

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

Complaint no. :	4354 of 2025
Date of first hearing :	16.10.2025
Decided on:	23.04.2026

**Sunaina Bhardwaj**

R/o- B-354 A, 1<sup>st</sup> floor, Sushant Lok-1,  
Gurgaon, Haryana-122022

**Complainant**

Versus

**M/s Redtopaz Real Estate Pvt. Ltd.**

Address: SF-05, Ninex City Mart, Sohna Road,  
Sector-49, Gurugram

**Respondent**

**CORAM:**

Shri Phool Singh Saini

**Chairman**

**APPEARANCE:**

Sh. Chaitanya Singhal Advocate

Shri Lokesh Kumar, Advocate

Complainant  
Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee on 20.08.2025 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 allottees 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 the project	Commercial Colony									
3.	RERA Registered/ not registered	Un-registered									
4.	License no. and validity	02 of 2012 dated 19.01.2012, valid till 18.01.2016									
5.	Unit no.	142, 1 <sup>st</sup> floor									
6.	Unit admeasuring area	516 sq. ft. (super area) 309 sq. ft. (carpet area)									
7.	Date of booking	15.10.2016 [As alleged at pg.5 of complaint]									
8.	Date of allotment	18.11.2016 [Page 14 of complaint]									
9.	Date of Builder Buyer Agreement	19.11.2016 [At Page 16 of complaint]									
10.	Payment Plan	<p><b>Down Payment Plan</b></p> <table border="1"> <thead> <tr> <th>S.No.</th> <th>Payment Description</th> <th>Amount (Rs.)</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td><b>AISP</b></td> </tr> <tr> <td>1</td> <td>Booking Amount (on application for booking)</td> <td>Rs.18,06,000/-</td> </tr> </tbody> </table> <p><i>Note</i> On intimation of possession, the allottees shall pay stamp duty, registration charges, label expenses, govt. levies and charges as applicable over and above the AISP. The AISP is inclusive of BSP, PLC, (if applicable) EDC &amp; IDC. The IFMS &amp; Electrification charges will be charged extra in addition to the above. (Service Tax shall also be applicable as per prevailing rate on AISP).</p> <p>[At pg. 15 of complaint]</p>	S.No.	Payment Description	Amount (Rs.)			<b>AISP</b>	1	Booking Amount (on application for booking)	Rs.18,06,000/-
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1	Booking Amount (on application for booking)	Rs.18,06,000/-									



11.	Assured Clause [as per BBA]	Return  4) That the First Party assured the Second Party that it shall pay monthly assured return for a total period of eight years commencing from 18.11.2016. The assured monthly "Assured Return" shall be paid to the Second Party by the First Party in the following manner:- a) For the first three years commencing from 18.11.2016 to 17.11.2019 Rs.36,068/- per month b) For the fourth year to sixth year commencing from 18.11.2019 to 17.11.2022 Rs.41,479/- per month c) From seventh year to eight year commencing from 18.11.2022 to 17.11.2024 Rs.47,700/- per month [As per BBA at Pg.19 of complaint]
12.	Possession clause	16. It is understood, confirmed and agreed by and between the parties that no physical possession of the said Unit shall be offered or given to Second Party as long as the Second Party enjoys receiving the Assured Return/Lease Rental from the First Party and physical possession of the said of the said Unit will be handed over the Second Party on expiry or early termination of this agreement or proposed lease deed. [As per BBA at Pg.22 of complaint]
13.	Due date of possession	<b>18.11.2019</b> "Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018 Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract." In view of the above-mentioned reasoning, the date of the allotment dated 18.11.2016 ought to be taken as the date for calculating the due date



		<i>of possession. Therefore, the due date for handing over the possession of the unit comes out to be 18.11.2019.</i>
14.	Building Plan	12.05.2015 [As mentioned in BBA at pg.17 of complaint]
15.	Environment Clearance	26.11.2014 [As mentioned in BBA at pg.17 of complaint]
16.	Total sale consideration including ED & IDC	Rs.18,87,562/- [As per BBA at pg.18 of complaint]
17.	Amount paid by the complainant	Rs.18,87,562/- [As per BBA at pg.18 of complaint]
18.	Occupation certificate /Completion certificate	Not on record
19.	Notice of possession	Not on record
20.	AR paid from Nov, 2016 - Dec, 2016	Amount Not on record

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:
- i. That on 15<sup>th</sup> October 2016 the complainant had booked a commercial unit measuring 516 sq. ft. in respondent's project "Ninex Mall" located in Sector-70 A Gurugram, Haryana and paid a sum of Rs.18,87,562/- to the respondent as 100% advance towards purchase of commercial unit.
  - ii. That On 18<sup>th</sup> November 2016 the complainant received "allotment letter" from the respondent. That in terms of the allotment letter the respondent had allotted unit no. 142 located on 1<sup>st</sup> floor in project "Ninex Mall" located at Sector-70 A Gurugram, Haryana.



- iii. That on 19<sup>th</sup> November 2016, builder buyer agreement was executed between the complainant and respondent. That as per B.B.A the complainant was allotted unit no. 142 located on 1<sup>st</sup> floor measuring 516 sq. ft super area in project "Ninex Mall." located at Sector-70A Gurugram, Haryana.
- iv. That as the B.B.A", the total sale consideration (T.S.C) including E.D.C & I.D.C was Rs.18,87,562/- @ Rs.3.500 - per sq. ft. . That the complainant had paid the entire a sum of 18.87.562to the respondent on the date of booking itself.
- v. That as per "Clause 4" of the builder buyer agreement the respondent had committed to pay monthly assured return for a total period of 8 years commencing from 18.11.2016 in the following manner-
- a) For the first 3 years commencing from 18.11.2016 to 17.11.2019 - Rs. 36,068/- per month.
  - b) From fourth year to sixth year commencing from 18.11.2019 to 17.11.2022 - Rs. 41,479/- per month.
  - c) From seventh year to eighth year commencing from 18.11.2022 to 17.11.2024- Rs. 47,700/- per month.
- vi. That the respondent had paid assured return only for a period of 2 months i.e., for the month of November 2016 and December 2016 to the complainant and thereafter the respondent had stopped paying Assured return without any reason.
- vii. That on account of non-payment of assured return and non-payment of committed lease rental, cause of action in favour of complainant and against the respondent is a continuing cause of action and still subsisting



**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s).
- I. Direct the respondent to pay the assured return as per the clause 4 of BBA starting from January 2017 till Nov, 2024.
  - II. Direct the respondent to pay interest as per HARERA Rule 15 upon the unpaid amount of assured return.
  - III. Direct the respondent to pay offer physical possession of booked unit as per clause 16 of agreement and execute Conveyance Deed.
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 contested the complaint by filing reply on the following grounds: -
- I. That the present complaint has been filed by the complainant after concealing the true facts and information regarding the booking of the unit no. 142, in the project Ninex City in Sector-70A, Gurugram, being developed by the respondent company i.e. Red Topaz Real Estate Pvt. Ltd.
  - II. That a similar complaint bearing no CR-1635-2025 titled Mohinder Singh Bhardwaj v/s Redtopaz Real Estate Pvt. Ltd has also been instituted by the complainant on the basis of similar affidavit. The said complaint is pending as of the filing of this written arguments by the



- answering respondent and the same has been not withdrawn by the complainant.
- III. That the reliefs sought by the complainant under the head interim relief as well in the para of relief sought is not maintainable as the approved Sec. 12 A plan of the IBC, 2016 which was approved by the C.O.C with 93.30% and had granted approval to the plan on the first instance itself i.e., on 08.07.2024 by the Hon'ble NCLT DELHI.
- IV. That respondent is wholly owned subsidiary company of M/s Ninex Developers Limited. That Ninex Developers Ltd. was subject to C.I.R.P proceedings under the Insolvency and Bankruptcy Code, 2016 on 25.07.2019 by the orders of the Hon'ble NCLT of Delhi. The insolvency proceedings were set aside on 15.02.2024 by the orders of the Hon'ble NCLAT of Delhi. During the CIRP proceedings the management and the board of directors were suspended and the control over the affairs of the company were taken over by the Resolution Professional.
- V. That the respondent herein i.e. M/S Red Topaz Real Estate Pvt. Ltd. was also subject to CIRP proceedings w.e.f. from 24/08/2019 by the orders of the Hon'ble NCLT of Delhi the management and the board of directors were suspended and the control over 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 on 20.05.2024 under the provisions of Sec. 12 A of the I.B.C, 2016 for revival of the company and suspension of CIRP proceedings. The said plan was put up to the committee of creditors (COC) which had accorded its consent



- unanimously by 93.30% members voting in favour of the withdrawal/revival plan on 27.05.2024.
- VII. That the consented withdrawal/revival plan was put up before the Hon'ble NCLT of Delhi on 08.07.2024. The Hon'ble NCLT giving cognizance to the fact that the plan has been approved by the C.O.C with 93.30% in its favour, and that in terms of the provisions of Sec. 12 A of the IBC, 2016 which requires more than 90% of the COC vote, had granted approval to the plan on the first instance itself i.e. on 08.07.2024. Subsequent the approval of the plan by the Hon'ble NCLT the C.I.R.P proceedings came to an end and the control of the respondent company was handed over the former management/directors i.e. Sh. Sandeep Garg and Sh. Ram Mehar Garg who took over charge of the respondent company which was handed over by the Ld. resolution professional.
- VIII. That the respondent company other than CIRP proceedings had also lost the precious time for the completion of the project due to Covid-19 pandemic and subsequent lockdown imposed by the Union Govt. and all activities most specifically construction related were banned w.e.f. from March 2020 till October 2020. That also Hon'ble National Green Tribunal had imposed ban on all kinds of construction activities between 1st November to 31st December from the year 2019 to 2024 due to excessive air pollution.
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 complainant at a later stage.

**F. Findings on the relief sought by the complainant:**

- I. Direct the respondent to pay the to pay the AR as per the clause 4 of BBA starting from January 2017 till Nov, 2024.**
  - II. Direct the respondent to pay interest as per HARERA Rule 15 upon the unpaid amount of AR.**
  - III. Direct the respondent to pay offer physical possession of booked unit as per clause 16 of Agreement and execute Conveyance Deed.**
12. The above-mentioned reliefs are interrelated to each other. Accordingly, the same are being taken up together for adjudication.
13. That in the present complaint, the complainant booked a unit/shop bearing no. 142 situated on the 1<sup>st</sup> floor admeasuring 516 sq. ft. super area and 309 sq. ft. carpet area in the project "Ninex Mall", Sector-70A, Gurugram. The allotment letter was executed on 18.11.2016 and builder buyer agreement was executed between the parties on 19.11.2016. That the complainant has filed the present complaint seeking specific relief with respect to the payment of assured return. The complainant has submitted that as per clause 4 of the agreement dated 19.11.2016 the respondent is liable to pay lease rental/assured return from 18.11.2016 and the respondent has failed to pay the same.
14. The plea of the respondent is otherwise and has stated that the present complaint is not maintainable in view of a withdrawal/revival plan under Section 12 A of the Insolvency and Bankruptcy Code, 2016.
15. The Authority observes that Corporate Insolvency Resolution Process (CIRP) proceedings were initiated against M/s Red Topaz Real Estate Pvt. Ltd. on 24.08.2019 during which period the management of the



company remained suspended. Thereafter, on 20.05.2024 the erstwhile suspended directors filed a withdrawal/revival plan under the provisions of the Insolvency and Bankruptcy Code, 2016. The said plan was duly approved by the Committee of Creditors with a voting share of 93.30%. Vide order dated 08.07.2024, the Hon'ble National Company Law Tribunal, Delhi approved the said withdrawal/revival plan thereby bringing the CIRP proceedings to an end.

16. The relevant and material clauses of the approved withdrawal/revival plan are clauses 7.9.2, 7.9.3, 7.9.9 and 7.9.10 which are reiterated herein below for ready reference:

*7.9.2 No allottee will be entitled to any penalty or interest in accordance with the builder buyer agreement or any other instrument executed between Corporate Debtor and allottees after this Revival Plan is approved by the NCLT, however in the event of delay in completion/ handing over of the units to the allottees after the prescribed period of Thirty Months as envisaged in this Revival Plan then the provisions of delay possession penalty will be paid to the Allottees @ of Rs15/- per Sq. Ft per month. It is further clarified that the penalty shall be given only for the delay period beyond Thirty months from the date of Approval of Revival Plan from the Hon'ble NCLT.*

*7.9.3 The Corporate Debtor has entered into various agreements with the allottees which provides for assured returns. After approval of this Revival Plan none of the allottees will be entitled for any assured return in accordance with the builder buyer agreement or any other MOU / Document / Instrument with Corporate Debtor. The right to receive unpaid assured returns as well as future assured returns shall stand extinguished except as provided in this Revival Plan.*

*7.9.9 All the clauses in the builder buyer agreement providing for payment of interest / Assured Return/ Delay Penalty*



*shall be withdrawn forthwith by the respective Allottees and hence become unenforceable. After approval of this Revival Plan none of the allottees will be entitled to any interest /delay penalties /Assured returns as guaranteed to them under the builder buyer agreement or any other MOU with Corporate Debtor.*

**7.9.10** *No allottee will be entitled for any refund except specifically provided in this Revival Plan. All buyback agreements shall become void and unenforceable from the date of approval of this Revival Plan by the NCLT.*

17. As per the said clauses the No allottee will be entitled to any penalty or interest in accordance with the builder buyer agreement or any other instrument executed between corporate debtor and allottees after the revival plan is approved by the NCLT. Further the allottee will be not entitled to assured returns and in case of refund also No allottee will be entitled for any refund except specifically provided in the Revival Plan.
18. Now the question arises whether the authority can go beyond the approved withdrawal/revival plan?
19. The Authority is of the considered view that it cannot do so, in view of binding nature of plan under Section 31 of the Insolvency and Bankruptcy Code, 2016 once a resolution plan or a withdrawal plan is approved by the Adjudicating Authority, the same becomes binding on the corporate debtor and all its stakeholders including creditors, allottees and other claimants.
20. The Authority is of the considered view that the statutory mandate under Section 31 of the IBC leaves no scope for any forum to grant reliefs which are dehors or inconsistent with the approved plan.
21. Further, in view of the overriding effect of the Insolvency and Bankruptcy Code under Section 238 any claim relating to assured



- returns, possession, interest or any other contractual or monetary relief pertaining to the period prior to or during the CIRP proceedings is required to be dealt with strictly in accordance with the approved withdrawal/revival plan.
22. In view of the aforesaid statutory position and factual matrix, the Authority holds that the present complaint is not maintainable and the complainant is required to pursue her claim, if any, strictly in accordance with the approved withdrawal/revival plan.
23. Complaint as well as applications, if any, stands disposed off accordingly.
24. File be consigned to registry.



**(Phool Singh Saini)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.04.2026

**HARERA**  
GURUGRAM