

# IBC Doesn't Give Immunity To Promoters, Directors: SC

## Allows Plea Against Promoters Of Insolvent Real Estate Firm

AmitAnand.Choudhary  
@timesgroup.com

**New Delhi:** In a relief to homebuyers, many of whom are left in lurch after real estate companies come under insolvency proceedings and moratorium is imposed under Insolvency and Bankruptcy Code, Supreme Court has said the shield of protection under the code is not available to promoters and directors of an insolvent firm and proceedings can be initiated against them.

Adjudicating a plea of homebuyers of Ansal Crown Heights in Faridabad in NCR whose plea against officials of the company for refund was rejected by National Consumer Disputes Redressal Commission because the company had come under IBC proceedings, a bench of Abhay S Oka and Ujjal Bhuyan clarified that directors/officers of a company cannot claim protection due to the moratorium under Section 14 of the IBC.

"We are of the view that

**In this case, National Consumer Disputes Redressal Commission had directed the company to either construct the flats in a time-bound manner or refund money to homebuyers**

only because there is a moratorium under Section 14 of the IBC against the company, it cannot be said that no proceedings can be initiated against the opposite party (promoters/directors) for execution, provided that they are otherwise liable to abide by and comply with the order, which is passed against the company. The protection of the moratorium will not be available to the directors/officers of the company," the bench said.

The court accepted the plea of Senior Advocate Bishwajit Bhattacharyya and lawyer Chandrachud Bhattacharyya who pleaded on behalf of homebuyers

that there was no prohibition on proceedings against the directors/officers of the company, which is the subject-matter of moratorium under Section 14 of the IBC.

Under Section 14 of IBC, a moratorium means prohibition of institution of suits, execution of judgments, transferring/disposing of assets and recovery of property in possession among other things.

In this case, NCDRC had directed the company to either construct the flats in a time-bound manner or refund money to homebuyers. Soon after the order, the company went under IBC proceedings and the homebuyers again approached the Commission for execution of its order for refund but it turned down their plea on the ground of IBC proceedings.

Quashing the order of the commission, the apex court referred to its earlier judgments on the issue and said the petitioner would not be prevented by the moratorium under IBC from

initiating proceedings against the promoters.

"This court approved the view taken in the case of P Mohanraj that notwithstanding the moratorium, the liability, if any, of the directors/officers will continue. This court, therefore, permitted the appellants to expressly proceed against the promoters of the company though there was a moratorium under Section 14 of the IBC affecting the company," the bench said while referring to earlier order of the court.

"Therefore, we set aside the impugned judgments and orders and remit the execution application to the National Commission. The execution will continue against the opposite party in the execution application. It is open for the opposite party to raise a contention that they are not bound to implement the order sought to be executed. They are entitled to file additional objections along with documents raising the issue of executability as against them," the bench said.

to notice' A A D Registries set