

BEFORE THE  
MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY  
MUMBAI.

COMPLAINT NO: CC006000000023197

1) Aruan G. Saldanha and  
2) Godwing A Saldanha ... Complainant.

Versus

M/s. Shree Adiraj Laxmi Builders Pvt. Ltd. ... Respondent.  
MahaRERA Regn: P99000012749

**Coram:**  
Hon'ble Shri Madhav Kulkarni.

**Appearance:**  
Complainant: No.2 Present a/w  
Advocate Adv. Anil Ghurye  
Respondent: Absent

**Final Order**  
22<sup>nd</sup> January 2019

1. The complainant who had booked a flat with respondent / builder seeks withdrawal from the project and seeks refund of the amount paid with interest @ 24% p.a.
2. The complainant has alleged that he booked Flat No. 404 in the building Adiraj Status and agreement was executed on 28<sup>th</sup> March 2013. Commencement Certificate dated 3.12.2012 was disclosed to the complainant. Revised commencement Certificate was obtained on 3.6.13 without prior consent of the complainant. Further revised commencement certificate was obtained on 8.2.14 without prior consent of the complainant. The respondent has illegally constructed 8<sup>th</sup> and 9<sup>th</sup> floor, therefore, complainant seeks refund of Rs. 23,71,980/- + Rs. 3,68,506/-. The complainant came to know that the respondent has not constructed flat admeasuring 49.44 sq.mtrs. which was agreed to be sold to complainant.

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3. The complaint came before Hon'ble Chairperson on 20<sup>th</sup> May 2018 and came to be transferred to the Adjudicating Officer. The matter was adjourned on 29<sup>th</sup> Aug. 2018 to 11<sup>th</sup> Oct. 2018 for recording Plea of the respondent and filing written explanation. On 11<sup>th</sup> Oct. 2018 again the respondent sought adjournment which was granted lastly on cost of Rs. 3000/-. On 21.11.2018 the respondent was absent and arguments for complainants were heard.

4. Following points arise for my determination. I have noted my findings against them for the reasons stated below.

<b>Points</b>	<b>Findings</b>
1. Has the respondent changed the plan of the building and failed to deliver possession of the flat to the complainant as per Agreement?	Affirmative
2. Is the complainant entitled to the reliefs claimed?	Affirmative
3. What order?	As per final order

**Reasons.**

5. Point no. 1 & 2

Complainant has placed copy of agreement dated 25.3.13 on record. The project is at Village Nile More, Tal. Vasai, Dist. Thane. The name of the building is Adiraj Status, Flat No. 404 on 4<sup>th</sup> floor in B Wing admeasuring 532 sq.ft., i.e. 49.44 sq.mtrs. built up area was agreed to be sold for a consideration of Rs. 25,27,000/-. The complainant had booked flat No. 404 as per plan and its area is as follows:

Living Room	:	15' x 9.5'
Kitchen	:	8.5' x 8'
W.C.	:	3' x 4'
Bathroom	:	4' x 5'
Bed Room	:	10.5' x 9'

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6. The total area will come about 350 sq.ft. In the agreement the respondent has mentioned the built up area as 49.44 sq.mtrs. He did not mention the carpet area. He must have quoted the price as per the built up area which is not permissible and amounts to malpractice being followed by builders. It is the grievance of the complainants that the respondent revised the Development Plan after 3<sup>rd</sup> Nov. 2012 without their consent on 3.6.13 as well as 8.12.14. It appears that total Built up area was initially 1808 sq. mtrs, then it was increased to 2357 sq. mtrs and then to 3323 sq.mtrs. How this was affecting the flat being purchased by complainants is not made clear. Still the respondent was required to obtain consent of the complainants and to make sure that the change in the plan did not affect the area or amenities that were promised to the complainants. Consequently, respondent is guilty in not obtaining previous consent of the complainants.

7. Detailed complaint is filed on record by complainant. It is alleged that the respondent though duty bound to give date for delivery of possession did not specify the date of delivery of possession in the agreement. Whether the construction is completed and possession is offered is not made clear by the complainants. The agreement in question is dated 28<sup>th</sup> March 2018. Nearly 6 years have gone by. The complainants claimed that by serving notice dated 22.12.2017 they have terminated the agreement with the respondent. Any way the respondent could not have delayed delivery of possession for about 6 years. No defence has been put forth by the respondent. In the circumstances respondent is guilty in not giving date of delivery of possession in the agreement. The respondent has also not shown that the construction is completed and occupation certificate has been received. Consequently, the respondent fails on this count also. I therefore answer point No.1 in the affirmative.

8. The complainants have claimed that they have paid Rs.23,71,980/- towards price of the flat. In addition, they have paid Rs.1,11,500/- for Society formation, Rs. 1,77,000/- towards stamp duty and registration, Rs. 25,000/-for VAT; Rs. 55,006/- for Insurance. Thus, in all they spent Rs. 3,68,506/- on this

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account. In the agreement payment of Rs.1,01,000/-; Rs. 3,00,000/- and Rs. 1,04,400/-, i.e. Rs. 5,05,400 is acknowledged. These payments are made in the year 2012. Copy of the cheque dated 6.3.2013 for Rs. 1,51,700/- and for Rs. 25,300/- are placed on record. Receipt for Rs. 55,006/- dated 2.5.13 and for Rs. 25,000/- dated 8.5.2016 are also placed on record. Further receipts however are not placed on record for the reasons best known to the complainants. The respondent on his part has failed to deny payment of Rs. 23,71,980/- and expenditure of Rs. 3,68,506/- made by complainants. Consequently, subject to the complainants proving these payments they will be entitled to claim these amounts except the Stamp Duty which can be refunded as per Rules. I therefore answer Point No. 2 in the affirmative and proceed to pass following order.

## ORDER

- 1) The complainants are permitted to withdraw from the project
- 2) Subject to the complainants proving the payment of Rs. 23,71,980/- and proving expenditure of Rs. 3,68,506/- the respondent to repay these amounts except the Stamp Duty which can be refunded as per Rules together with interest @ 10.70% p.a. on the date of payments till actual realisation.
- 3) The respondent to pay Rs. 20,000/- to the complainants as costs of this complaint.
- 4) The complainants to execute cancellation Deed at the cost of the respondent.
- 5) The respondent to pay the above amounts within 30 days from the date of this order.

Mumbai.  
Date: 22.01.2019



(Madhav Kulkarni)  
Adjudicating Officer,  
MahaRERA