
**INSOLVENCY & BANKRUPTCY CODE: DRAWING THE
BOUNDARY—SUPREME COURT DISTINGUISHES
'ASSURED RETURN' HOMEBUYERS AS SPECULATIVE
INVESTORS UNDER THE IBC: MANSI BRAR FERNANDES
V. SHUBHA SHARMA AND ANR., 2025 IN SC 1110
(SUPREME COURT OF INDIA)**

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ABSTRACT

In *Mansi Brar Fernandes v. Shubha Sharma and Anr.* (2025 IN SC 1110), the Supreme Court held that individuals investing in real estate through “assured return” or “buy-back” arrangements are speculative investors and therefore ineligible to initiate CIRP under Section 7 of the IBC, 2016. The ruling draws a clear line between genuine homebuyers and profit-oriented investors, upholding the IBC’s purpose of corporate insolvency resolution. It also links stalled housing projects to the constitutional Right to Shelter under Article 21, while ensuring that such investors can still seek relief through RERA or consumer protection mechanisms, providing a policy-oriented framework for real estate insolvency.

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I. INTRODUCTION

In *Mansi Brar Fernandes v. Shubha Sharma and Anr.*,² the Supreme Court of India clarified a recurring dispute in insolvency jurisprudence concerning homebuyers who invest in real estate projects under “assured return” or “buy-back” arrangements. The Court held that such persons are not genuine homebuyers but rather speculative investors, as their intent is to secure financial gains instead of residential possession. Consequently, they cannot maintain applications under section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC). By reaffirming the distinction drawn earlier in *Pioneer Urban Land & Infrastructure Ltd. v. Union of India*,³ the Court reinforced the principle that the IBC is a mechanism for resolution of insolvency, not a substitute for debt recovery.

II. STATUTORY AND JURISPRUDENTIAL CONTEXT

A. Allottees as Financial Creditors

The IBC’s 2018 amendment expanded the definition of “financial debt” in section 5(8)(f) to expressly cover sums raised from allottees in real estate projects.⁴ This provision was enacted to safeguard homebuyers, granting them the status of financial creditors and thereby a voice in the corporate insolvency process. The legislative intention was to acknowledge their vulnerability as stakeholders whose investments often represent life savings.

B. The 2019 Amendment and the Collective Threshold

In 2019, an Ordinance (later codified in the 2020 Amendment) introduced a numerical bar for homebuyer petitions under section 7.⁵ It required at least one hundred allottees, or ten percent of the total number of allottees in a project, to jointly file an application.⁶ This amendment was intended to prevent misuse of the IBC by isolated or speculative individuals. Its applicability to pending petitions—particularly those where orders had been reserved—was central to the controversy in the present case.

² *Mansi Brar Fernandes v. Shubha Sharma and Anr.*, Civil Appeal No. 3826 of 2020, 2025 INSC 1110 (Supreme Court of India).

³ *Pioneer Urban Land & Infrastructure Ltd. v. Union of India*, (2019) 8 SCC 416.

⁴ IBC (Amendment) Act, 2018, No. 26 of 2018 (India).

⁵ IBC (Amendment) Ordinance, 2019; later replaced by IBC (Amendment) Act, 2020, No. 1 of 2020 (India).

⁶ *Manish Kumar v. Union of India*, (2021) 5 SCC 1.

III. THE SUPREME COURT'S DECISION

A. Factual Background and Procedural History

Mansi Brar Fernandes entered into an MoU with Gayatri Infra Planner Pvt. Ltd. in 2016, investing ₹35 lakhs for four apartments.⁷ The agreement contained a buy-back option promising a return of ₹1 crore within a year, failing which possession of the flats would be handed over. After default and dishonour of post-dated cheques, Fernandes approached the NCLT under section 7. The NCLT admitted the matter, but the NCLAT reversed on appeal, categorizing her as a speculative investor.⁸

In a related case, Sunita Agarwal invested ₹25 lakhs with Antriksh Infratech under a scheme guaranteeing 25% annual returns and a compulsory buy-back.⁹ Her petition followed the same trajectory: admission by the NCLT, reversal by the NCLAT, and eventual appeal to the Supreme Court.

B. Ruling and Reasoning

The Supreme Court reached three key conclusions:

- **Speculative Investors Excluded:** Drawing on *Pioneer Urban*,¹⁰ the Court reiterated that transactions structured around guaranteed returns, refund clauses, and buy-back provisions indicate speculative investment rather than genuine housing demand. Such arrangements do not amount to “financial debt” within the meaning of section 5(8)(f).¹¹
- **Threshold Requirement in Pending Matters:** The Court clarified that the 2019 threshold amendment applies to all pending proceedings.¹² Yet, applying the maxim *actus curiae neminem gravabit*,¹³ it held that litigants cannot be disadvantaged where orders had already been reserved by a tribunal before the amendment’s commencement.
- **Broader Policy Guidance:** Recognizing systemic issues in the real estate sector, the Court urged reforms such as strengthening NCLT/NCLAT capacity, empowering RERA with enforcement tools, developing project-specific guidelines through IBBI,

⁷ Record of Proceedings, Mansi Brar Fernandes v. Shubha Sharma, NCLT (2019).

⁸ *Mansi Brar Fernandes v. Shubha Sharma*, NCLAT, Company Appeal (AT) (Insolvency) No. 936 of 2019.

⁹ *Sunita Agarwal v. Gayatri Infra Planner Pvt. Ltd.*, NCLAT, Company Appeal (AT) (Insolvency) No. 1073 of 2019.

¹⁰ *Pioneer Urban*, supra note 3.

¹¹ See also *Anuj Jain v. Axis Bank Ltd.*, (2020) 8 SCC 401.

¹² *Manish Kumar v. Union of India*, supra note 6.

¹³ *Jang Singh v. Brij Lal*, AIR 1966 SC 1631.

mandating escrow accounts for early-stage projects, and expanding revival funds like SWAMIH.¹⁴

IV. ANALYSIS AND POLICY IMPLICATIONS

A. Defining the Boundary Between Investment and Debt

By differentiating speculative investors from genuine homebuyers, the Court narrowed the ambit of section 5(8)(f).¹⁵ The judgment establishes that investment contracts promising extraordinary returns or guaranteed buybacks are presumptively speculative.¹⁶ This interpretation preserves the integrity of IBC as a resolution statute rather than a vehicle for private recovery.

B. Linking Insolvency Law with the Right to Shelter

The Court went beyond doctrinal clarification, situating the dispute within the framework of Article 21. Citing precedents recognizing the Right to Shelter,¹⁷ it proposed that stalled projects could be addressed by state-backed entities akin to NARCL, which could acquire incomplete projects and use unsold inventory for affordable housing.¹⁸ This indicates a judicial shift toward embedding constitutional values in insolvency jurisprudence.

C. Safeguards for Investors Outside the IBC

Even while excluding speculative investors from the CIRP framework, the Court preserved their ability to pursue remedies under consumer protection statutes and RERA, exempting them from limitation periods.¹⁹ This balance ensures that the doors of justice remain open, albeit through more appropriate forums.

V. CONCLUSION

The decision in *Mansi Brar Fernandes* draws a clear line demarcating speculative investment contract from bona fide homebuyer agreements. It underscores that the IBC's purpose is corporate revival, not recovery for opportunistic investors. At the same time, the Court integrated broader constitutional and policy considerations, recognizing the housing crisis as a

¹⁴ *Mansi Brar Fernandes*, supra note 2, ¶¶ 108–116.

¹⁵ Insolvency & Bankruptcy Code, 2016, S. 5(8) (India), read with *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 S.C.C. 17 (India).

¹⁶ R. Varottil, “Speculative Investments and Homebuyers under the IBC,” *Indian Journal of Corporate Law* (2020).

¹⁷ *Chameli Singh v. State of U.P.*, (1996) 2 SCC 549.

¹⁸ Report of the Insolvency Law Committee, Ministry of Corporate Affairs (2023).

¹⁹ *Mansi Brar Fernandes*, supra note 2, ¶ 54

fundamental rights issue.

By closing the insolvency route to speculative investors while simultaneously recommending systemic reforms and preserving alternate remedies, the Court not only upheld the spirit of the IBC but also charted a policy-sensitive path forward for India's troubled real estate sector.