

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 664 of 2025
Date of complaint : 07.02.2025
Date of order : 12.12.2025

Mr. Atul Mittra
R/o E-173, DLF The Belaire,
Phase-5, Gurugram, Haryana - 122002

Complainant

Versus

M/s Redtopaz Real Estate Private Limited
Having its office at:
SF-05, Ninex City Mart, Sohna Road,
Sector-49, Gurugram, Haryana - 122018

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Manual Mittra (Advocate)

Sh. Lokesh (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.no.	Particulars	Details
1.	Name of the project	Ninex Mall, sector-70A, Gurugram
2.	Nature of project	Commercial complex
3.	Project area	4 acres
4.	RERA registered/not registered	Not registered
5.	DTPC License no.	02 of 2012 dated 19.01.2012 valid upto 18.01.2016
6.	Name of licensee	DLF New Gurgaon Retail Developers
7.	MOU executed on	12.05.2016 [Page 22 of the complaint]
8.	MoU Clause	<p>Clause1: <i>The First Party assures the Second Party that it shall pay a sum of Rs. 1,71,360/- (Rupees One Lakh Seventy-One Thousand Three Hundred Sixty only) per month to the Second Party as assured return on the said investment. This assured return shall be released after deducting Tax Deducted at Source (TDS) thereon, as applicable from time to time.</i></p> <p><i>The Second Party shall continue to receive the said assured return from the First Party with effect from 01.04.2017 until the date on which</i></p>

		<p><i>the First Party offers possession of the said shop/unit to the Second Party. Upon the First Party offering such possession, the Second Party shall become ineligible to receive the assured return, and the First Party shall not be liable to pay the assured return from the date of offering possession of the said shop/unit.</i></p> <p><i>The Second Party further assures the First Party that he shall make complete payment of the said unit on or before the commencement of the assured return period, failing which the First Party shall not be obligated to release the assured return as mentioned herein.</i></p>
9.	Allotment letter	12.05.2016
10.	Unit no.	G-8, Ground floor
11.	Unit area admeasuring	1190 sq. ft. [Super-area]
12.	Payment plan	Down Payment Plan
13.	Possession clause	<p><i>Clause2:</i></p> <p><i>It is understood, confirmed, and agreed by and between the parties to this Memorandum of Understanding that no physical possession of the said unit shall be offered or handed over to the Second Party until the First Party obtains the Occupation Certificate (OC) for the said commercial colony from the Director General, Town and</i></p>

		<i>Country Planning, Haryana, Chandigarh.</i>
14.	Due date of possession	12.05.2019
15.	Total sale consideration	Rs. 59,50,000/- [Page 23 of the complainant]
16.	Amount paid by the complainants	Rs. 59,10,000/- [As stated by the complainant]
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint:

- I. That the complainant, Mr. Atul Mittra, S/o Late Sh. M.P. Mittra, is a resident of E-173, DLF The Belaire, Phase-5, Gurugram, Haryana - 122002 and is a peace-loving and law-abiding citizen of India.
- II. That the respondent i.e. M/s Redtopaz Real Estate Private Limited is engaged in the business of developing and constructing commercial and residential projects and is a company incorporated under the provisions of the Companies Act, 1956, having its office at SF-05, Ninex City Mart, Sohna Road, Sector-49, Gurugram, Haryana - 122018.
- III. That the respondent was developing a commercial colony/building/complex over an area of approximately 4.0 acres under the name "Ninex Mall" situated at Sector-70A, Gurugram, Haryana.

- IV. That the complainant showed his interest in purchasing a commercial unit in the aforesaid project "Ninex Mall" being developed by the respondent. That the respondent made several false assurances and representations and promised that possession of the said unit would be delivered within three (03) years, along with monthly assured returns.
- V. That relying upon the assurances and promises made by the respondent, the complainant decided to invest his life-long savings in the said project with the hope of owning a commercial property in Gurugram.
- VI. That on 12.05.2016, the respondent and the complainant executed a Memorandum of Understanding (MOU) whereby the respondent allotted Unit No. G-08, having a tentative super area of 1190 sq. ft., in Ninex Mall to the complainant for a total sale consideration of Rs. 59,50,000/- (Rupees Fifty Nine Lakh Fifty Thousand Only).
- VII. That as per Clause 1 of the MOU dated 12.05.2016, the respondent agreed to pay the complainant Rs. 1,71,360/- per month as assured return with effect from 01.04.2017 until the offer of possession of the said unit. That the respondent initially paid the assured returns to the complainant until March 2020, after which the respondent stopped making any payments.
- VIII. That as on date, the assured returns for 59 months (April 2020 to February 2025) remain unpaid, amounting to a total of Rs. 1,01,10,240/- (Rupees One Crore One Lakh Ten Thousand Two Hundred Forty Only).
- IX. That on 12.05.2016, the respondent issued an Allotment Letter along with a Payment Schedule in favour of the complainant for Unit No. G-08 measuring 1190 sq. ft. situated on the Ground Floor of Ninex Mall, Sector-70A, Gurugram.

- X. That on 12.05.2016, the complainant issued Cheque No. 389705 dated 12.05.2016 for an amount of Rs. 19,50,000/-, against which the respondent issued Receipt No. 100. That on 27.05.2016, the complainant issued another cheque bearing Cheque No. 389706 dated 27.05.2016 for Rs. 39,60,000/- in favour of the respondent.
- XI. That despite receiving the entire consideration amount, the respondent has deliberately failed to complete the project, apply for Occupation Certificate (OC), hand over physical possession of the unit, or pay the assured returns since April 2020. That the complainant repeatedly approached the respondent requesting release of the assured returns as per the MOU dated 12.05.2016 and completion of the project, but the respondent ignored all such requests.
- XII. That the said commercial project "Ninex Mall" remains incomplete, and no construction activity is presently taking place, which clearly indicates that the respondent has abandoned the project.
- XIII. That it is also pertinent to mention that DTCP License No. 02 of 2012 dated 19.01.2012 granted to the respondent expired on 18.01.2016 and has not been renewed since then. That as per Section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016, the respondent is legally bound to perform its obligations in accordance with the terms and conditions agreed between the parties under the MOU dated 12.05.2016.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- I. Direct the respondent to make a legal and complete offer of possession and execute the registry of Unit No. G-08 in favour of the complainant

after obtaining all necessary government approvals and licenses from the competent authority.

- II. Direct the respondent to pay the pending assured returns of Rs. 1,71,360/- per month for 59 months (April 2020 to February 2025) amounting to Rs. 1,01,10,240/-.
 - III. Direct the respondent to continue paying the monthly assured return as per the MOU dated 12.05.2016 until the offer of possession is made.
 - IV. Direct the respondent to pay litigation costs of Rs. 2,00,000/- (Rupees Two Lakh Only) to the complainant.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds.
- i. That the reliefs sought by the complainant under the head "Specific Relief" as well as under the paragraph "Relief Sought" are not maintainable in the eyes of law in view of the approved Revival Plan under Section 12A of the Insolvency and Bankruptcy Code, 2016, which was duly approved by the Committee of Creditors (CoC) with 93.30% voting share and subsequently approved by the Hon'ble NCLT, Delhi on 08.07.2024.
 - ii. That the Respondent No.1 is a wholly owned subsidiary company of M/s Ninex Developers Limited. It is submitted that Ninex Developers Limited was admitted into Corporate Insolvency Resolution Process (CIRP) under the provisions of the Insolvency and Bankruptcy Code,

2016 on 25.07.2019 by the orders of the Hon'ble National Company Law Tribunal, Delhi.

- iii. That the aforesaid insolvency proceedings were subsequently set aside by the Hon'ble National Company Law Appellate Tribunal (NCLAT), Delhi vide order dated 15.02.2024.
- iv. That during the CIRP proceedings, the management and the Board of Directors of the corporate debtor were suspended and the control and management of the affairs of the company were taken over by the Resolution Professional in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.
- v. That the Respondent No.1 herein, namely M/s Red Topaz Real Estate Pvt. Ltd., was also admitted into CIRP with effect from 24.08.2019 by the orders of the Hon'ble NCLT, Delhi, whereby the management and Board of Directors were suspended and the affairs of the company were taken over by the Resolution Professional.
- vi. That the respondent company through its then suspended Director Sh. Sandeep Garg filed a Withdrawal/Revival Plan dated 20.05.2024 under Section 12A of the Insolvency and Bankruptcy Code, 2016 seeking withdrawal of the CIRP proceedings and revival of the company.
- vii. That the said Withdrawal/Revival Plan was placed before the Committee of Creditors (CoC), which after due consideration accorded its consent with 93.30% voting share in favour of the plan on 27.05.2024, thereby satisfying the statutory requirement of more than 90% voting share as mandated under Section 12A of the IBC, 2016.
- viii. That the consented Withdrawal/Revival Plan was thereafter placed before the Hon'ble NCLT, Delhi, which, taking cognizance of the approval granted by the CoC with the requisite voting share, approved the said plan vide order dated 08.07.2024.

- ix. That pursuant to the approval of the said Revival Plan by the Hon'ble NCLT, the CIRP proceedings came to an end and the control and management of the respondent company were handed back to the erstwhile management/directors namely Sh. Sandeep Garg and Sh. Ram Mehar Garg by the Resolution Professional.
- x. That a copy of the Revival Plan along with the order dated 08.07.2024 passed by the Hon'ble NCLT is being annexed herewith for the kind perusal of this Hon'ble Authority. It is pertinent to highlight certain relevant provisions of the approved Revival Plan which directly address the contentions and prayers raised by the complainant, reproduced hereinbelow for ready reference: Para 7.9.2

"No allottee shall be entitled to any penalty or interest in accordance with the Builder Buyer Agreement or any other instrument executed between the Corporate Debtor i.e. M/s Red Topaz Real Estate Pvt. Ltd. and the allottees after the approval of the Revival Plan. However, in the event of delay in completion/handing over of units beyond the prescribed period of thirty (30) months from the date of approval of the Revival Plan by the Hon'ble NCLT, the allottee shall be entitled to delay possession penalty at the rate of Rs. 15/- per Sq. Ft. per month for the period of delay beyond the said thirty months."

Para 7.9.9

"All clauses in the Builder Buyer Agreement providing for payment of interest, assured return or delay penalty shall stand withdrawn forthwith by the respective allottees and shall become unenforceable. After approval of this plan, none of the allottees shall be entitled to claim interest, delayed penalties or assured returns as guaranteed under the Builder Buyer Agreement or any other MOU with the Corporate Debtor."

Para 7.9.10

"No allottee shall be entitled to any refund except as specifically provided in this Revival Plan. All buy-back agreements shall become void and unenforceable from the date of approval of the Revival Plan by the Hon'ble NCLT."

- xi. That it is further submitted that apart from the CIRP proceedings, the respondent company also suffered significant delay in execution of the project due to the COVID-19 pandemic and the consequent nationwide lockdown imposed by the Government of India, during which construction activities remained completely suspended from March 2020 till October 2020.
 - xii. That further restrictions were imposed by the National Green Tribunal (NGT) which banned construction activities during the period 1st November to 31st December every year from 2019 to 2024 on account of severe air pollution, thereby further affecting the progress of construction work.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for

all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainant.

12. The respondent has submitted that the complainant's claim for specific relief and other reliefs sought in the present complaint is not maintainable in view of the approved Withdrawal/Revival Plan under Section 12A of the Insolvency and Bankruptcy Code, 2016, which was duly approved by the

Committee of Creditors (CoC) with 93.30% voting share and subsequently approved by the Hon'ble National Company Law Tribunal (NCLT), Delhi vide order dated 08.07.2024, thereby bringing the Corporate Insolvency Resolution Process (CIRP) of Respondent No.1 and its parent company to an end.

13. It has further been submitted that during the CIRP proceedings, the management and Board of Directors of the respondent company stood suspended and the control and management of the affairs of the company vested with the Resolution Professional. Upon approval of the Revival/Withdrawal Plan by the Hon'ble NCLT, the CIRP proceedings came to an end and the control of the company was restored to the erstwhile directors.
14. The respondent has also submitted that the approved Revival Plan specifically provides that no allottee shall be entitled to any interest, penalty, assured return, delay compensation, or refund, except to the extent specifically provided in the plan itself. It is further stipulated in the said plan that any delay penalty shall become payable only in the event of delay beyond 30 months from the date of approval of the plan by the Hon'ble NCLT. It is also submitted that the project suffered unavoidable delays due to the Covid-19 pandemic and the lockdown imposed by the Government, as well as restrictions on construction activities imposed by the National Green Tribunal, which impacted the project timelines.
15. The Authority observes that the CIRP proceedings were initiated against M/s Red Topaz Real Estate Pvt. Ltd. in CP No. IB-667/ND/2019 titled Renu

Properties Pvt. Ltd. vs. Red Topaz Real Estate Pvt. Ltd., and a Resolution/Withdrawal Plan dated 20.05.2024 was approved by the Hon'ble NCLT, Delhi vide order dated 08.07.2024.

16. It is further observed that the name of the complainant appears at Serial No. 9 in Tower G-08 at Page No. 51 of the Amended Withdrawal Plan dated 20.05.2024 for Red Topaz Developers, which has been duly approved by the Committee of Creditors.
17. In view of the above, and considering the binding nature of the approved Resolution/Withdrawal Plan, the relief sought by the complainant cannot be granted by this Authority and shall be regulated in terms of the approved Resolution/Withdrawal Plan.
18. Accordingly, the present complaint stands dismissed as not maintainable, with the observation that the rights and entitlements of the complainant shall be governed in accordance with the approved plan.
19. The complaint and application, if any, stands disposed of.
20. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.12.2025