

**BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY,
MUMBAI**

Complaint No. CC006000000089620

Mr. Nilesh Singit

..... Complainant

Versus

M/s. Jay Construction India,

Mr. Jayesh Mistry

Mr. Manish Mistry

.... Respondents

Project Registration No. **P52000006764**

Coram: Dr. Vijay Satbir Singh, Hon'ble Member – 1/MahaRERA

Adv. Vaibhav Bajpayi a/w Adv. Nikita Isai appeared for the complainant.

Adv. Karishma Ahuja appeared for The respondent.

ORDER

(17th December, 2019)

1. The complainant claiming to be allottee has filed this complaint seeking directions to the respondent/promoter to handover peaceful possession of four flats as per the provision of section 19(1) of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as "RERA") in the respondent's project known as "**Le Jardin**" bearing MahaRERA registration No. **P52000006764** at Savargaon, Karjat, Dist. Raigarh or in any other project in same vicinity. The complainant further prayed for interest towards mental agony caused to the complainant.
2. This matter was heard finally on 4-11-2019 and after hearing the arguments of both the parties, the MahaRERA directed the respondent to file written submission within a period of one week and the matter was reserved for order.
3. It is the case of the complainant that he along with his other family members have agreed to sell land under the said project admeasuring 32,000 sq.ft. to the respondents vide Agreement dated 5.06.2002 for consideration and such terms and conditions mentioned therein. Thereafter, they entered into a

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Supplementary Agreement. Further, the complainant and respondents have entered into a separate Development Agreement on 26.10.2005, wherein the respondents have agreed to handover to the complainant four flats each having an area of 550 sq.ft. built up area on ownership basis in the building constructed on the said property or in the same vicinity. However, till date no such flats have been handed over to the complainant. The complainant since then, have constantly approaching the respondents to comply with the Development Agreement dated 26.10.2005. The respondents vide letter dated 06.11.2012 assured the complainant to provide four flats in the said building, when the construction of the same is over. The complainant was not keeping good health and waiting for completion of the construction of the said building. Hence the present complaint has been filed.

4. The respondents. on the other hand, filed reply on record and disputed the claim of the complainant and stated that the complainant is not an allottee, as defined under section 2(d) of the RERA, since he has not paid any consideration amount for purchase of the said four flats. However, being owner of the land, he has been given four flats, in lieu of his development rights. The respondents further stated that they are ready to handover possession of four flats, having area of 550 sq. ft. to the complainant, subject to repayment of an amount of Rs. 19 lakh and sum odd amount by the complainant.
5. The MahaRERA has examined the rival submissions made by both the parties as well as the record. In the present case, prima facie, it appears that there is a dispute between the promoter and the owner promoter. The complainant is the co-owner of the land under the project and assigned the development rights to the respondent. In lieu of the same, the respondents have agreed to handover possession of four flats to the complainant. The complainant, therefore, can not be termed as an allottee as defined under section 2(d) of the RERA. Hence, the complainant can not seek relief under section 19(1) of the RERA. Moreover, the complainant can not seek specific

performance of the agreement by filing complaint u/s 31 of RERA before MahaRERA, which only the civil court has jurisdiction to decide the same under the provisions of RERA.

6. In the light of these facts, the complaint is dismissed being devoid of merit.



(Dr. Vijay Satbir Singh)
Member – 1/MahaRERA

