



**White Paper**  
**HOMEBUYERS**  
**GAUTAM BUDDHA NAGAR**  
*Way Forward*



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# मेरी सरकार, मेरा अभिमान

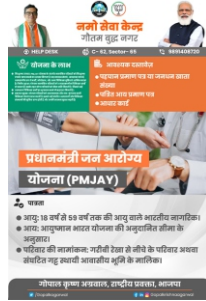


# नमो सेवा केंद्र

## गौतम बुद्ध नगर

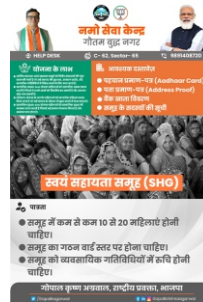
पिछले सरकारों को समस्याएं तो पता थीं, समाधान के लिए जो इच्छाशक्ति एवं मेहनत की आवश्यकता है उसकी भारी कमी थी। अब तो समाधान के लिए भी हम बाहरी शक्तियों पर आश्रित नहीं हैं। आज संकल्पित भारत, सशक्त हो कर आदरणीय मोदी जी के नेतृत्व में स्वाभिमान के साथ खड़ा हो गया है।

हमारी सरकार ने पिछले लगभग दस वर्ष के अपने कार्यकाल में जन कल्याणकारी योजनाओं के द्वारा उन्नतीस लाख करोड़ रुपये से भी अधिक की राशि का लाभ बिना किसी भ्रष्टाचार या रिसाव के लोगों तक पहुंचाया है। यह मेरे लिए स्वाभिमान का विषय है।



मोदी सरकार के इस अथक प्रयास के कारण ही हम देखते हैं कि सरकारी योजनाएं ज़मीनी स्तर पर घर घर, हर व्यक्ति तक पहुंच रही हैं, चाहे जन धन योजना हो, स्वच्छ भारत अभियान हो, उज्ज्वला योजना, हर घर जल परियोजना या प्रधानमंत्री आवास योजना, आयुष्मान भारत, किसान सम्मान निधि या गरीब कल्याण अन्न योजना आदि सभी योजनाओं ने अभूतपूर्व उपलब्धि हासिल की है। हमारी सरकार का अन्तोदय-लक्ष्य है कि समाज के अन्तिम छोर पर बैठे व्यक्ति तक सभी योजनाओं का लाभ पहुंचे।

प्रधानमंत्री के इस उद्देश्य और आवाहन पर हमने अपने इस गौतमबुद्ध नगर में नमो सेवा केंद्र की स्थापना नौएडा, दादरी, ज़ेवर, खुरजा, ग्रेटर नौएडा क्षेत्र में की है ताकी इन केंद्रों के माध्यम से हम यहाँ के आम जन की विकास में भागीदारी सुनिश्चित कर सकें। यदि किसी को किसी भी प्रकार की समस्या आती है, तो हमारी हेल्पडेस्क टीम सभी आवश्यक दस्तावेज से लेकर समाधान तक निःशुल्क मदद करेगी।



नमो सेवा केंद्रों के अभियान के द्वारा हम जन जन तक सभी सरकारी योजनाओं को पहुंचाएंगे और सुनिश्चित करेंगे कि लोग इनका लाभ सरलता से ले पायें। हेल्पडेस्क की सहायता के लिये मोबाईल नः 9891408720 पर काल कर सकते हैं।

आप सोशल मीडिया के माध्यम से भी जुड़ सकते हैं- @NSK\_GBN

**White Paper**  
**on**  
**Homebuyers Issues**  
**in**  
**Gautam Buddha Nagar**  
**(Uttar Pradesh)**  
**Way Forward**





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## **Foreword**

Dear friends,

Namaste.

The problems of homebuyers in Noida and Greater Noida area is old and severe. A large part of their lifetime earnings are stuck in it. The root cause of the problem lies in the poor land allotment policies on lease by Authorities under the previous governments' along with the banks handing out loans to builders on these lands. These unscrupulous developers fraudulently diverted these funds to other areas. It eventually led to stalled projects, unfulfilled promises and multiple financial burden on the homebuyers. Homebuyers who took home loans from financial institutions to purchase the property are compelled to continue repayment of the loan through EMI, they have not even got the possession of their homes. This is indeed a very sad situation for them, having faced insufferable consequences.

Homebuyers of Gautam Buddh Nagar have been fighting for many years at multiple forums, even in the Supreme Court, the highest court of India. There are a large number of cases that are pending, people are patiently waiting to get their houses built, and get their promised homes. We have stood with homebuyers since the beginning, be it Logix, Ecotech Village-2, Jaypee Wish Town or Amrapali Group, and we will continue to strive for justice to them. We are determined with our resolve that every homebuyer in Gautam Buddha Nagar should get his/her house and has access to all the basic amenities that comes along with it. We stand by the principle of the right to life with dignity.

My association with Gautam Buddha Nagar constituency is decades old and I have been working on a number of issues for the welfare of the people of this area. My understanding is that demonstrations and agitations are effective for drawing attention to an issue, but a solution can come only if we bring up a roadmap for a lasting solution.

Earlier, when farmers were agitated over the land acquisition issues, and Gautam Buddha Nagar happened to be the epicentre, though, my party BJP was in opposition both at the Centre and in UP, I along with my team had intervened constructively after consultations with all the stakeholders. A document 'Development vs. Displacement' on the subject was authored by me, subsequently a new land acquisition law in 2013 was enacted. We had also suggested and raised the demand for enactment of real estate regulatory body. The document is in the public domain.

BJP led Governments at the Centre and the State is sensitive to the issue of homebuyers. In our first term under Modi Ji, our Government enacted Real Estate Regulatory Authority

(RERA) Act, 2016 to clean up the existing real estate mess and provide for an orderly growth of the sector. Further, Insolvency and Bankruptcy Code (IBC), 2016 was enacted for resolution of financially stressed firms. We realised that for the housing sector, in the absence of homebuyers as a group in the committee of creditors (CoC), the CoC will only be able to protect the interest of the financial and operational creditors. On agreement with professionals and stake holders, in 2016, I took up the matter with the Central government ministries. The IBC, 2016 was subsequently amended and homebuyers as a group were explicitly recognised as financial creditors.

Recently, the Central Government constituted Committee has suggested ways to revive stalled real estate projects and the Insolvency and Bankruptcy Board of India (IBBI) has also come up with a discussion paper on amendments to IBC, to make it more suitable for real estate sector resolution, we welcome them. Notwithstanding the efforts of the Central Government, the genesis of the issues plaguing stalled real estate projects in Gautam Buddha Nagar are unique to this area and require a tailor-made solution.

We have prepared a comprehensive solution roadmap (White Paper on Homebuyers issue) keeping the Homebuyers agony in mind, after studying a number of reports, court judgments, meetings with stakeholders and experts. Whether it is a matter of house registration for homebuyers, or the issue of giving them Occupancy Certificate (OC), Completion Certificate (CC) or completion of incomplete construction work or resolution process under IBC or pending decisions of various courts, we have studied them all and have suggested a way forward to resolve the problem once and for all.

Several administrative decisions have to be taken by the State and Central government and both are committed to resolve this issue. This detailed white paper is being issued as a roadmap for the homebuyers to get their homes. We are determined to stand with them for its implementation on the ground.

With your cooperation, we intend to work towards a better Gautam Buddha Nagar for all of us not just in words but in deeds as well.

Yours

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## **Introduction**

National Capital Region (NCR) is one of the major markets for organised real estate in India. It consists of Delhi and adjoining areas such as Gurgaon, Faridabad, Noida & Greater Noida, Ghaziabad, Sonapat etc.

The real estate markets of Noida and Greater Noida have grown to be favourites for both developers and consumers due to lack of options and high property cost in Delhi and Gurgaon. In comparison to other areas in the NCR, the twin cities of Noida and Greater Noida have received more attention because they offer abundant options, affordability, and ongoing price appreciation. This region is one of the most preferred options for buyers due to the accessibility and availability of social and commercial infrastructure, as well as an attractive pipeline of future projects being announced by real estate developers at all price points. The expressway in Noida and Greater Noida has drawn both homebuyers and developers and the development of airport at Jewar is providing a new boost to the real estate market in the region. End-users have a choice of options, including flats and standalone homes in both ready-to-move and under-construction complexes.

However not everybody is satisfied with the current housing market situation in the Noida and Greater Noida region. A large number of homebuyers are in a fix due to stalled and delayed projects which has postponed their ownership of their dream homes. Even a refund of their money hasn't been sanctioned for more than ten years despite them approaching concerned authorities through various forums. The main culprits behind the grim situation are real estate projects (close to 30) in Noida and Greater Noida that were started by developers between 2006 and 2014 and are facing bankruptcy today. As part of the corporate insolvency resolution process (CIRP) before the National Company Law Tribunal (NCLT), several real estate behemoths, including Jaypee Infratech Limited and 3C Group, have acknowledged that they lack the funding required to complete their projects. Once ranked among the country's biggest real estate giants, the Amrapali Group is today nowhere in the scene and its projects are being completed by NBCC under Supreme Court monitored court receiver. Around 100,000 homebuyers who have been waiting more than ten years to get their flats are hoping that the government will help them but the impasse continues.





## **Problem Statement**

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More than 850 residential projects have been inaugurated in the district of Gautam Buddha Nagar since the year 2011 of which around 90 percent of the projects come under the purview of NOIDA, Greater NOIDA, and Yamuna Expressway Development Authority (UP RERA annual report, 2020). Anarock property consultants rank Noida as the worst city in terms of projects stalled as 35% of the stalled residential projects in the country are from Noida and Greater Noida region. Their analysis figures out that projects which comprise around 1.65 lakh units are yet to be completed fully and their combined value is worth as high as Rs. 1.18 lakh crore. Our analysis on Uttar Pradesh's RERA report indicates that more than 50% of the stalled projects are stalled for more than 3 years over the proposed completion time. 27,992 complaints from home buyers have been registered in the UP RERA portal, recording the highest in the country as of 2020.

As per the report at present, there are at least one lakh individuals who are still waiting to register their flats. Nearly 60,000 others are yet to be handed flats long after their possession date. These buyers have a twin financial burden on their shoulders - continue paying EMIs for their incomplete flats and bear the hefty rent of their houses where they stay at the moment.

In view of the situation as described above, we have segregated the problem statement into seven thematic areas (issues) as follows:

### **1) Possession certificate and completion of unfinished work post possession**

A basic step of getting a possession certificate to the home buyers often ends up in a tussle as the projects get delayed due to acquisition issues and legal complications. As of date, closer to a lakh people don't own possession of their flats.

In certain cases, possession certificates are handed over to home buyers in a hurry to comply with guidelines without developing basic amenities. The same continues post possession scenario as the work progresses slowly or the work is incomplete.

### **2) Obtaining completion certificate**

Completion certificate is issued by the authority once the developer satisfactorily completes the construction and undertakes all the required formalities including safety checks. Without the completion certificate, a home buyer cannot legally stay in the home even after one hundred percent completion of construction. Delays in obtaining

completion certificates usually is due to lack of standardized basic amenities in the constructed flats, administrative delays in getting the No Objection Certificate and safety checks done from various authorities such as for fire safety and environmental clearance. There have been cases of delay due to outstanding payment on the acquired land or in cases of other issues related to land acquisition.

The builder is liable towards the other stakeholders in getting the completion certificate from the authorities but in some cases, builders have refused to take such responsibility. Recent Supreme Court ruling in the year 2017 declared that the builder of a housing complex is legally bound to obtain completion certificate even if the homebuyer was given possession without that mandatory legal document, and said there are many cases wherein possession was offered by the developer without obtaining completion certificate, causing issues for buyers.

### **3) Registration of home**

Registration of flat enables a home buyer to legally possess a flat and to benefit from it by carrying out activities such as selling or gifting the flat, borrowing money against it etc. Delays in registration mostly happen due to delays in attaining four mandatory certificates which include Occupancy Certificate. As the process is stuck at earlier stages, home buyers lose their legal rights over the property.

Authorities in Gautam Buddha Nagar had started scheme for allotment of land to the highest bidder on lease with payments in future instalments. Builders bought the land initially by paying a fraction of the original land cost and to pay the dues during the construction period. Due to cost overruns, illegal diversions of funds and other difficulties encountered during the construction phase, the builders fail to clear the dues and as a result, authorities prevent registration of the flats developed on that particular parcel of land. The builders also complain about higher interest rate while paying dues which poses an unviable equation for builders to clear dues regularly. Authorities are refusing registration even though flats are complete and the homebuyer have made full payment and have possession of their respective homes.

### **4) Fulfilment of undelivered promises according to the plan**

Basic amenities and other promises as per the original plan are not delivered during the actual development as the home buyers are finally ready to move in. Generally, the tussle arises over complimentary amenities that had once found its place in the original building

plan but does not materialise in reality. In one such instance, a community centre in an apartment complex had been converted into a banquet-hall and a convention centre which wasn't stated in the original plan. As residents confronted the developer, the developer responded that the plan was subject to change in accordance with any prevailing government norms and regulations.

Among those who could afford and live in their registered homes, a large section waged a battle of their own against their developers over lack of basic amenities and unfinished promises as per the original housing contract.

### **5) Compensation for delayed construction**

A delayed real estate project is a buyer's worst nightmare since it causes them to suffer severe financial and emotional loss. Earlier, the lack of stringent regulations caused years of litigation and prolonged possession times. After the Real Estate (Regulation and Development) Act of 2016 (RERA) came into effect, the situation has improved considerably. A home buyer has the option under RERA to request either interest on delayed possession or a full refund of the amount paid, plus interest. Additionally, the Act stipulates harsh penalties such as the cancellation of the builder's registration and imprisonment if the builder fails to pay the appropriate compensation. However, RERA lacks effective enforcement mechanism in case of violations. Builders are going back on their promises of paying interest or providing alternative houses during delayed construction.

### **6) Cash flow issues with home buyers**

There is a twin financial burden on the shoulders of home buyers- they have taken housing loans from banks on EMI. They continue paying EMIs for the flats that they are yet to get possession of and bear the hefty rent of their houses where they currently stay.

Apart from this, home buyers are responsible for submitting their flat-related documents to the banks within a certain period of time as a part of their home loans processing. Due to unforeseen delays in construction, home buyers do not receive the documents in time and they fail to provide these documents to their banks that had sanctioned their home loans. As a consequence the home buyers become liable to pay additional interest payments as another 2% (usually) is added to the EMI due to failure in complying with the original home loan contract between the bank and the home buyer.

**7) Other issues with respect to developers**

- a) As builders have illegally diverted funds received either from the homebuyer or banks for a project, they fail to make payments to authorities, vendors or banks and therefore the project gets stalled.
- b) Earlier IBC was expected to help in resolving the problem and restart the project but due to cancellation of land allotment by the authorities and lack of bidders because of unviable resolution plan, the IBC in its current form is also not the solution to most of the problem.
- c) There are several judgments of the top courts relating to various aspects of the problem but have not been implemented by defaulting parties in their true spirit. We have given the list of judgments in Annexure 1.



## **Genesis of the Problem**

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The genesis of the problem lies in the pre- RERA period, i.e. before 2016. It's majorly a legacy issue from the past governments, indicating unholy nexus between authorities and developers. If one tries to find out the root cause of the mess that the residential real estate market is in the twin regions of Noida and Greater Noida, one finds the following main reasons:

### **1. Allotment of land on lease on instalment payments**

The development authorities allotted land to real estate developers on lease through auction. However it modified the terms of payment and allowed the winner to make payment in a number of instalments spread over a few years. This was presumably done to increase the value realisation for the authorities but it allowed either weaker developers to walk away with the land by making aggressive bids and/ or developers ended up accumulating more land for development that their project management team and balance-sheet could support. The successful bidder was given the possession of land to be developed while the title of the land remained with the authority which was to be transferred on receiving the full consideration amount. Once there was a failure on the part of the developers to make full payment (which increased due to hefty rate of interest and penalties for delayed payments) the authorities cancelled the allotment of land.

### **2. Bank financed without collateral to developers**

Since the title of the land remained with the development authority that delivered the possession on partial payment, the lenders (banks/ NBFCs etc.) funding the project through developers could not have been secured creditor. The lending institutions however claim that they are secured creditors in the project and they have first claim over the land. This conflicting claim on the land as security is one of the main cause of failure in the implementation of any resolution plan.

### **3. Siphoning off of funds**

A number of fly by night operators jumped on to the real estate bandwagon when the going was good and the regulation was minimal. The developers managed to get possession of the land on part payment of the total value, announced projects on such land and collected huge sums from home buyers, in the form of 'pre-launch' and 'launch' of projects. The developers also got these projects financed from institutions on land as collateral and the even the home buyers were given housing loans on the basis of these approved projects by



the financial institutions. Since there was no end use monitoring of the funds collected, they were either diverted for acquisition of other plots of lands or simply siphoned off.

#### **4. Domino effect of default**

The authorities, the developers and the banks operated under the belief that the good times in the real estate sector will never end. However, when the business cycle in the sector turned unfavourable due to various reasons, counter cyclical measures should have been activated to reduce the stress in the sector. Instead, the authorities levelled huge penal interest on missed instalments (still continues to do), cancelled allotment of land and initiated measures to take back the possession of such plots. Once the threat of plot being taken back looked credible, the developers could not get further finance for construction and potential buyers also backed out. The liquidity suddenly vanished for the developer and it exacerbated the problem. When the developers failed in making loan repayment to banks, the banks initiated corporate insolvency resolution plan (CIRP). Any developer facing insolvency proceeding could not manage to sell its units because of the moratorium under section 14 of the IBC, 2016.

#### **5. Operation in silos**

The authorities while allotting the land through auction failed to ensure that the projects approved are free from any future legal hurdles and are cleared from regulatory authorities. As a result the projects were sometimes delayed for reasons beyond the control of the developer. For example, National Green Tribunal (NGT) had imposed a restriction on certain projects that were in proximity to the Okhla Bird Sanctuary.

#### **6. In conclusion**

The developers got multiple credits; i.e. land on instalments, the project financed from banks/institutions, received instalments from homebuyers towards purchase of flat and illegally diverted those funds. All these developers, authorities and banks are at fault at different levels and so the weakest link in the chain, homebuyers are suffering.



## **Roadmap to Resolve Homebuyers' Issues**

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We have analysed the whole situation through the lens of:

1. Rights of different stakeholders such as home buyers, developers, authorities, banks, etc.
2. Liabilities of developers towards home buyers, authorities and banks.
3. Effective enforceability of laws, rules, regulations and contracts.
4. Gaps in existing legislations and plugging them through appropriate amendments/ legislations.

It must be accepted that there are no winners in the current stalemate and the homebuyers are the worst sufferers. Given the complexity of the issues and the number of stakeholders and their competing interests, a multi-pronged strategy must be devised to address the issues. Since stalled projects are the biggest and most complicated issue within the real estate sector, it should be tackled head on. After our intense consultation with various stakeholders and going through the suggestions of the committees set up by the government and analysis of various court judgements and the resolution processes under the IB Code, 2016, we recommend the following roadmap for arriving at a permanent resolution of home-buyers' agony:

### **1. Stalled Projects - An administrator for each Project**

A project could be stalled for a number of reasons and a detailed study for each project is a pre-requisite before any fruitful project intervention can be made. Therefore a project administrator should be appointed for each stalled project and should be vested with sufficient power to take decisions. The State Government can make such appointments on the recommendation of UP RERA and Insolvency and Bankruptcy Board of India (IBBI). The administrator can be a serving or retired bureaucrat or a professional like Chartered Accountant, Cost accountant, Company Secretary or a management professional with relevant experience in the field of finance, project management, financial resolution etc. Appointment of Resolution Professionals as Administrators can also be explored.

The administrator shall make a detailed list of all the assets and liabilities of the project with proper valuations, analysing all claims and counter claims of creditors and debtors. The Administrator will ask for the outstanding claims of NOIDA/Greater NOIDA authority, banks and operational creditors and the current assets of the project. He shall also evaluate current financial status including solvency of the project and its future financial

requirement for completion. Based on current financial solvency a haircut will also have to be worked out.

If the project is unfinished/ delayed because either the developer has become bankrupt or has siphoned off the money and fled or for some other reason, then a resolution process similar to the one proposed under the Insolvency and Bankruptcy Code (IBC), 2016, but outside the IBC framework, should be followed by the Administrator. It will have the advantage of restarting each project on a clean slate and obviate the delays that take place due to resolution plans being contested in NCLT, NCLAT and the Supreme Court of India.

Once the report of the Administrator is ready for a project, the UP State government can approve this plan in consultations with RBI/Ministry of finance under an overall structured approved resolution plan with respective haircuts. The future financial requirement has to be approved under SWAMIH fund. With this approved resolution plan new developers will step in. The Administrator will then call for bids from real estate developers to complete the project. The admissible outstanding claims will be reduced proportionally to match the bid amount and the winner of the bid can take them as liability to be paid in a manner that's mutually agreeable. Banks and NBFCs lending to such resolved projects should be categorised as 'standard'.

Government of Uttar Pradesh should come out with a template that can be applied to calculate the outstanding dues of industrial authorities like NOIDA and Greater NOIDA against real estate developers/ project promoters. These authorities already have their own calculations under the land lease contracts but the high interest rates and penal clauses inflate the outstanding amount. Similarly, Reserve Bank of India can prescribe a template for banks and other financial institutions that have advanced money to such projects. Such templates will cut down time needed for individual project wise calculations.

## **2. One time Land Surrender Policy**

A one-time comprehensive land surrender policy needs to be devised. The Authority should not insist on getting pending payment for the full plot of land and builder should be allowed to return such land where no development has taken place at the original value without any penalty or interest thereon. Such plots will not have any bank or homeowners claim over them. In the case of Wave City, the developer was allowed to return back one of the plots of land.

In cases where builder has made part payment, the builder should be given a share of the total land corresponding to the payment that has been received. It is very likely that these plots would be semi developed and in such cases banks and homeowners will insist a claim

over the land. For example, if the builder has paid 40 percent of the land price and is unable to pay the remaining, the original land allotment should be changed and 40 percent of the plot area should be given. In such a case there would not remain any pending payment from the builder to the Authority and no interest need to be charged. The remaining 60 percent of the land can be allotted afresh. Such settlement policy should offer a bouquet deal that also includes automatic approval to changes in the layout plan as a result of the new settlement.

As the land price has appreciated considerably since the time the allotments were made, the Authority is probably not likely to face any financial loss due to this policy. Report of the Committee to examine the issues related to legacy stalled real estate projects has also given a similar recommendation.

### **3. Increase in corpus of SWAMIH Fund**

Special Window for Affordable and Mid-Income Housing (SWAMIH) is a social impact fund formed to provide priority debt financing for the completion of stressed stalled brownfield real estate projects. The fund is sponsored by the Ministry of Finance, Government of India and is managed by a State Bank of India (SBI) Group Company. Since the fund requirement to complete the stalled projects is much larger, the size of SWAMIH fund should be increased by roping in other investors.

### **4. Issuance of Occupancy Certificate (OC) and Completion Certificate (CC)**

In cases where the projects are otherwise complete but the developer has failed to pay the full amount to the land allotting authority, the authority shall be made to give CC and OC so that registration of properties can take place. Wherever the issuance of CC and OC to the projects have been withheld by the authorities because of deviations from the layout plan, the authority should be asked to give so that registration/ transfer of flat can take place. The Authority should be allowed to levy penalty on the developer for not adhering to the approved layout plan. Once registration in such properties is allowed, it will lead to financial inflows and improve the financial viability of such projects.

### **5. Allow transfer of ownership/possession of flats to allottees on 'as is where is basis'**

An option should also be given to allottees to acquire incomplete units on 'as is where is' basis on waiver of payment of balance amount required to complete the unit reducing the original cost of the flat.

## **6. Contractual Issues/ Consumer Grievances – to be dealt by Civil Courts and Consumer Forums**

If the project is simply delayed and the developer is a going concern extensive Government intervention is not required. The homebuyers can approach the Court or Consumer Forum or the concerned RERA and get compensation for delayed compensation. Similarly, poor quality of construction and amenities are simple cases of breach of contract where the promised level/ quality of services were not delivered and remedy should lie in civil court. The aggrieved buyer can also move the Consumer Forum or RERA based on their respective jurisdictions.

There are also a number of other state-specific laws that have a bearing on the subject which empower apartment owners. Remedies under them have to be worked by respective homebuyers association through group/class actions suits. Relevant portions of those specific Acts have been included in Annexure III.

## **7. Further amendments to Insolvency and Bankruptcy Code, 2016 (IBC)**

There is a possibility that in a few cases the roadmap provided above fails and projects end up in resolution proceeding under the IBC. Our study of this issue has led us to believe that a few more amendments in the IBC, 2016 will make it more effective in dealing with the resolution of stalled projects.

IBC did not initially provide any specific provision for the treatment of homebuyers who had bought flats or made partial payment towards purchase of a flat in a project that subsequently faced bankruptcy. Consequently, also on our recommendations, the Code was amended and homebuyers are now treated as financial creditors in any proceeding under the IBC, 2016. Further, some amendments have been suggested by the Insolvency and Bankruptcy Board of India (IBBI) in its discussion paper issued on 6th November, 2023 for public comments, we recommend following of those proposed amendments. One recommendation is to insert Chapter IIA in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (Principal Regulations) with the following regulations:

### **4D. Registration of real estate project.**

- (3) The interim resolution professional or the resolution professional as the case may be, shall register the real estate project of the corporate debtor under the Real Estate (Regulation and Development) Act, 2016 if the project of the corporate debtor is not registered under the Act.



- (4) If the registration under the Real Estate (Regulation and Development) Act, 2016 of a project of the corporate debtor admitted in the corporate insolvency resolution process is about to expire or has expired, the interim resolution professional or resolution professional as the case may be, shall seek extension of registration of such real estate project from the concerned authority.

**4E. *Opening Project wise account.***

The interim resolution professional or the resolution professional, as the case may be, shall operate a separate bank account for each real estate project.

**4F. *Handing over the possession.***

After obtaining the approval of the committee with not less than sixty-six percent of total votes, the resolution professional, shall:

- (1) hand over the possession of the plot, apartment, or building or any instruments agreed to be transferred under the real estate project where the allottee has performed his part under the agreement, and facilitate registration; or
- (2) provide an option to the allottees to acquire such units or on payment of balance required to complete the unit during the process. Provided that the units which are under possession of the allottees, shall not be part of the assets of the corporate debtor.

**Explanation:** for the purposes of handing over the possession, the allottees are required to pay all applicable charges or do all the compliances as per the terms of the sale deed or allotment letter or any instrument for transfer and possession of the sale deed which shall not be inconsistent with the applicable laws.

***Clarification to sub-regulation (4) of 36A***

It also recommends the following clarification to be added to sub-regulation (4) of regulation 36A of the principal regulations:

**Clarification:** The resolution professional on the proposal and approval of the committee may invite a separate resolution plan for each real estate project or group of projects of the corporate debtor.

***Insertion to IBC liquidation process 46A***

The Discussion Paper also recommends the following insertion to Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016:

**46A. Exclusion of Certain Assets from the Liquidation Estate.**

For the purposes of section 36(4)(e), wherever an “allottee” as defined under clause (d) of section 2 of the Real Estate (Regulation and Development) Act, 2016 is in possession of the unit, it shall not form a part of the liquidation estate of the corporate debtor.

**8. Urgent steps that need to be undertaken by Government of Uttar Pradesh**

For the process of amicable resolution of Home buyer's agony the following recommendations of the Government Committee have to be implemented by the Government of Uttar Pradesh on an urgent basis:

- a. Re-implementation of 'Zero Period' (as already defined by Government of Uttar Pradesh) for approximately 2 years on account of delays which occurred due to orders of NGT & NCR Planning Board and COVID-19.
- b. Waiving of time extension charges' imposed due to non-completion of projects within 5 years due to various factors.
- c. Non- capitalization of interest / penal interest / time extension charges / re-schedulement charges' for the viability of the projects.
- d. Removal of the provision of No Objection Certificate from the existing lenders' for the funding from SWAMIH fund.
- e. Providing details of the calculation of interest/ penal interest, etc. to the developers to review and understand it comprehensively.
- f. Replication in Uttar Pradesh of the 'one- time project settlement policy' adopted by the State of Haryana to resolve its stalled projects issue.



## **Conclusion**

The whole resolution process has to be ring fenced from any potential legal challenges. The stalled projects will first have to be made viable for future investors for any acceptable resolution bid. The main problem lies in the legacy issue of allotment of land on lease by authorities to the developers on instalment payment, levying compound interest and hefty penalties for default thereof. The overleveraged developers, supported by multiple financing options on single piece of land, compounded the problem. The unholy nexus of previous governments in power can now be undone through haircuts alone. The above recommended solutions have to be implemented by the government with political will.

There are several Court Judgements which have significant bearing on the resolution of home buyer's issues, they are to be implemented in letter and spirit by the State government as the Authorities have been reluctant to act upon them (Annexure I).

A large number of orders were also passed in the matter of Amrapali Case by the Hon'ble Supreme Court to resolve the problem and though the matter is still pending before the Hon'ble Court, the judgment/ order passed on 23.07.2019 is significant as it paved the way for the completion of several of the Amrapali projects. This is an important case in point for implementation by the government as a way forward outside the Court process. (Annexure II).

Resolution of homebuyers issue can come only through political will and administrative decision. Central Government and the Government of Uttar Pradesh are committed to resolve this issue and we hope that the homebuyers would be given possession of their dream homes.



## Annexure I

**Case Laws/ Judgment Portion (Rights of homebuyers)**

As the problems in the sector intensified a number of individuals and associations took recourse to judicial forums for the redressal of their grievances. A number of orders and judgments were passed in those matters that have strengthened the legal position of the homebuyers. Some of those decisions are as follows:

S. No.	Court/ Forum	Case	Question/ Issue	Judgement Brief
1.	Supreme Court	Debashis Sinha vs M/s RNR Enterprise	1. Home-buyers alleged that the developer did not provide the amenities as mentioned in the brochure or advertisement.	1. Flat owners don't forfeit right to claim amenities promised by builder by taking possession of apartments.
			2. Home Buyers alleged that despite them paying a full flat cost and getting the flats registered in their name, the builder had failed to provide the completion certificate.	2. Held that a builder of a housing complex is legally bound to obtain completion certificate even if the homebuyer was given possession without that mandatory legal document.
2	Supreme Court	Union Bank of India Vs Rajasthan Real Estate Regulatory Authority	Whether the provisions of the RERA Act would prevail over the provisions of the SARFAESI Act, if the provisions of the SARFAESI Act are applicable as well?	Bank would be considered as a "promoter" under the Act and that RERA has jurisdiction to entertain a complaint against a bank if the bank has taken over a project to recover its dues under the provisions of the SARFAESI Act.

*Annexure I*

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3	Supreme Court	Aloke Anand vs M/s IERO Pvt. Ltd.	The builder failed to handover possession of the apartment within the stipulated timelines therefore complainant prayed handover of the possession of the apartment along with delayed compensation	Builders cannot sell dream to flat buyers and not fulfil it. If deviation is observed, the flat buyers are entitles to demand refund.
6	Supreme Court	Wg. Cdr. Arifur Rahman Khan & Aleya Sultana & Ors vs. DLF Southern Homes Pvt. Ltd.	Whether the flat buyers are constrained by terms of AFS providing compensation?	SC held that flat buyers were entitled to "just" and "reasonable" compensation for gross delays by developers in handing over possession of homes overturning the "One Sided Agreement".
7	Supreme Court	Utpal Trehan Vs. DLF Home Developers Ltd.	Terms and conditions regarding payment of compensation for delayed possession.	It is true that the time for payment of compensation for delayed possession stops from the date of offer of possession. However, in the given case the offer for possession was conditional on settling of account and, as the account reflected illegal demands, the builder cannot argue that there was a valid offer for possession.



8	Supreme Court	M/s Imperia Structures Ltd. vs Anil Patni	Jurisdiction of RERA and NCDRC.	Supreme Court ruled that the Real Estate (Regulation and Development) Act, 2016 does not preclude the National Consumer Disputes Redressal Commission (NCDRC) or the Consumer Forum from entertaining any complaint under Consumer Protection (CP) Act.
9	Supreme Court	Bikram Chaterji vs. Union of India (Amrapali Case)	Rights of homebuyers in projects undergoing CIRP.	The Court observed that homebuyers money had been diverted fraudulently, thus, fraud could not be perpetuated against them by selling the flats and depriving them of hard-earned money and savings of entire life. They cannot be cheated once over again by sale of the projects raised by their funds. The Court further directed Noida and Greater Noida Authorities to issue the Completion/ Part Completion Certificate, as the case may be, to execute tripartite agreement and registered deeds in favour of the buyers on part-completion or completion of the buildings, as the case may be or where the inhabitants are residing, within a period of one month from the order.

*Annexure I*

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10	NCLAT	Alok Sharma & Ors. Vs. M/s. I.P. Constructions Pvt. Ltd.	Rights of homebuyers in projects undergoing CIRP.	NCLAT held that the rights of home buyers cannot be affected adversely in the 'corporate insolvency resolution process' and their interest is to be appropriately preserved and protected within the parameters of the I & B Code, 2016.
11	NCLAT	Puneet Kaur vs K V Developers Pvt Ltd	Claims of the homebuyers have been filed after gap of eight months from the last date of the submission of the claim and therefore the claims cannot be admitted.	Claim of homebuyers who had not filed their claim exists. Even though they could not file their claims within the time prescribed, details of their allotment and payments made by them already existed in the records of the Corporate Debtor. Therefore they shall be included in the resolution plan
12	Maharashtra Real Estate Appellate Tribunal	Jervis Anthony Creado Vs Aishwarya Light Construction Company	The appellant was not granted reliefs of interest/ compensation as the agreement between the buyer and developer was not registered.	Merely because there is no registered agreement between a developer and home buyer, interest relief for delayed possession under section 18 cannot be denied.



## **Amrapali Case**

The stalling of Amrapali Projects in Noida/ Greater Noida had generated national headlines a few years back because of the sheer number of people affected by one builder. The aggrieved home-buyers approached the Hon'ble Supreme Court and the said matter was dealt with the Supreme Court in *Bikram Chatterji vs. Union of India* (WP(C) 940 of 2017).

A large number of orders were passed in this matter by the Hon'ble Supreme Court to resolve the problem and the matter is still pending before the Hon'ble Court. However, the judgment/ order passed on 23.07.2019 was significant as it paved the way for the completion of Amrapali projects. The main points of the said judgment are as follows:

- (i) The registration of Amrapali Group of Companies under RERA were cancelled;
- (ii) The various lease deeds granted in favour of Amrapali Group of Companies by Noida and Greater Noida Authorities for projects in question were cancelled and rights vested in Court Receiver;
- (iii) Noida and Greater Noida Authorities were denied right to sell the flats of the home buyers or the land leased out for the realization of their dues. Their dues were to be recovered from the sale of other properties which have been attached. These directions were to apply for the recovery of the dues of the various Banks as well.
- (iv) NBCC was appointed to complete the various projects and hand over the possession to the buyers. The percentage of commission of NBCC was fixed at 8 percent.
- (v) The home buyers were directed to deposit the outstanding amount under the Agreement entered with the promoters within 3 months from the date of order in the Bank account that was to be opened for this purpose. The amount deposited by them was to be invested in the fixed deposit to be disbursed under the order of the Supreme Court on phase-wise completion of the projects/ work by the NBCC.
- (vi) In view of the finding recorded by the Forensic Auditors and fraud unearthed, indicating prima facie violation of the FEMA and other fraudulent activities, money laundering, Enforcement Directorate and concerned authorities were directed to investigate and fix liability on persons responsible for such violation and submit the progress report in the Supreme Court. Police was also directed to submit the report of the investigation made by them till then.

- (vii) The Institute of Chartered Accountants of India was directed to initiate appropriate disciplinary action against a chartered accountant for his conduct as reflected in various transactions and the findings recorded in the order and his overall conduct as found on Forensic Audit.
- (viii) Various Companies/ Directors and other incumbents in whose hands money of the home buyers was available as per the report of Forensic Auditors, were directed to deposit the same in the Court within one month from the date of the order and to do the needful in the manner. Last opportunity of one month was granted to deposit the amount and to do the needful failing which appropriate action were to be taken against them.
- (ix) Concerned Ministry of Central Government, as well as the State Government and the Secretary of Housing and Urban Development, were directed to ensure that appropriate action is taken as against leaseholders concerning such similar projects at Noida and Greater Noida and other places in various States, where projects have not been completed. They were further directed to ensure that projects are completed in a time-bound manner as contemplated in RERA and home buyers are not defrauded.
- (x) A Senior Advocate with an impeccable reputation was appointed as the Court Receiver. The right of the lessee was to vest in the Court Receiver and he was to execute through authorized person on his behalf, the tripartite agreement and do all other acts as may be necessary and also to ensure that title is passed on to home buyers and possession is handed over to them.
- (xi) Noida and Greater Noida Authorities were also directed to execute the tripartite agreement within one month concerning the projects where homebuyers were residing and issue completion certificate notwithstanding that the dues were to be recovered under the order by the sale of the other attached properties. Registered conveyance deed were also to be executed in favour of homebuyers, they were to be placed in the possession and they could continue to do so in future on completion of projects or in part as the case may be. Noida and Greater Noida Authorities were directed to take appropriate action to do the needful in the matter. The Water Works Department of the concerned area and the Electricity Supplier were directed to provide the connections for water and electricity to home buyers forthwith.

The above points led to a resolution of the Amrapali mess. The construction is ongoing at various sites and the homebuyers are expected to get their properties in near future.



## **Laws/Acts Governing the Real Estate Landscape (Relevant Portions)**

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Real Estate sector has expanded significantly in the recent years and plays a major role in meeting the housing and infrastructure requirement of the nation. However, the sector was highly unregulated resulting in lack of standardisation and inadequate consumer protection. While the Consumer Protection Act of 1986 served as an option for buyers in the real estate market to voice their grievances, the remedies it provided were only corrective in nature and fell short of addressing all the issues faced by both buyers and promoters.

Central Government enacted Real Estate (Regulation and Development) Act 2016 to promote an orderly development of the real estate sector in India. Considering the large number of stakeholders involved in the sector, the Act was formulated to promote transparency, accountability and fair dealing. The Act gave a new hope to the innocent homebuyers on the wide range of issues faced by them.

There are also a number of state-specific laws that have a bearing on the subject. Since the focus of the present report is the resolution of issues being faced by home-buyers in Gautam Buddha Nagar (Noida, Greater Noida etc.), relevant sections of the important laws that can influence the outcome are enumerated bellow.

### **1. Uttar Pradesh Urban Planning and Development Act, 1973**

#### **14. *Development of land in the developed area -***

- (1) After the declaration of any area as development area under Section 3, no development of -land shall be undertaken or carried out or continued in that area by any person or body (including a department of Government)- unless permission for such development has been obtained in writing from the Vice-Chairman in accordance with the provision of this Act.
- (2) After the coming into operation of any of the plans in any development area no development shall be undertaken or carried out or continued in that area unless such- development is also in accordance, with such plans.

#### **15-A *Completion Certificate -***

- (1) Every person or body having been granted permission under sub-section (3) of section 15, shall complete the development according to the approved plan and

send a notice in writing of such completion to the Authority, and obtain a completion certificate from the Authority in the manner prescribed or provided in the bye-laws of the Authority. Provided that if completion certificate is not granted and refusal to grant it is not intimated within three months after receipt of the notice of completion, it shall be deemed that the Completion certificate has been granted by the Authority.

- (2) No person shall occupy or permit to be occupied any commercial building or use or permit to be used such building or part thereof affected building or work until completion certificate has been issued by the Authority, or Authority has failed for three months after the receipt of notice of completion to intimate its refusal of grant of the said certificate.

*Explanation* - For the purposes of this section, the expression 'commercial building' shall have the meaning assigned to it in the Uttar Pradesh Municipal Corporations Act, 1959.

16. *Uses of land and buildings in contravention of plans -*

After the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan:

Provided that it shall be lawful to continue to use, upon such terms and conditions as may be prescribed by bye-laws made in that behalf, any land or building for the purposes and to the extent for and to which it is being used upon the date on which such plan comes into force.

17. *Compulsory acquisition of land -*

- (1) If in the opinion of the State Government any land is required for the purpose of development or for any other purpose, under this Act the State Government may acquire such land under the provisions of the Land Acquisition Act, 1894:

Provided that any person from whom any land is so acquired may after the expiration of a period of five years from the date of such acquisition apply to the State Government for restoration of that land to him on the ground that the land has not been utilized within the period for the purpose for which it was acquired, and if the State Government is satisfied to that effect it shall order restoration of the land to him on re-payment of the charges which were incurred in connection with the acquisition together with interest at the rate of twelve percent per annum and such development charges as if any may have been incurred after acquisition.



- (2) Where any land has been acquired by the State Government, that Government may, after it has taken possession of the land, transfer the land to the Authority or any local authority for the purpose for which the land has been acquired on payment by Authority or the local Authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the acquisition.

**2. Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010**

*General liabilities of promoter*

- 4.(1) Any promoter who intends to sell an apartment, shall make a full and true disclosure in writing of following to an intending purchaser and the Competent Authority:-
- (a) rights and his title to the land and the building in which the apartments have been or proposed to be constructed;
  - (b) all encumbrances, if any, on such land or building, and any right, title, interest or claim of any person in or, over such land or building;
  - (c) the plans and specifications approved by or submitted for approval to the local authority of the entire building of which such apartment forms part;
  - (d) detail of all common areas and facilities as per the approved layout plan or building plan;
  - (e) Built-up area and common area of an apartment;
  - (f) the nature of fixtures, fittings, and amenities, which have been or proposed to be provided;
  - (g) the details of the design and specifications of works or and standards of the material which have been or are proposed to be used in the construction of the building, together with the details of all structural, architectural drawings, layout plans, no objection certificate from Fire Department, external and internal services plan of electricity, sewage, drainage and water supply system etc. to be made available with the Association;
  - (h) all outgoing, including ground rent, municipal or other local taxes, water and electricity charges, revenue assessments, maintenance and other charges, interest on any mortgage or other encumbrance, if any, in respect of such land, building and apartments;

- (i) such other information and documents as may be prescribed.
- (2) *Every promoter shall,*
  - (a) specify in writing the date by which, construction of the apartment is to be completed, subject to force majeure clause and intimation sent to such purchaser;
  - (b) declare the penalty for delay in completion of the building and also penalty in the event of non-payment of instalment by the purchaser;
  - (c) declare the conditions for cancellation or withdrawal of allotment and the extent of compensation either way in the event of violations of any of the conditions.
  - (d) give the intending purchaser, on payment of photocopying charges, true copies of the documents referred to in this section.

- (4) After plans, specifications and other particulars specified in this section as sanctioned by the prescribed sanctioning authority are disclosed to the purchaser to home allotment letter in respect of an apartment is issued, the promoter may make such additions or alternations except any change in the location and character of parks and green areas earmarked in the originally approved plan, as may be necessary due to architectural and structural reasons duly recommended and verified by authorized architect or engineer after proper declaration and intimation to said purchaser:

Provided that the promoter shall not make any alterations in the plans, specifications and other particulars without obtaining the permission of the prescribed sanctioning authority:

Provided further that after completion fully or partially of a project or of a particular phase of a project, the promoter shall not make any alternations in any building or common areas and facilities in respect to which completion certificate has been issued;

- (5) An apartment may be transferred by the promoter to any person only after obtaining the completion certificate from the prescribed sanctioning authority concerned as per building bye-laws. The completion certificate shall be obtained by promoter from prescribed authority within the period specified for completion of the project in the development permit or the building permit as the case may be;

Provided that if the construction work is not completed within the stipulated period, with the permission of the prescribed authority;

Provided further that if the completion certificate is not issued by the prescribed sanctioning authority within three months of submission of the application by the promoter complete with all certificates and other documents required, the same shall be deemed to have been issued after the expiry of three months.

Explanation : For the purposes of this subsection "completion" means the completion of the construction works of a building as a whole or the completion of an independent block of such building, as the case may be.

- (6) After obtaining the completion certificate as provided in sub-section (5) and handing over physical possession of the apartments to the allottees, it shall be the responsibility of the promoter to hand over the possession of the common areas and facilities and also the originals of the plans and documents to the Association of apartment owners formed and registered under sub-section (2) of section 14.

Provided that handing over of physical possession of the common areas and facilities under this sub-section shall be completed within a period of one year from the date of issue of completion certificate or the date by which sixty percent of the apartments have been handed over to the owners, whichever is earlier, subject to the condition that the promoter shall be responsible for the sale and transfer of the balance apartments;

- (7) The promoter shall maintain the common areas and facilities till the Association is formed in accordance with the conditions laid down in sub section (2) of section 14 and shall be entitled to levy proportionate maintenance charges as specified in the declaration.
- (8) The promoter shall be responsible up to two years after handing over the apartments regarding construction and structural defects in the building constructed by him and he shall get such defects removed at his own cost, failing which he shall be liable to pay compensation for the losses incurred by him for such defects.
- (9) The promoter shall pay all local taxes including house tax, water tax, sewer tax, until and unless subleases have been executed in favour of the apartment owners.

### ***Rights of Apartment Owners***

- 5.(1) Every person to whom any apartment is sold or otherwise transferred by the promoter shall subject to the other provisions of this Act, be entitled to the exclusive ownership and possession of the apartment so sold or otherwise transferred to him.

- (2) Every person who becomes entitled to the exclusive ownership and possession of an apartment shall be entitled to such percentage of undivided interest in the common areas and facilities as may be specified in the Deed of Apartment and such percentage shall be computed by taking, as a basis, the area of the apartment in relation to the aggregate area of all apartments of the building.
- (3)(a) The percentage of the undivided interest of each apartment owner in the common areas and facilities shall have a permanent character, and shall not be altered without the written consent of all the apartment owners and approval of the competent authority.
- (b) The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with apartment, even though such interest is not expressly mentioned in the conveyance or other instrument.
- (4) The common areas and facilities shall not be transferred and remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, and any covenant to the contrary shall be void.
- (5) Each apartment owner may use the common areas and facilities in accordance with the purposes for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners.
- (6) The necessary work relating to maintenance, repair and modification or relocation of the common areas and facilities and the making of any additions or improvements thereto, shall be carried out only in accordance with the provisions of this Act and the bye-laws.
- (7) The Association of Apartment Owners shall have the irrevocable right, to be exercised by the Board or Manager to have access to each apartment from time to time during reasonable hours for the maintenance, repairs or replacement of any of the common areas or facilities therein, or accessible there from, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to any other apartment or apartments.

***Ownership of apartment shall be subject to conditions***

8. Where any allotment, sale or other transfer of any apartment has been made, whether before or after the commencement of this Act, in pursuance of any promise of payment, or part payment, of the consideration thereof, the allottee or transferee,

as the case may be, shall not become entitled to the ownership and possession of that apartment or to a percentage of undivided interest in the common areas and facilities appurtenant to such apartment until full payment has been made of the consideration thereof together with interest, if any due thereon, and where any such allottee or transferee has been inducted into the possession of such apartment or any part thereof in pursuance of such allotment or transfer, he shall, until the full payment of the consideration has been made, continue to remain in possession thereof on the same terms and conditions on which he was so inducted into possession of such apartment or part thereof. There shall not be any hidden charges. All sale consideration shall be fixed either at the time of agreement to sale or when the purchases are made final in writing as per provisions of this Act;

### ***Registration of Deed of Apartment***

13. No promoter or an apartment owner shall transfer or hand over the possession of any apartment constructed after the commencement of this Uttar Pradesh Apartment (promotion of construction, ownership and maintenance) Act 2010 without executing an appropriate transfer deed and also getting it registered under the provisions of the Registration Act, 1908;

### **3. Real Estate (Regulation and Development) Act, 2016**

Section 2(d) “allottee” in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

**Section 14.** Adherence to sanctioned plans and project specifications by the promoter.

- (3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

**Section 18.** Return of amount and compensation.

- (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building, –
  - (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
  - (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

- (2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.
- (3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

**Section 19:** Rights and duties of allottees.

- (1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.
- (2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.



- (3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (l) of sub-section (2) of section 4.
- (4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.
- (5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.
- (9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.
- (10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

**Section 31.** Filing of complaints with the Authority or the adjudicating officer.

- (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

**Explanation.** For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

#### **4. Insolvency and Bankruptcy Code, 2016**

**Section 5.(7)** "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to -

**Section 7. (1)** A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 inserted an Explanation under Section 5(8) (f) which mentions that amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing.

By the Insolvency and Bankruptcy (Amendment) Act, 2020 ('Amendment Act, 2020') w.e.f. 28.12.2019, in section 7 of the principal Act, in sub-section (1), before the Explanation, the following provisos were inserted: –

"Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:



## **Google Form For Primary Survey**

### **Homebuyers Issue - Gautam Buddha Nagar**

**Name :**

**Mobile Number :**

**Email :**

**Current Address :**

**Flat's address under dispute :**

**Society where flat belongs :**

**Association where member :**

**Status of flat :**

- In possession
- Living
- Not Completed
- Not Delivered
- Not Registered
- Under Construction
- Other

**Issues :**

- Possession
- Incomplete construction
- Completion certificate
- Registration
- Other

**What all steps taken till now?**

**Remarks :**



## **Committee Members**

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### **Mr. Gopal Krishna Agarwal**

Mr. Gopal Krishna Agarwal is the National Spokesperson - Economic Affairs, Bharatiya Janata Party and Mentor, Homebuyers Issues Committee, Gautam Buddha Nagar (Uttar Pradesh).

### **Mr. Charan Singh**

Mr. Charan Singh is the Chairman of Punjab and Sind Bank and an eminent bureaucrat.

### **Mr. Anil Sharma**

Mr. Anil Sharma is a Chartered Accountant and was a Director of the UCO Bank. He was also a member of National Financial Reporting Authority (NFRA).

### **Mr. Sambhrant Krishna**

Mr. Sambhrant Krishna is an advocate-on-record in the Supreme Court of India. He was a member of the Quality Review Board of the Institute of Chartered Accountants of India (ICAI).

### **Mr. Manas Chugh**

Mr. Manas Chugh is a practising Chartered Accountant.

### **Mr. Kuber Bisht**

Mr. Kuber Bisht is a professional footballer and a long term resident of Noida and associated with social and political issues of Gautam Buddha Nagar.

### **Mr. Ramanathan**

Ramanathan is a student of public policy and is a **Research Associate**.





गोपाल कृष्ण अग्रवाल



राष्ट्रीय प्रवक्ता  
(आर्थिक मामले)  
भारतीय जनता पार्टी

—: Mentor :—  
Committee -  
Homebuyers Issues,  
Gautam Buddha Nagar  
(Uttar Pradesh)

—: Patron :—



DEMOCRATIC OUTREACH  
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(DOST)  
- NOIDA DIALOGUE



Independent Director  
Bharat Petroleum Corpn. Ltd.



Independent Director  
ICSI IIP



Member (Mng. Committee)  
PHD Chamber of Commerce



Former Independent Director  
Bank of Baroda



Former Independent Director  
North Eastern Electric Power Corporation Ltd.

Former Member, Board of Governor



Indian Institute of  
Corporate Affairs  
*Partners in Knowledge. Governance. Transformation.*



Former Member, Task Force - MSME  
Ministry of Finance, Govt. of India



अध्यक्ष  
जलाधिकार फाउण्डेशन



ट्रस्टी एवम् कोषाध्यक्ष  
सूर्या संस्थान



पूर्व ट्रस्टी एवम् कोषाध्यक्ष  
डॉ. मुकर्जी स्मृति न्यास



पूर्व ट्रस्टी एवम् कोषाध्यक्ष  
भारत नीति प्रतिष्ठान



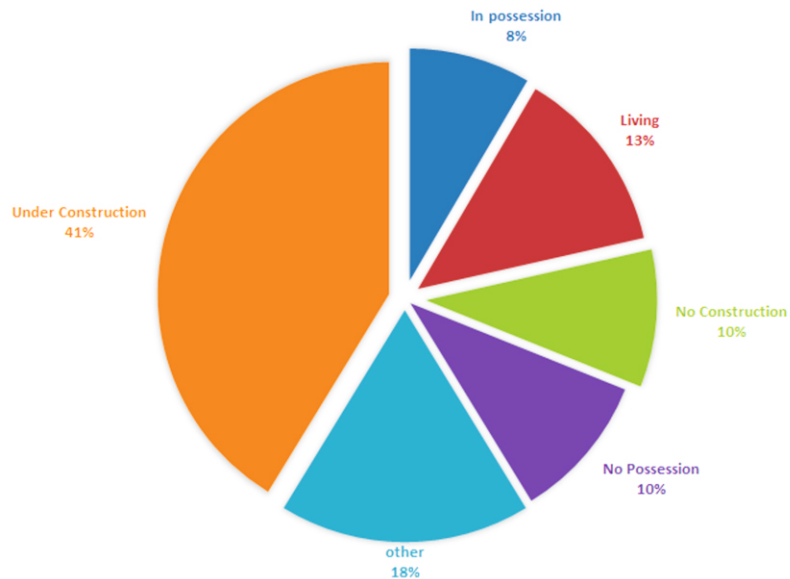
पूर्व अध्यक्ष  
श्री जी गौसदन, नौएडा



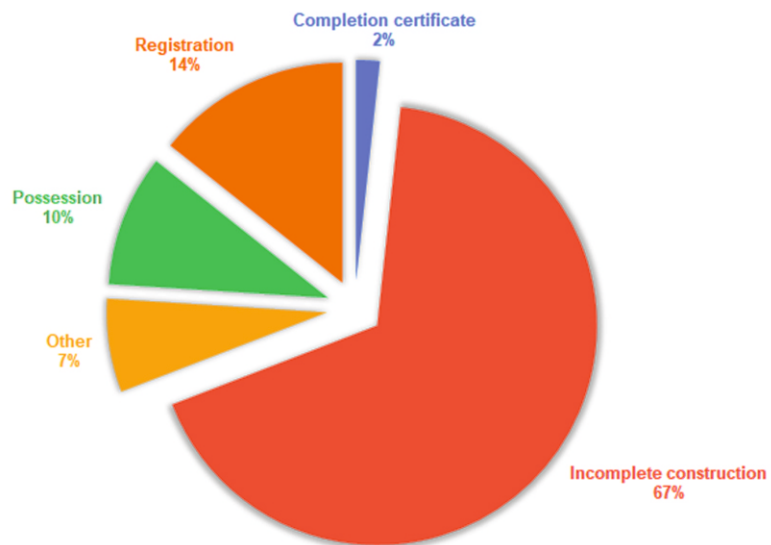


## Primary Survey Through Google Forms Homebuyers Response

### Status Of Flats



### Important Issues





# मोदी जी का VISION गोपाल जी का MISSION



NAMO SEVA KENDRA  
C-62, SEC-65, NOIDA

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