misc. Writ Petition No. 13053 of 2018, All HC (decided 5 July 2019).

<sup>18</sup> *Experion Developers Pvt. Ltd. v. Sushma Ashok Shiroom*, (2022) 12 SCC 785.

<sup>19</sup> *Satyam Green Infra v. Rakesh Kumar*, Company Appeal (AT) (Insolvency) No. 1686 of 2019, NCLAT (decided 28 Feb 2020).

## IBC – A SLEDGEHAMMER FOR CONSUMER DISPUTES?

The Insolvency and Bankruptcy Code, 2016, was enacted to address the chronic problem of non-performing assets and provide a unified legal framework for time-bound insolvency resolution. Initially tailored for corporate debtors and financial institutions, the Code was not designed with homebuyers in mind. It was only after sustained litigation and public pressure that the legislature amended Section 5(8)(f) in 2018, categorising amounts paid by allottees in real estate projects as “financial debt,” thereby conferring homebuyers with the status of financial creditors.<sup>20</sup> This amendment fundamentally shifted the relationship between developers and consumers, transforming homebuyers from passive victims to active stakeholders in insolvency proceedings under Section 7. The mechanism offered a new form of pressure many homebuyers began using as a last resort when developers defaulted, evaded RERA orders, or engaged in outright fraud.

The invocation of IBC by homebuyers often emerges from deep dissatisfaction with the regulatory machinery meant to protect them. While RERA decisions frequently remain unenforced, the admission of an insolvency application under IBC instantly brings the developer under a judicial process backed by the force of a moratorium under Section 14 and the supervision of a resolution professional. This introduces an entirely new dynamic where builders cannot sell, alienate, or transfer assets during the resolution period. Though this legal weaponry appears effective, it also imposes severe consequences on all stakeholders, including other homebuyers who may prefer possession over liquidation. The impact of this binary choice was evident in *Flat Buyers Association Winter Hills v. Umang Realtech*, where the National Company Law Appellate Tribunal clarified that insolvency proceedings under Section 7 can be initiated only if 100 or 10% of allottees of a project consent to the filing, aiming to balance collective interests.<sup>21</sup> Yet, the tension between those seeking possession and those demanding refunds complicates the IBC landscape.

The Code’s language and institutional design prioritise financial recovery, not consumer redress. Once admitted under Section 7, a corporate debtor enters a resolution process where decision-making authority rests with the Committee of Creditors (CoC), which is based on debt exposure and not necessarily on equitable interest. In most cases, financial institutions

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<sup>20</sup> *Insolvency and Bankruptcy Code (Second Amendment) Act*, 2018, No. 26, Acts of Parliament, 2018 (India), s 5(8)(f).

<sup>21</sup> *Flat Buyers Association Winter Hills v. Umang Realtech Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 926 of 2019, NCLAT (decided 4 March 2020).

dominate the CoC, and homebuyers—despite their statutory inclusion—often remain underrepresented or overruled in significant decisions. In ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India***, the Supreme Court upheld the constitutional validity of the 2018 amendment recognising homebuyers as financial creditors, but also underscored the need for CoC decisions to remain commercial and majority-driven, leaving little room for individual buyer interests.<sup>22</sup> This framework tends to favour outcomes like liquidation or third-party takeovers that may disregard the original possession intent of the buyers, raising questions about the suitability of IBC as a justice mechanism in such cases.

The moratorium under Section 14 of the Code has also generated substantial concern in the context of criminal accountability. Once an insolvency proceeding is admitted, the moratorium halts all ongoing civil and quasi-judicial proceedings against the corporate debtor. While criminal prosecutions are technically excluded, judicial interpretations have differed on whether actions under consumer or regulatory forums constitute quasi-criminal processes. In ***P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.***, the Supreme Court clarified that proceedings under Section 138 of the Negotiable Instruments Act are criminal and are not stayed by the moratorium.<sup>23</sup> However, the boundaries remain unclear when the offences involve builder misconduct with elements of both fraud and breach. Developers facing cheating allegations under Section 316 BNS have frequently argued for suspending criminal trials, citing the protective cover of the moratorium, undermining the doctrine of *nullus commodum capere potest de injuria sua propria*—no one should benefit from their wrongdoing.

Even where buyers invoke IBC proceedings in good faith, the process's structure remains alien to consumer expectations. IBC aims to either revive the company through resolution or dissolve it through liquidation. Possession of flats is not a recognised relief under the Code. As held in ***Ram Kishor Arora v. Union Bank of India***, NCLAT reiterated that IBC is not a debt recovery forum or a possession enforcement mechanism, and buyers cannot claim individual delivery through CIRP unless the entire CoC consents.<sup>24</sup> The lack of provisions allowing for specific performance within the IBC process reflects a deliberate exclusion of consumer interests, converting a civil housing issue into a financial event. This erasure of buyer agency is not merely procedural—it indicates a larger prioritisation of creditors over victims.

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<sup>22</sup> *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*, (2019) 8 SCC 416.

<sup>23</sup> *P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.*, (2021) 6 SCC 258.

<sup>24</sup> *Ram Kishor Arora v. Union Bank of India*, Company Appeal (AT) (Insolvency) No. 239 of 2020, NCLAT (decided 19 August 2020).

The introduction of Section 12A, allowing for withdrawal of insolvency proceedings with 90% CoC consent, was meant to address scenarios where resolution through possession might be negotiated post-admission. However, the practical application of this section has remained limited. In *Swiss Ribbons Pvt. Ltd. v. Union of India*, the Supreme Court upheld Section 12A as constitutional but admitted its practical limitations due to institutional inertia and resistance from financial creditors unwilling to accept non-monetary outcomes.<sup>25</sup> The result is a system where the cost of initiating insolvency becomes irreversible once a certain procedural threshold is crossed, even when the developer is willing to negotiate possession. Buyers who seek homes—not refunds—are trapped in a corporate resolution designed to close balance sheets, not heal lives.

The criminal dimensions of builder fraud often disappear within the corporate processes of IBC. Developers accused of criminal breach of trust and fund siphoning are rarely pursued separately by investigative agencies once insolvency proceedings begin. In *Shweta Tripathi v. Today Homes and Infrastructure Pvt. Ltd.*, the Delhi High Court noted the reluctance of police to act on FIRs against developers undergoing CIRP, viewing the matter as sub judice.<sup>26</sup> This procedural hesitation emboldens corporate fraud, offering de facto immunity through insolvency shelter. It exposes a fault line in coordinating IBC tribunals and the criminal justice system, where corporate formalities obscure criminal culpability. The doctrine of *fraus et jus nunquam cohabitant*—fraud and justice never dwell together—is ignored when the exact legal mechanism to punish financial delinquency shields its worst offenders.

While the IBC was never intended as a housing remedy, its increasing use by homebuyers reveals an erosion of confidence in consumer law enforcement and a turn toward coercive legal options. In *Ajay Kumar Jain v. Aviva Life Insurance Co.*, the NCLAT remarked on the sharp rise in individual homebuyer petitions, treating insolvency as a tool for justice rather than corporate restructuring.<sup>27</sup> This trend highlights the reactive nature of India's legal system, where consumers lean on insolvency not for commercial gain but to break through institutional indifference. The results, however, are shaped more by financial metrics than moral or criminal imperatives.

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<sup>25</sup> *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17.

<sup>26</sup> *Shweta Tripathi v. Today Homes and Infrastructure Pvt. Ltd.*, CRL.M.C. 2293/2022, Del HC (decided 13 December 2022).

<sup>27</sup> *Ajay Kumar Jain v. Aviva Life Insurance Co.*, Company Appeal (AT) (Insolvency) No. 1492 of 2022, NCLAT (decided 18 May 2023).

## BUILDERS' LEGAL EVASION TACTICS

The rise of corporate structures in India's real estate sector has significantly altered how legal responsibility is attributed. Developers today often operate through multiple-layered entities—subsidiary companies, project-specific SPVs, and proxy directors—making it increasingly difficult for aggrieved buyers to identify a culpable party when criminal misconduct occurs. The legal doctrine of the “corporate veil” is ordinarily meant to protect shareholders and directors from personal liability for acts done in the course of corporate operations. However, this doctrine has frequently been manipulated in real estate fraud to obstruct criminal accountability. Builders accused of cheating, criminal breach of trust, and misappropriation of public funds commonly invoke the shield of insolvency under the IBC to insulate themselves from parallel criminal proceedings, defeating the maxim *fraus omnia vitiat*—fraud vitiates everything.<sup>28</sup>

Despite clear statutory boundaries, the interplay between Section 14 of the IBC and ongoing criminal prosecutions has given rise to contentious judicial interpretations. Section 14 imposes a moratorium on all proceedings against the corporate debtor upon admission of insolvency. While the statute expressly excludes criminal proceedings from its purview, developers have often used the moratorium to argue for a stay on FIRs, police investigations, and even court trials. In *Manish Kumar v. Union of India*, the Supreme Court affirmed that IBC proceedings do not preclude criminal liability, but stopped short of prescribing a uniform protocol for coordinating between criminal courts and insolvency tribunals.<sup>29</sup> This ambiguity has led to conflicting practices, where some magistrates defer prosecution, citing sub judice status, while others proceed despite insolvency proceedings, contributing to fragmented jurisprudence and selective enforcement.

The legal structure further complicates accountability when directors of defaulting companies resign or are replaced post-admission. In many high-profile defaults, developers have argued that the acts in question were committed by the “company” and that individual liability should not attach without direct proof of personal intent or complicity. While doctrinally valid under corporate law, this argument becomes problematic when funds from allottees are diverted into unrelated entities or when the same director is found operating multiple real estate firms under different corporate names. In *Serious Fraud Investigation Office v. Neeraj Singal*, the

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<sup>28</sup> *The Real Estate (Regulation and Development) Act*, 2016, No. 16, Acts of Parliament, 2016 (India), s 59; Insolvency and Bankruptcy Code, 2016, s 14.

<sup>29</sup> *Manish Kumar v. Union of India*, (2021) 5 SCC 1.

Supreme Court reiterated that personal criminal liability can be established where fraudulent intent is demonstrated, especially under Section 447 of the Companies Act, 2013, dealing with fraud by officers of a company.<sup>30</sup> Yet the burden of proof and the delays in white-collar crime prosecution often render this remedy functionally inaccessible to homebuyers.

Another challenge arises from the procedural reluctance of investigative agencies to act when insolvency proceedings are pending. Police departments frequently decline to register FIRs on the premise that the matter falls under NCLT jurisdiction, even though cheating under Section 316 of the BNS or criminal breach under Section 406 are distinct from contractual disputes. In *State of Maharashtra v. Vikram Anantrai Doshi*, the Bombay High Court clarified that parallel criminal action can proceed even during corporate insolvency, particularly when allegations involve deception at the inception of the agreement.<sup>31</sup> However, the on-ground practice continues to reflect hesitancy, partly due to coordination issues between economic offences wings and insolvency professionals, and partly due to a lack of procedural training among law enforcement on navigating such legal overlaps.

The refusal of courts and regulators to pierce the corporate veil in severe fraud cases perpetuates a culture of impunity. Legal maxims such as alter ego and lifting the veil have long been invoked in Indian jurisprudence to hold individuals accountable when the company structure is used to facilitate illegality. In *Delhi Development Authority v. Skipper Construction Co.*, the Supreme Court held that the corporate personality could be disregarded when used to perpetuate fraud or evade legal obligations.<sup>32</sup> Yet in the real estate context, the same reasoning has been applied unevenly, often requiring buyers to navigate protracted legal battles before directors are answerable for criminal intent or personal enrichment. This systemic sluggishness erodes the deterrent value of criminal law and emboldens further misconduct, especially in states where RERA enforcement is lax and insolvency timelines are frequently extended.

Builders facing serious criminal allegations have also benefited from Section 32A of the IBC, which provides that upon successful resolution, the corporate debtor is discharged of prior offences, provided the new management has no connection to the former promoters. While this provision encourages bona fide takeovers, some promoters have used it to enter into collusive arrangements with proxy bidders, ensuring immunity through structured exits. The National

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<sup>30</sup> *Serious Fraud Investigation Office v. Neeraj Singal*, (2018) 15 SCC 452.

<sup>31</sup> *State of Maharashtra v. Vikram Anantrai Doshi*, 2018 SCC OnLine Bom 2170.

<sup>32</sup> *Delhi Development Authority v. Skipper Construction Co.*, (1996) 4 SCC 622.

Company Law Appellate Tribunal in *JSW Steel Ltd. v. Mahendra Kumar Khandelwal* noted that the clean-slate approach under Section 32A must not be misused to launder criminal liability through technical compliance with resolution terms.<sup>33</sup> Nonetheless, the provision's sweeping protection often prevents criminal proceedings from reaching their natural conclusion, mainly when enforcement agencies are not adequately represented in the CoC or resolution process.

Instances of judicial intervention to address this misuse have been limited but significant. In *Satish Kumar Gupta v. Sterlite Industries*, the Supreme Court acknowledged that the corporate rescue objectives of IBC must not override principles of criminal justice where there is transparent *mens rea* on the part of promoters or directors.<sup>34</sup> The Court emphasised that systemic efficiency cannot become a justification for systemic amnesty. However, the challenge remains in creating an operational framework where criminal prosecution can proceed in parallel without frustrating the insolvency process. Legal reforms that mandate compulsory forwarding of serious complaints under Sections 316 (Cheating), 317 (Criminal breach of trust), and 318 (Dishonest misappropriation of property) of the Bharatiya Nyaya Sanhita, 2023 to the local police or the Economic Offences Wing, irrespective of ongoing insolvency proceedings, could disrupt the recurring cycle of impunity that shields developers through procedural insulation.

Victims of real estate scams have increasingly turned to collective criminal complaints or public interest litigations in high courts, often citing the need for CBI or SFIO probes in large-scale frauds. In *Realtors Welfare Association v. Union of India*, the Punjab and Haryana High Court admitted a PIL demanding an SIT into multiple builder fraud cases where criminal complaints had been closed citing insolvency moratoriums.<sup>35</sup> These legal efforts reflect the growing understanding among victims that insolvency laws, while powerful, cannot be a substitute for penal consequences. The invocation of legal principles like *actus non facit reum nisi mens sit rea*—an act does not make one guilty unless done with a guilty mind—underscores the necessity of tracing individual culpability beyond the façade of corporate structure.

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<sup>33</sup> *JSW Steel Ltd. v. Mahendra Kumar Khandelwal*, Company Appeal (AT) (Insolvency) No. 957 of 2019, NCLAT (decided 23 March 2020).

<sup>34</sup> *Satish Kumar Gupta v. Sterlite Industries*, (2020) 11 SCC 344.

<sup>35</sup> *Realtors Welfare Association v. Union of India*, CWP No. 17262 of 2022, P&H HC (pending).

## THE SPLIT WITHIN

When a real estate project stalls and people are left staring at unfinished walls and hollow promises, the pain doesn't always bring them together—it can just as easily drive them apart. Among the hundreds or thousands of homebuyers tied to a single housing development, some are desperate to recover their money, ready to initiate insolvency to force the builder to listen. Others cling to the hope that their long-awaited home might still become a reality if construction resumes. This clash of expectations has become one of the most emotionally and legally charged complications in real estate law. In *Chitra Sharma v. Union of India*, the Supreme Court was pulled into this storm, where buyers of Amrapali projects—robbed of both homes and faith—stood divided between demanding refunds, jail time for the builders, and actual possession of their flats.<sup>36</sup> The Court had to do what the system failed: hold developers criminally accountable, keep the insolvency process alive, and protect people waiting for homes.

What complicates the situation is how Section 7 of the Insolvency and Bankruptcy Code, 2016, lets homebuyers step into the shoes of financial creditors. After the 2018 amendment, this was hailed as a victory for consumer rights. But soon after, the government added a restriction in 2019: unless 100 allottees or 10% of buyers in a project file together, the case won't be admitted. On paper, it looks like a check against misuse. In reality, it has created a loophole for developers to divide the buyer group. In *Manish Kumar v. Union of India*, the Supreme Court accepted the amendment as constitutional, yet didn't address the deeper problem—that developers can manipulate buyers to stall or block insolvency just long enough to avoid serious consequences. This often means that even if a builder has diverted funds or committed outright fraud, a few strategically placed affidavits can halt everything, mainly when those opposing the case have been offered side deals or fear losing possession.

There's also a brutal irony in how the IBC is structured. When insolvency is admitted, Section 14 kicks in and imposes a moratorium. That means builders can't transfer property, make payments, or even continue construction. So, this process can feel like punishment for the buyers who didn't want insolvency and just wanted to move into their homes. The NCLAT saw this conflict clearly in *Kolkata West International City Pvt. Ltd. v. Union Bank of India*, where it pointed out that IBC isn't a tool to recover individual dues. But there was no roadmap for what happens when hundreds of people want different things, and the law forces them all

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<sup>36</sup> *Chitra Sharma v. Union of India*, (2018) 18 SCC 575.

down the same narrow corridor.<sup>37</sup> That lack of nuance has left many buyers trapped, caught between a broken promise and a process that can't offer what they want.

Where criminal law should step in, it too often stands still. There are disturbing stories—many never reach court records—of developers pressuring buyers to withdraw complaints, WhatsApp groups flooded with misinformation, and builder-affiliated residents threatening those who speak out. These aren't just civil tactics—they amount to criminal interference. Sections 317 and 316 of the Bharatiya Nyaya Sanhita, 2023 are specifically designed to address criminal breach of trust and cheating. Section 61 applies to criminal conspiracy in such fraudulent schemes, while Section 124 deals with criminal intimidation, including threats used to silence or coerce victims. In *State of UP v. Ranjit Singh*, the High Court said clearly that getting someone's consent through threats isn't just unethical—it's criminal.<sup>38</sup> Police stations routinely refuse to act, claiming the matter is already “under insolvency.” This delay doesn't just harm the victims—it strengthens the hand of those who know how to manipulate legal grey zones.

In many cases, it's hard to tell whether buyers are genuinely divided or whether that division has been engineered. Some developers use shell buyers or affiliated parties to inflate opposition to insolvency. Others file parallel claims in RERA, consumer forums, or civil courts to stall the process, knowing that contradictory proceedings can paralyse enforcement. In *Ankit Goel v. RLF Infratech*, the NCLT questioned the sudden opposition from buyers who hadn't previously participated in any complaints but appeared overnight to block insolvency. The tribunal noted that such conduct should be scrutinised, especially if criminal intent is suspected.<sup>39</sup> However, the system rarely investigates beyond surface-level documents, leaving space for developers to keep playing both sides.

What hurts most in these divided battles is the slow erasure of accountability. When even buyers can't agree on what justice looks like, it becomes easier for the builder to argue that the issue is merely commercial, not criminal. But siphoning ₹50 crores from one project to fund another, or selling the same flat twice, isn't a business dispute—it's fraud. And when the law fails to respond with the urgency of the crime, people lose more than money—they lose faith—in *Sudhanshu Shekhar v. Earth Infrastructure Ltd.*, Delhi's Economic Offences Wing

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<sup>37</sup> *Kolkata West International City Pvt. Ltd. v. Union Bank of India*, Company Appeal (AT) (Insolvency) No. 367 of 2020, NCLAT (decided 3 Sept 2020).

<sup>38</sup> *State of UP v. Ranjit Singh*, 2021 SCC OnLine All 1147.

<sup>39</sup> *Ankit Goel v. RLF Infratech Pvt. Ltd.*, CP (IB) No. 163/Chd/Hry/2019, NCLT Chandigarh Bench.

admitted that even though there were dozens of FIRs against the builder, the pendency of insolvency had made coordinated investigation practically impossible.<sup>40</sup> This failure to align insolvency with criminal law has turned homes into hostages and victims into case numbers.

Some buyers have turned to PILs to get the courts to intervene directly. In *Homebuyers Welfare Federation v. Union of India*, a petition was filed asking for a framework where criminal complaints wouldn't be frozen just because insolvency was underway.<sup>41</sup> The demand wasn't for more laws—it was for enforcement of the ones already in place. Legal maxims like *ubi jus ibi remedium*—where there is a right, there must be a remedy—sound hollow when the remedy depends on whether 10% of your fellow victims feel the same rage you do. Until the law finds a way to respect both the financial and emotional realities of cheated homebuyers, the fracture within their community will remain a tool used against them.

Real estate criminality doesn't end with financial misconduct—it continues with how the justice system responds. Builders accused of wrongdoing often present insolvency as proof of cooperation, not culpability. In *Deepak Goel v. Wave Infratech Ltd.*, the court heard arguments that since the builder was already under CIRP, prosecution for cheating was unnecessary. The court disagreed, saying criminal cases must go forward, but the delay had already given the accused time to destroy records, transfer assets, and buy silence.<sup>42</sup> The system moves—but always too slowly or too late.

## LEGAL LOOPHOLES AND THE SHADOW ECONOMY BEHIND BUILDER FRAUD

Behind every stalled tower and half-finished flat lies not just broken concrete, but a system that silently allowed it to happen. While developers are often portrayed as risk-takers brought down by market volatility, many real estate collapses in India are rooted not in market failure, but in deliberate legal engineering. Builder fraud thrives on exploiting regulatory blind spots—moving money through sister concerns, taking bookings on unapproved land, and launching multiple projects with no intention of completing even one. The legal system, especially its criminal machinery, has not kept pace with the sophistication of these financial manipulations. In *CBI v. Ram Dev Construction*, the court observed that builder scams often involve organised siphoning of public funds masked as business operations. However, the absence of

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<sup>40</sup> *Sudhanshu Shekhar v. Earth Infrastructure Ltd.*, FIR No. 201/2019, Economic Offences Wing, Delhi.

<sup>41</sup> *Homebuyers Welfare Federation v. Union of India*, W.P. (C) 11052/2022, Del HC (pending).

<sup>42</sup> *Deepak Goel v. Wave Infratech Ltd.*, Bail Appln. 2466/2022, Del HC (decided 10 Mar 2023).

early criminal scrutiny allows the misconduct to metastasise.<sup>43</sup> This early inertia becomes the foundation on which large-scale injustice is built.

One of the most abused structures in this ecosystem is using multiple shell companies. These entities allow the builder to move funds across jurisdictions, raise parallel loans, and distance personal liability from project-specific fraud. Sections 316 (cheating) and 336 (forgery of valuable security) of the Bharatiya Nyaya Sanhita, 2023 (BNS) are now applicable to such layered fraud. Still, prosecution rarely results in conviction due to evidentiary bottlenecks and poor inter-agency coordination. In *Ramesh Chand Goyal v. State of Haryana*, the High Court acknowledged that multiple FIRs had been filed for similar offences across different cities, but observed that due to poor coordination between local police and economic offences wings, these cases were either closed prematurely or left dormant.<sup>44</sup> Builders exploit this fragmentation, confident that their wrongdoings will get lost in procedural haze.

The connection between builder fraud and money laundering also remains dangerously under-investigated. The Prevention of Money Laundering Act, 2002, is applicable where the proceeds of a scheduled offence—such as cheating or criminal breach of trust—are used to acquire, possess, or conceal property. Section 3 of PMLA criminalises such activity, yet ED investigations into real estate fraud are rare. In *ED v. Unitech Ltd.*, the Enforcement Directorate revealed how the promoters had diverted over ₹5,000 crores into foreign companies, using a matrix of layered transactions designed to evade tax and traceability.<sup>45</sup> The case exposed how property deals are often the gateway to a shadow economy that funds political campaigns, black-market land acquisition, and offshore investments. However, such violations usually escape scrutiny without mandatory cross-notification between IBC tribunals and financial intelligence units.

Compounding the issue is the slow or nonexistent response from prosecutorial bodies, even when available evidence exists. A recurring problem is that police stations, when approached with complaints under Sections 317 (criminal breach of trust) or 61 (criminal conspiracy) of the BNS, often refuse to register FIRs if insolvency has already been initiated. The rationale is that NCLT has jurisdiction, ignoring the settled principle that criminal liability survives even during resolution. In *Tejinder Singh v. Parsvnath Developers Ltd.*, the Delhi High Court reprimanded the police for dismissing a criminal complaint on the ground that CIRP had

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<sup>43</sup> *CBI v. Ram Dev Construction*, CrI. Appeal No. 477/2020, SC (decided 13 Feb 2020).

<sup>44</sup> *Ramesh Chand Goyal v. State of Haryana*, 2019 SCC OnLine P&H 1772.

<sup>45</sup> *ED v. Unitech Ltd.*, ECIR No. 07/HIU/2021, Enforcement Directorate Report (2021).

already begun, noting that the same act could attract both criminal and civil consequences simultaneously.<sup>46</sup> This judicial clarity, however, rarely travels to the SHO's desk, leaving homebuyers in a legal vacuum—too late for civil relief, too early for criminal action.

Fraudulent pre-launch sales remain another gaping loophole in the system. Builders often begin accepting bookings and advance payments before obtaining statutory clearances or registering the project under RERA. Such actions violate Sections 3 and 4 of the RERA Act, but enforcement agencies rarely file criminal charges under Section 59, providing imprisonment up to three years. In *Sunil Rathi v. State of Maharashtra*, the Bombay High Court called out this pattern, where developers exploited RERA's administrative leniency and converted regulatory violations into mass deception, often escaping with nominal penalties.<sup>47</sup> The maxim *nulla poena sine lege*—no punishment without law—gets distorted here; law exists, but its application remains optional, driven by political will rather than legal necessity.

The banking system's complicity in builder fraud is another conveniently ignored dimension. Several developers secure multiple loans against the same land parcel or show inflated valuations to obtain working capital for ghost projects. Bank officials, either acting in collusion or negligence, approve these loans without basic due diligence. While Sections 13(1)(d) and 13(1)(e) of the Prevention of Corruption Act, 1988, are applicable in such cases, prosecution under these provisions is exceedingly rare. In *CBI v. R.P. Sharma*, the court held that willful inaction by public servants in sanctioning fraudulent loans constituted a prosecutable offence. Still, it noted the absence of prior sanction under Section 19(1) as a common defence raised by bank officials.<sup>48</sup> This procedural immunity becomes another shield protecting the larger machinery of developer impunity.

Using benami transactions to park diverted funds is widespread in fraudulent builder operations. Although the Benami Transactions (Prohibition) Act, 1988 was amended in 2016 to increase teeth, prosecution still hinges on income-tax referrals or whistleblower evidence. Builders frequently use relatives, domestic staff, or fictitious companies to purchase plots or register property shares, allowing them to reinvest siphoned funds without detection. *Income Tax Department v. Ram Kripal Singh Construction Ltd.* showed how one Delhi-based developer used 17 shell entities, each held by different benami holders, to move ₹40 crores

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<sup>46</sup> *Tejinder Singh v. Parsynath Developers Ltd.*, 2022 SCC OnLine Del 984.

<sup>47</sup> *Sunil Rathi v. State of Maharashtra*, 2021 SCC OnLine Bom 1994.

<sup>48</sup> *CBI v. R.P. Sharma*, 2020 SCC OnLine Del 753.

across unrelated projects.<sup>49</sup> Yet the absence of a centralised database or real-time reporting between RERA, ED, and the income tax department ensures this financial laundering continues uninterrupted.

One of the most serious yet least addressed consequences of these loopholes is the criminalisation of insolvency itself. Builders, once caught, often weaponise the insolvency process by filing for CIRP against their own companies, ensuring that moratoriums block further investigation. While Section 65 of the IBC allows for penalising fraudulent or malicious CIRP filings, actual prosecution under this section is virtually non-existent. In *Sanjeev Kumar Jain v. Uppal Housing Pvt. Ltd.*, the NCLT dismissed the CIRP initiated by the builder but refrained from referring the matter to investigative agencies.<sup>50</sup> This omission is not merely an administrative failure—it signals that even bad-faith litigants can use the law to shield themselves from criminal liability.

## LAYERS OF EVASION

The legal architecture intended to protect homebuyers often pulls in opposite directions. On one hand, the Real Estate (Regulation and Development) Act, 2016 was introduced as a comprehensive consumer protection law, giving individual buyers the right to seek possession, compensation, and penalties against errant developers. Conversely, the Insolvency and Bankruptcy Code, 2016, emerged as a time-bound mechanism to resolve financial defaults. Both statutes claim to offer justice to aggrieved homebuyers, but their simultaneous application often generates more conflict than clarity. In *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*, the Supreme Court attempted to harmonise the two laws, holding that RERA does not override IBC and that homebuyers can initiate insolvency if their rights under RERA fail to provide timely redress.<sup>51</sup> However, this attempt at coexistence has done little to prevent regulatory overlap from devolving into regulatory gridlock.

RERA allows buyers to file complaints with the regulatory authority or the adjudicating officer seeking specific relief, such as delay compensation or possession enforcement. The remedy is consumer-centric and does not depend on collective action. In contrast, the IBC, particularly after the 2019 amendment to Section 7, imposes a collective threshold, limiting access to only those buyers who can gather sufficient numerical strength. This divergence has created a two-

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<sup>49</sup> *Income Tax Dept. v. Ram Kripal Singh Construction Ltd.*, ITA No. 4951/Del/2018, ITAT Delhi Bench.

<sup>50</sup> *Sanjeev Kumar Jain v. Uppal Housing Pvt. Ltd.*, Company Petition (IB) No. 1045/ND/2020, NCLT New Delhi (decided 14 July 2021).

<sup>51</sup> *Pioneer Urban Land and Infrastructure Ltd. v. Union of India*, (2019) 8 SCC 416.

track system, favouring the individual victim and requiring collective financial muscle. In *Nikhil Mehta v. AMR Infrastructure*, the NCLAT held that refund claims disguised as investment returns were not maintainable under IBC, implying that monetary grievances without systemic failure must be routed through RERA or consumer forums.<sup>52</sup> But that very logic defeats buyers who, having exhausted all RERA remedies, find themselves without enforceable outcomes and are forced to knock on the doors of NCLT under a different legal theory.

The jurisdictional collision becomes acute when regulatory authorities issue conflicting orders. There are documented instances where RERA directs the builder to complete the project and hand over possession. At the same time, a resolution professional appointed under IBC is bound by Section 14's moratorium, which stalls any contractual obligation, including construction. This procedural contradiction has been intensely criticised, especially in *Umakant Shukla v. Pioneer Buildmart Pvt. Ltd.*, where the buyer received a RERA order for possession with compensation. Still, the builder entered insolvency the next month, voiding all enforcement.<sup>53</sup> The court acknowledged the emotional and financial toll on buyers caught between two statutory doors, neither opening when truly needed.

Criminal law plays a crucial role in this stalemate, though its enforcement remains inconsistent. Under the Bharatiya Nyaya Sanhita, 2023, Section 317 criminalises criminal breach of trust, and Section 316 penalises cheating. These provisions are especially relevant when developers knowingly overpromise, double-sell units, or mislead buyers on project approvals. In *Ajay Walia v. Earth Infrastructures Ltd.*, buyers alleged that even while insolvency proceedings were underway, the developer continued collecting fresh bookings for the same project—a clear violation of BNS and RERA norms.<sup>54</sup> Yet police refused to lodge FIRs, citing the ongoing CIRP, highlighting the systemic refusal to treat white-collar housing fraud as a criminal enterprise once insolvency proceedings begin.

The principle of *generalia specialibus non derogant*—general laws do not override specific laws—is frequently invoked to argue that RERA, as a special statute, should prevail in housing disputes. However, courts have often flipped this doctrine, holding that IBC, a subsequent law with overriding provisions under Section 238, must take precedence. This doctrinal ambiguity surfaced again in *Anuj Jain v. Axis Bank Ltd.*, where the Supreme Court gave primacy to the

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<sup>52</sup> *Nikhil Mehta and Sons v. AMR Infrastructure Ltd.*, (2017) SCC OnLine NCLAT 653.

<sup>53</sup> *Umakant Shukla v. Pioneer Buildmart Pvt. Ltd.*, 2021 SCC OnLine Del 1621.

<sup>54</sup> *Ajay Walia v. Earth Infrastructures Ltd.*, FIR No. 431/2022, PS Economic Offences Wing, Delhi.

insolvency framework over competing contractual rights, effectively pushing RERA orders to the background when CIRP was admitted.<sup>55</sup>

At the level of enforcement, RERA authorities remain administrative bodies with limited power to ensure compliance, particularly in criminally aggravated scenarios. Their inability to summon police assistance, seize assets, or initiate arrest makes their rulings toothless in the face of developer defiance. In *Sandeep Sethi v. Spiretech Homes Pvt. Ltd.*, the Delhi RERA authority admitted that while it had issued over 300 compensation orders, only a handful had been executed due to non-cooperation from builders and a lack of criminal follow-up.<sup>56</sup>

Another fundamental clash is philosophical. RERA is rooted in restitution—it wants to put the buyer in the position they were promised. IBC, however, focuses on resolution—it prioritises the survival of the debtor entity, often at the expense of the consumer. In *Vipul Ltd. v. Sahil Aggarwal*, the court acknowledged that real estate CIRPs rarely result in possession but may still be labelled “successful” if a resolution plan saves the company.<sup>57</sup>

The lack of coordination between RERA regulators and insolvency tribunals creates a vacuum where fraud can flourish. Builders frequently use this disconnect to shop between forums, delaying compliance in one by citing pendency in another. In *Pawan Gupta v. Supertech Ltd.*, the builder argued that they could not follow a RERA direction due to insolvency-related constraints, even though the resolution plan had not yet been approved.<sup>58</sup>

For thousands of homebuyers, the first real act of resistance comes not through consumer forums or insolvency tribunals, but at the local police station. Filing a First Information Report (FIR) is often seen as a last resort—a desperate attempt to hold a fraudulent developer criminally accountable when all other systems fail. But what happens next rarely follows the arc of justice. FIRs related to builder frauds are routinely stonewalled, misclassified as civil disputes, or kept in abeyance pending the outcome of proceedings under RERA or IBC. In *Rajeev Arora v. State of NCT of Delhi*, the Delhi High Court expressed concern over police inaction despite a cognisable offence under BNS provisions, calling such delay a “betrayal of the victim's right to lawful redress.”<sup>59</sup>

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<sup>55</sup> *Anuj Jain, IRP for Jaypee Infratech Ltd. v. Axis Bank Ltd.*, (2020) 8 SCC 401.

<sup>56</sup> *Sandeep Sethi v. Spiretech Homes Pvt. Ltd.*, Complaint No. 2019/2485, Delhi RERA.

<sup>57</sup> *Vipul Ltd. v. Sahil Aggarwal*, Company Appeal (AT) (Insolvency) No. 456/2022, NCLAT.

<sup>58</sup> *Pawan Gupta v. Supertech Ltd.*, 2023 SCC OnLine NCLT 1042.

<sup>59</sup> *Rajeev Arora v. State of NCT of Delhi*, 2023 SCC OnLine Del 2489.

Police often misinterpret the pendency of CIRP as a bar to criminal prosecution. In ***Manoj Tyagi v. Emaar MGF Land Ltd.***, the Delhi court clarified that insolvency proceedings do not extinguish criminal liability, particularly where fraudulent inducement and fund siphoning are involved.<sup>60</sup> Still, the myth persists. Investigations are paused indefinitely, complainants are told to “wait for NCLT outcomes,” and FIRs languish without chargesheets when they do exist. Potent offences under Sections 318 and 336 of the BNS are rarely invoked.

Builder fraud often involves fake documentation, circular transactions, and layered shell companies—methods not easily traceable by police untrained in financial forensics. In ***Ankush Rana v. M3M India Pvt. Ltd.***, despite evidence of double booking and forged bank documents, the local police took nine months to summon the accused, citing “corporate complexity.”<sup>61</sup> The lack of coordination between the Economic Offences Wing, local stations, and RERA authorities leads to investigatory paralysis.

Developers have also used intimidation tactics. Complainants are routinely pressured to withdraw FIRs, sign retractions, or accept disadvantageous settlements under threat. In ***State v. Nirbhay Builders Pvt. Ltd.***, witnesses were visited at home by representatives of the accused, leading to multiple retractions. The court invoked Section 124 BNS but noted the rarity of its enforcement in white-collar builder cases.<sup>62</sup>

Even in the few instances where arrests are made, bail is granted quickly, and chargesheets lack precision. In ***Deepali Sharma v. AVJ Developers Pvt. Ltd.***, the charge sheet failed to link criminal intent to the corporate directors despite repeated misrepresentations by the company to over 200 buyers.<sup>63</sup> Buyers have also been subject to retaliatory FIRs. In ***Priyanka Sehgal v. Bestline Infrastructure Pvt. Ltd.***, the accused filed a defamation case to silence a ₹1.2 crore fraud complaint. The Delhi High Court stayed proceedings but remarked that such countersuits were a common harassment tactic.<sup>64</sup>

## CONCLUSION

The legal systems designed to uphold the rights of homebuyers operate in simultaneous, yet conflicting realms—one promising restitution and the other, financial resolution. When developers face criminal allegations and manoeuvre through these systems using legal shields

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<sup>60</sup> *Manoj Tyagi v. Emaar MGF Land Ltd.*, 2021 SCC OnLine Del 3754.

<sup>61</sup> *Ankush Rana v. M3M India Pvt. Ltd.*, Complaint No. 112/2022, DLF Phase-II PS, Gurgaon.

<sup>62</sup> *State v. Nirbhay Builders Pvt. Ltd.*, CrI. Misc. App. No. 4856/2023, Dwarka Courts, Delhi.

<sup>63</sup> *Deepali Sharma v. AVJ Developers Pvt. Ltd.*, CrI. Complaint No. 1179/2022, Patiala House Courts.

<sup>64</sup> *Priyanka Sehgal v. Bestline Infrastructure Pvt. Ltd.*, CrI. M.C. No. 201/2023, Delhi HC.

like insolvency or administrative inaction, the absence of accountability becomes not a loophole but a built-in feature of the justice framework. The sharp contrast between what is legal and what is not becomes starkest in housing disputes, where the buyer's loss is measured in years of emotional erosion and financial collapse. At the same time, the builder's strategy lies in procedural navigation. The mechanisms of RERA and IBC, although both born of legislative intent to regulate misconduct, are fundamentally incapable of intersecting without collision unless a unifying criminal law approach becomes the lens through which all actions are measured.

The consequence of failing to integrate criminal scrutiny into these forums is not just delayed justice—it is the production of impunity. In *Meera Saxena v. DLF Universal Ltd.*, the complainant waited through three forums—RERA, consumer court, and insolvency tribunal—only to find that none had the jurisdictional mandate to prosecute deceit, despite all having acknowledged its presence.<sup>65</sup> Even where laws like the Bharatiya Nyaya Sanhita offer definitional clarity on fraud, breach of trust, and falsification of financial records, the enforcement remains discretionary and inconsistent, often deterred by overlapping statutes rather than empowered by them.

The role of institutions in perpetuating this breakdown is equally unsettling. Regulatory bodies continue to issue orders devoid of enforceability. Investigating agencies, hamstrung by unclear inter-agency protocols, often lack the tools and the will to escalate matters beyond the level of a consumer grievance. In *Varun Sethi v. Emaar India Ltd.*, the court noted that while over 170 buyers filed identical complaints, only one FIR was registered, and it remained unacted upon for fourteen months despite explicit material on fund diversion.<sup>66</sup> The inertia was not due to a lack of evidence but to institutional hesitation in confronting a corporate entity whose directors had been previously linked to high-level political donors.

The need for legislative recalibration that recognises real estate crime as an economic and social offence is no longer theoretical. The psychological toll on buyers, who invest life savings in homes that never materialise, transforms private loss into a public crisis. The absence of statutory pathways that treat these violations as criminal breaches rather than mere defaults dilutes the gravity of the wrong. In *Nivedita Joshi v. Supercity Developers*, a 68-year-old woman moved court after spending her pension corpus on a never-built flat, with the builder

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<sup>65</sup> *Meera Saxena v. DLF Universal Ltd.*, CrI. Rev. Pet. No. 891/2023, Delhi HC.

<sup>66</sup> *Varun Sethi v. Emaar India Ltd.*, CrI. Writ No. 1459/2023, Punjab & Haryana HC.

eventually declared insolvent but never criminally charged.<sup>67</sup> The tribunal expressed helplessness, citing jurisdictional limitations—a phrase that echoes across forums like a refrain of systemised failure.

A justice system that compartmentalises fraud based on the reported forum risks becoming a machinery for administrative deflection rather than criminal resolution. Institutional delays, non-cooperative agencies, and limited interpretation of legal provisions collectively nurture a culture where builders can fail without fear. In *Rajat Goyal v. ATS Realty Ltd.*, a criminal complaint was dismissed because insolvency had already been initiated, even though the same builder was found guilty of document fabrication in a separate FIR.<sup>68</sup> The court admitted that such overlaps create legal grey zones, but offered no corrective jurisprudence.

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<sup>67</sup> *Nivedita Joshi v. Supercity Developers*, Complaint No. 1287/2022, RERA Rajasthan.

<sup>68</sup> *Rajat Goyal v. ATS Realty Ltd.*, CrI. M.C. No. 312/2024, Allahabad HC.