

**IN THE COURT OF ADJUDICATING OFFICER,
REAL ESTATE REGULATORY AUTHORITY (RERA)
6TH FLOOR, BIHR STATE BUILDING CONSTRUCTION CORPORATION BUILDING
HOSPITAL ROAD, SHASTRI NGAR
PTNA-800023**

RERA/CC/519/2019
RERA/AO/122/2019

1. Sri Akhilesh Kumar Mishra,

Add-1: Village-Purawan, P.O.-Brahampur,
District-Buxar, PIN-802112.

Add-2: C/o Sri Sushil Kumar Singh, House
No.223, CDA Colony, Nalkup

Bhawan Road, District-Patna, PIN-800023. ... Complainant

Versus

M/s Three Wings Builders Pvt. Ltd.
Through: Director, Mr. Srikant Dilip Kawde.

Add-1: Madhu Kunj, F/No.-30, 2nd Floor,
Juhu lane, Opp:Shree Ram School,
Andhri (W), Mumbai City (MH),
Maharashtra, District-Mumbai
City, PIN-400058.

Add-2: 2nd Floor, Nema Palace, Exhibition
Road, District-Patna-800001.

... Respondents

Present:

**Sri Ved Prakash
Adjudicating Officer**

Appearance:

For Complainant : In Person

For Respondents : None

13-10-2020

ORDER

The Complainant, Sri Akhilesh Kumar Mishra appeared through video conferencing, but Respondent is absent.

2. Heard the complainant.
3. On going through the record, it appears that the complainant Sri Akhilesh Kumar Mishra and the Respondent company, M/s Three Wings Builders Pvt. Ltd. through its Director, Mr. Srikant Dilip Kawde entered into Allotment Agreement on 26-03-2013 for sale/purchase of 3 plots 90, 91 and 92 measuring each 12905 sq.ft. situated at Mauza Anandpur, P.S-Bihta, District-Patna (Bihar) on consideration of Rs.11,61,000/-. The Respondent company was developing the project "Three Wings Heaven" comprising of 113 plots measuring each about 1290 sq.ft.. It also appears that the complainant has paid Rs.78,000/- cash on 20-03-2013 as down payment towards the allotment. It is also clear that the balance money Rs.10,83,000/- was to be paid by the complainant in 60 equal monthly instalments each of Rs.13,500/- commencing from 20-04-2013. It was agreed between both the parties that after payment of all 60 equal monthly instalments, both the parties will execute Sale Agreement/Conveyance Deed and in case of dispute, the matter will be referred to the Arbitrator for arbitration appointed with amicable consent of both the parties and the jurisdiction of the trial of disputes will be at competent Court/

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Forum/Tribunal at Mumbai. It shows that the complainant has paid 4 equal monthly instalments of Rs.13,500/- each and on demand of receipt, he was told by the office bearer that after 6 months original receipt will be handed over to him. When he went to deposit 5th instalment, he found that the company was closed and there was none available in the office of the company to respond. On call on Mobile Phone, it was found switched-off. In this way, there was no trace of the company, its officers and staffs.

However, after filing of the complaint petition, Notice was issued to the Respondents including the Director, Mr. Srikant Dilip Kawde, who through post has submitted his reply mentioning therein that he is based at Mumbai and the company was also based in Mumbai, which is presently in strike off list of R.O.C. He has further submitted that the company has started an open Bungalow project in the name of “Three Wings Heavens” in the year 2011-12 at Bihta, District-Patna, which was unfortunately closed in a short span of time. He has further submitted that at no point of time the project was registered under Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the “Act, 2016”) and it is strange as to how

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it has been deemed to be registered, is unknown to him. He has further submitted that as mentioned earlier, the project did not materialise and the land of the project was handed over back to the brokers. He has further submitted that the complainant himself was in fault in not honouring his part of transactions. Therefore, he lost his right to claim any relief against the project/company. He has requested to drop the proceedings, as the project was started and closed before the Act, 2016 came into existence.

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4. RERA Act, 2016 came into force w.e.f. 1st May, 2017. First proviso of Section-3 (1) says that *“the project that are on-going on the date of commencement of this Act, for which Completion Certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of 3 months from the date of commencement of this Act”*. It appears that neither the Respondents have applied for registration of the project nor they are developing the plots at the site of the project. The complainant has not brought any document on the record to show that the Respondents are continuing the project. I think, the project was closed prior to enforcement of the Act, 2016. Hence, this Court has no

jurisdiction to entertain the complaint petition filed by the complainant. Though the complainant has right to file case before other Forums like Civil Court or Consumer Forum, but this Court cannot/should not entertain this complaint case for the disputes arisen between the parties prior to enforcement of the Act, 2016. In such facts and circumstances, it is not reasonable to continue the proceeding of this case against the Respondents.

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Therefore, in my considered opinion due to lack of jurisdiction, this Court cannot continue the enquiry proceedings of this case. Accordingly, the complaint case filed by the complainant, Sri Akhilesh Kumar Mishra is hereby dismissed, but in the circumstances without cost.

Sd/-

(Ved Prakash)
Adjudicating Officer
RERA, Bihar, Patna
13-10-2020