BEFORE THE

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

MUMBAI

COMPLAINT NO: **CC005000000000067**

1. Anant Bagaria
2. Vashu Bagaria ...Complainants.

V/s

Godrej Greenview Housing Pvt.Ltd. .... Respondents.

MahaRERA Regn. : **P51700000120**

Hon'ble Shri B.D. KAPADNIS.
(Member & Adjudicating Officer)

21st November 2017

Final Order

The complainants have filed this complaint under Section 12 of Real Estate (Regulation and Development) Act, 2016(for short, RERA)for refund of Rs. 7,35,048/- paid towards advance / deposit, with interest and compensation.

2. The complaints contend that they have booked a flat No 2204 situated on the 2nd floor of Tower No. 7 of respondent's registered project Godrej Emerald, Thane by submitting an application on 21st August 2016 and paid the booking amount of Rs. 1,00,000/- on that day by cheque. Thereafter they paid Rs. 6,28,148/- by cheque on 20.10.2016. Thus, they paid Rs. 7,28,148/. After booking of the flat they came to know from various sources that the Respondents did not have approvals from Forest Wild Life Department. The respondents could not convince them that they had necessary approvals for the construction, therefore they cancelled the booking and sent the email on 12th December 2016 to that effect. However, the respondents failed to refund the monies paid by them.

3. The Respondents have pleaded not guilty and have filed their affidavit-in-reply to contend that the complainants agreed to purchase the

flat for Rs. 1,38,01,300/- and paid Rs. 1,00,000/- at the time of booking, Rs. 6,28,148/- on 20th October 2016. Thereafter they stopped the payment and started to make enquiries regarding the approvals Respondents shared with the complainants the development permit and approved plans sanctioned by Thane Municipal Corporation by sending email dated 16th November 2016. Thereafter the complainants complained by their email dated 18.11.2016 that they knew from market sources that the respondents' project was scrapped. Therefore, to convince them the meeting was convened on 6th December 2016. The respondents explained to the complainants that in the light of Resolution passed by the Ministry of Environment and Forest published in the Government Gazette dated 05.12.2016 that the village within whose limits the property was developed was not within the Eco Sensitive Zone lying around Sanjay Gandhi National Park. The complainants were told that the construction zone of the project falls beyond the periphery of the Forest Reservation and Wild Life Boundaries. Thereafter the complainants requested for payment flexibility till 12 to 18 months which the respondents refused to grant. Thereafter, the complainants sent the email dated 12.12.2016 and cancelled the booking. The Respondents informed the complainants that as per clause 'm' of the application form the payment made by the complainants towards the booking would be forfeited. Thereafter the respondents sent email dated 31.07.2017 with a letter dated 10th May 2016 issued by the Government of Maharashtra to Ministry of Environment contending that the Respondents' project does not fall within the periphery of Eco Sensitive Zone of Sanjay Gandhi National Park. The respondents by their emails dated 9 & 16th August 2017 shared with the complainants minutes of 40th meeting of Standing Committee of National Board of Wild Life held on 3rd January 2017 holding that the project does not fall within the periphery of Economical Sensitive Zone of Sanjay Gandhi National Park. In view of these facts, they deny that they did not have necessary approvals for

proceeding with the project. The earnest money paid by the complainants is lesser than 20% of the total consideration and therefore, as per clause 'm' of the application, the same is liable for forfeiture on the acceptance of complainants' offer to purchase the flat.

4. I have recorded the plea of the respondents falling under Section 12 of RERA to which they have pleaded not guilty.

5. Following points arise for determination and I record my findings thereon as under:

	POINTS	FINDINGS
1)	Whether complainants prove that they were effected by any incorrect or false statement of respondents?	Affirmative.
2)	Whether the complainants are entitled to get back their investment with interest on withdrawal from the project?	Affirmative.

Relevant Law:

6. Section 12 of RERA provides that when any person makes advance or deposit on the basis of information contained in the notice, advertisement or prospectus as the case may be and sustains any loos or damage by incorrect, false statement included therein, he shall be compensated by the promoter. If he wants to withdraw from the project, he shall be retuned his entire investment along with interest at such a rate as may be prescribed and compensation in the manner provided under the RERA. On the basis of this provision of law, it is necessary to look at the facts of the case.

Booking of the flat and payment of advance / deposit.

7. There is no dispute between the parties that the complainants booked the flat No. 2204, 22nd floor, Wing T-7 of Godrej Emerald situated at village Bhyanderpada, Thane for Rs. 1,38,01,300/-. It is also not in

dispute that on 21.08.2016 the complainants paid the respondents Rs. 1,00,000/- towards booking amount and thereafter paid Rs. 6,28,148/- on 20th October 2016. Thereafter the complainants stopped the payment.

Whether the Respondents represented that their project was beyond Eco Sensitive Zone of Sanjay Gandhi National Park?

8. I have deliberately reproduced the contentions of the respondents contained in their affidavit-in-reply. On their perusal, it becomes clear that the respondents have been making representation throughout that their project is not within the Eco Sensitive Zone of Sanjay Gandhi National Park.

Whether the complainants prove that the respondents failed to convince them that their project was beyond Eco Sensitive Zone of Sanjay Gandhi National Park?

9. The complainants have come with the case that after booking the flat and on paying the first instalment, they came to know from other sources that the respondents did not have necessary approvals from Wild Life and Forest Department. It appears that from the mails exchanged by the parties that the complainants made respondents aware of all these facts and the respondents also sent emails to share with the complaints, the approvals which they had. I think that it is not necessary to go in details thereof but it will be convenient to refer to some important aspects of the matter.

10. The complainants have relied upon the letter of the respondents dated 16.11.2016 which shows that the respondents forwarded development permit and approved plan of project. The letter further mentions "we are waiting for other approvals from the concerned authorities and will update you once received". So the Respondents themselves made the complainants to believe in the fact that some other approvals were awaited, in other words, they conceded the fact that they did not have all the approvals to proceed ahead with the project. The learned Advocate for the respondents has brought to my notice the Gazette

of India dated 5th December 2016 wherein it is mentioned that the Eco Sensitive Zone is spread over an area of 59,456 sq.km to an extend of 100 meters to 4 km from the boundary of Sanjay Gandhi National Park as mentioned in Annexure-I. The list of villages falling within the Eco Sensitive Zone is included in Annexure-III. He has also brought to my notice the sanction of development issued by Thane Municipal Corporation on 24.08.2016 in the name of Vihang Enterprises, wherein it is mentioned that M/s. Vihang Enterprises were allowed to make the development in the lands mentioned in the said certificate. Those lands are of Village Bhyanderpada. Thereafter when I have perused the Annexure-III of the Gazette I do not find the name of Bhyanderpada in it. This means the land on which the project of M/s. Vihang Enterprises is being developed is not in Eco Sensitive Zone of Sanjay Gandhi National Park. To this extent, I am with the learned Advocate of the Respondents.

11. In this context, it is necessary to look at the minutes of 40th meeting of Standing Committee of National Board for Wild Life held on 3rd January 2017 as well as the letter of Revenue and Forest Department, Mantralaya, Mumbai dated 10th May 2016. This letter clearly shows that in the minutes of meeting, it is mentioned that the project area of M/s. Vihang Enterprises lies in Eco Sensitive Zone of Sanjay Gandhi National Park, it is clear from the map that it lies outside proposed Eco Sensitive Zone of Sanjay Gandhi National Park. So this letter of the Government of Maharashtra also supports the allegation of the complainants that there were reasons to believe that the project site was within the Eco Sensitive Zone of Sanjay Gandhi National Park. The minutes of the meeting of Standing Committee dated 3rd January 2017 have clarified that the proposal of construction of project of M/s. Vihang Enterprises at Bhyanderpada, on Survey Nos. 220/1, 220/2, 220/3, 220/4, 220/5 B, 221/1, 221/11, 217/29, 217/30/1, 217/30/4, 217/33, 277/34/195/1, 195/1, 219/1, 219/2 and 219/2 of village Bhyanderpada, Dist. Thane falls outside the Eco Sensitive Zone of Sanjay

Gandhi National Park and its recommendation is not required. The complainants have submitted that the sanction of development granted by Thane Municipal Corporation shows that M/s. Vihand Enterprises have been permitted the development, not only that, minutes of the Standing Committee of National Board of Wild Life also refers to the project of M/s. Vihang Enterprises in January 2017 and the Respondents' project has not been mentioned therein. For this purpose, the complainants have relied upon the booking form wherein it is clearly mentioned that the project is being developed by Godrej Greenview Housing Pvt. Ltd., and this company is being referred to as the developer. The learned Advocate of the Respondents has relied upon the prospectus where "Vihang" is printed on the third page in small letters. According to him, initially the project was of M/s. Vihang Enterprises and the same has been taken over by the Respondents. Hence the name of M/s. Vihang Enterprises appears on these documents. The survey numbers mentioned in the minutes also did not tally totally with the survey numbers mentioned in the sanction of development certificate issued by Thane Municipal Corporation. The minutes of the Standing Committee of National Board of Wild Life came on 3rd January 2017, whereas the complainants have cancelled their booking in the year 2016. After taking into consideration the facts which existed at that point of time, I find that respondents themselves made complainants to believe that some approvals / sanctions were awaited. Not only that, the minutes of the Standing Committee of National Board of Wild Life also indicates that earlier the project site was held to be within the Eco Sensitive Zone. It means that on the date of cancellation of booking it was a fact that the project site was said to be within the Eco Sensitive Zone of Sanjay Gandhi National Park. In view of this, I find that when the complainants took the decision to withdraw from the project, the facts were such that any ordinary man would have laboured under the impression that the site of the project was within Eco Sensitive Zone for

which the respondents did not get approvals to carry on project. Therefore, in the facts and circumstances of the case, I find that the complainants are entitled to get refund of the monies paid by them with interest under Section 12 of RERA. Hence, following order.

ORDER

The respondents shall pay the complainants Rs. 7,28,148/with marginal cost of lending rate of interest of SBI namely 8.15 + 2 % from the date of respective payments.

The respondents shall pay the complainants Rs. 20,000/- towards the cost of complaint.

(B.D. Kapadnis)
(Member & Adjudicating Officer)
MahaRERA, Mumbai

Mumbai
Date: 21.11.2017.