

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

COMPLAINT NO. CC006000000057239

Ronaldo Fernandes

..Complainant

Verses

Palava Dwellers Pvt. Ltd.

..Respondent

MahaRERA Regn. No. P5170000506

Coram:

Hon'ble Shri Madhav Kulkarni.
Adjudicating Officer, MahaRERA.

Appearance:

Complainant: Present
Respondent : Adv. Akshay

**ORDER
(Dated 17.10.2019)**

1. The complainant/allottee who had booked a flat with the respondent/promoter, seeks withdrawal from the project and refund of his amount with interest as respondent gave false information to the complainant.
2. Complainant has alleged that he booked flat no. 403 in the B wing in the project of the respondent Fontana in Palava City in Thane for a consideration of Rs.58,71,492/-. Complainant has paid amount of Rs.2,86,720/-. Complainant booked Ultima (2 BHK flat) but as per mylodha site, Optima Flat is allotted by misleading complainant. Respondent never took complainant for site inspection. Flat booked is allotted near Taloja bypass which is 7 km away from Palava. Complainant therefore, filed this complaint.

3. Complaint came up before Hon'ble Member on 12.02.2019 and complaint came to be transferred to Adjudicating Officer. The complaint came up before me on 26.06.2019. Plea of the respondent was recorded and respondent filed written explanation. Matter was adjourned to 24.07.2019 for arguments. Arguments were heard. As I am working at Mumbai and Pune Offices in alternative weeks, and due to huge pendency in this office, this matter is being decided now.
4. The respondent has alleged that, complaint is frivolous. Complainant has filed this complaint in respect of flat no.403 in building Fontana Tower in the project codename epic at Dombivali. Complainant booked the flat vide application dated April, 2018, after being convinced of the terms and conditions. There were details of layout, location and payment schedule. Complainant made only part payment, but failed to make further payments. Respondent has right to forfeit the amount paid by the complainant. Respondent has already terminated allotment made to the complainant vide letter dated 26.12.2018. Complainant had approached respondent citing financial distress and family problem. Respondent offered 50% of the amount received without prejudice to his right to recover liquidated damages of 10% of the price value of Rs.53,09,614/-. Complainant was fully aware of the location while booking the flat. Complaint therefore, deserves to be dismissed.
5. Following points arise for my determination. I have noted my findings against them for the reasons stated below:

12-10-19

POINTS	FINDINGS
1 Has the respondent given incorrect information to the complainant causing loss to the complainant?	Negative
2 Is the complainant entitled to the reliefs claimed?	Negative
3 What Order?	As per final Order.

REASONS

6. **Point Nos. 1 & 2 -** Complainant averred that he booked flat no. 403 in the building Ultima in the project Fontana in Palava city. Respondent has mislead and allotted flat in Optima which is 7 km away from Palava city and is near Taloja bypass. Complainant has placed on record receipt of Rs.1,35,000/- in respect of flat no. 403 dated 14.04.2018. There is price sheet of project centre park in cluster Fontana. Some emails have been placed on record calling for layout from the respondent. There are booking details and application form of booking. Accordingly, project is codename epic cluster is Casa Fontana. Flat no. is 403 in B wing. Flat type is 2 BHK. The project location is at Taloja bypass road, Dombivali.
7. The real question is of the information, the complainant received while booking the flat. Application form signed by the complainant, is placed on record by the respondent. Accordingly, flat booked was in cluster fontena in B wing on 4th floor flat no. 403. Annexure C is the brochure in respect of palava. Then there is email from the complainant that due to sensitive and personal reasons, complainant wanted to cancel the booking of the flat in the project Casa Fontena, in B wing, flat no. 403. Another email dated 10.05.2018 from respondent

shows that respondent clarified doubts especially about living area.

8. It was submitted on behalf of the complainant that complainant had booked in the building Ultima, but respondent has wrongly shown booking in building Optima. Said flat was not having pooja room and store room. On the other hand, respondent has denied having changed booking.
9. There is no dispute that booking was done in cluster Fontena. There is nothing to show that initially flat from Ultima was booked, but it was wrongly changed to Optima. Also there is nothing on record to show that location was changed and now it is 7 km away from palava city. There is email on record to show that complainant wanted to cancel the booking due to personal reasons. Dispute has arisen about the amount offered by the respondent towards repayment. This is not the question to be considered by this forum and complainant must approach proper forum for redressal of his grievance. I am of the opinion that complainant has failed to prove his case and is not entitled for reliefs claimed. I therefore answer point 1 and 2 in the negative and proceed to pass following Order.

ORDER

1. Complaint stands dismissed.
2. No Order as to costs.

Mumbai

Date : 17.10.2019

MH 12.10.2019
(Madhav Kulkarni)
Adjudicating Officer
MahaRERA