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Apartment with all fittings and thereafter hand over possession of the share of complainant as per Development Agreement dated 18/19-01-2010 and also to pay compensation by way of rent @ Rs.20,000/- per month since June, 2014 till delivery of possession.

2. In nutshell, the case of the complainant is that the husband of the complainant namely; Ajit Kumar Jha and Respondent No.4 Gopal Krishna Jha are absolute owners of land measuring area 3 Khata, 6 Dhooors, 2.66 Dhurkis equal to 4110.50 sq.ft. being part of Plot No.1067, Khata No.107, Touzi No.15281, Thana No.02 situated at Mauza-Mainpura (New Patliputra Colony), P.S.-Patliputra, District-Patna and the said land is owned and possessed through Sale Deed dated 02-08-1958. The husband of the complainant Ajit Kumar Jha and Respondents had entered into a registered Development Agreement dated 18/19-01-2010 with Respondent No.1 through its Director, Respondent No.2 Amitab Ranjan, who was working with collaboration of Respondent No.3 the Developer for constructing a multi-storied building on aforesaid land after sanction of the Map from the competent authority. The construction of the building started by Respondents No.1 and 2 through Respondent No.3. As per Development Agreement, the building was to be completed within two years with grace period of six months and the share

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of land owners was up to the extent 40% and share of Respondents No.1 and 2 was to the extent of 60% in constructed area as per para-8 of the Development Agreement. The total constructed area of the building comes to 14223 sq.ft., in which the share of land owners comes to 5689 sq.ft., while the share of builder comes to 8534 sq.ft.in the ratio of 40% and 60% respectively. The Respondents No.1 and 2 till date have not delivered the possession of the constructed building to the complainant. Besides, the non-delivery of possession, the Respondents No.2 and 3 deviated from sanctioned Map dated 17-03-2011 in making construction of building, which led to filing of complaint case No.221-A/2011 by P.M.C. and during this period. Ajit Kumar Jha, husband of the complainant died on 29-10-2011leaving behind the complainant and her two sons Kumar Gaurav and Kumar Saurav, due to which the complainant bent under trouble and hardship and she was mentally shocked and disturbed. However, the Respondents No.2 and 3 persuaded the complainant and Respondent No.4 to make division of share in constructed building, which is still incomplete and they got prepared the Share Division papers, according to which share of land owners shall be on 1st, 2nd and 3rd floor as well as on ground floor and they simply got signed, which was done in good faith and it was also agreed by the builder to hand over possession of the share of the complainant and Respondent

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No.4 till June, 2014, which is still awaiting. Later on, Respondent No.2 handed over photocopy of Share Division paper, in which share of the land owners has been shown mischievously on 4th floor, while the 4th floor is highly objected by the P.M.C. As stated above, the total constructed area comes to 14223 sq.ft., in which share of the builder comes to 8534 sq.ft. and share of land owners comes 5689 but the Respondents No.2 and 3 have cunningly shown total constructed area 4523 sq.ft. in share of land owners, which is less to the extent of 1166sq.ft. In the Share Division Deed 9700 sq.ft. has been shown in share of builders, which is more to the extent of 1166 sq.ft., which is against the provisions of Development Agreement. Therefore, the share division paper is illegal. In such facts, the complainant is suffering a lot of monetary loss to the extent of Rs.20,000/- per month, which is payable by Respondents No.1 to 3. The complainant has been approaching with the Respondents No.2 and 3 to allot their share as per para-8 of the Development Agreement in respect of 14223 sq.ft comprising of G+4 and basement, but they are not ready, hence, this complaint case is filed with the above reliefs against the Respondents No.1 to 3.

3. After appearance, the Respondents No.1 to 3 have filed reply and denied the allegations of the complainant and have stated *inter-alia* that the complaint petition is not maintainable since Section 18 defines only claim of allottee and not for land

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owner. Whereas, in case the allottee wishes to withdraw from the project without prejudice, the promoter is duty bound to return the amount received by him including compensation as per the Act, 2016. Section 19 of the Act, 2016 has provided, only rights and duties of allottee. The complainant is not an allottee, therefore, the present complaint petition is not maintainable, as the remedy to the complainant is available before the Civil Court. It is further stated that the Development Agreement was executed/registered on 18/19-01-2010 between the Respondents no.1 and 2 and land owners for construction of multi-storied building of area comprising of 4110.50 sq.ft. After the agreement, the Map was sanctioned by the competent authority and thereafter the construction started, but during this period Ajit Kumar Jha, husband of the complainant died and construction work of the building was stopped by the complainant. On 30-04-2013, the complainant and other owners approached the Respondent for Supplementary Agreement (Share Distribution) for continuation of the construction work and believing their versions, the Respondents agreed for share distribution amongst the parties in continuation of paara-8 and 9 of the Development Agreement dated 18/19-01-2010 and after due deliberations amongst both the parties, the Share Distribution Deed was executed on Stamp Paper on 30-04-2013, after duly signed by the complainant, Respondent No.4 and Respondent

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No.2, 3 and the said deed was witnessed by two sons of the complainant namely; Kumar Gaurav and Kumar Saurav. Hence, said Deed is valid, legal and operative and accordingly, share amongst the parties has been distributed as per the said Deed. The complainant had agreed to get her share on 4th floor in the Share Distribution Deed dated 30-04-2013 and on ground floor in the name of Respondent No.4, Gopal Krishna Jha according to her choice and Agreement was made by her sweet will and without any pressure from any corner.

4. While construction was being done all of a sudden the Hon'ble High Court has passed order in C.W.J.C. No.8152/2013 dated 10-05-2013 and in view of the concerned order of the Hon'ble High Court, a letter was issued by S.H.O., Patliputra Colony P.S. to stop the further construction till further order and as per order, construction was stopped. It is also relevant to mention that a team of P.M.C. Engineers suo-moto inspected the building in pursuant to the order passed by Hon'ble High Court to inspect the buildings of Patna and around and a vigilance case was also instituted vide vigilance case no.221-A/2014 by the P.M.C. and notice has also been received by the Respondent with regard to stop construction till further orders and from the date of issuance of notice by the P.M.C., the construction work has been completely stopped in compliance of the direction of Municipal Commissioner, Patna awaiting for further order, if any, under

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the proceedings of the case. So far construction of the building is concerned, the Respondents had made construction of the building as per sanctioned plan and there may be some minor deviations, which are under condonable limits and the Respondent has already filed reply before the learned Municipal Commissioner, Patna with consent of the complainant. The complainant relates to the high police/administrative officer and she is always pressurising and threatening to the Respondents for implicating in illegal case. Therefore, the Respondents submit to this Court to direct the complainant to short out the matter from P.M.C. and try to vacate the restraining order of the P.M.C. with the help of the Respondents and the Respondents are ready to hand over the possession to the complainant within six months. As such, in the above facts and circumstances, the complainant is not entitled for any relief, as the case is not maintainable in this court, hence, the complaint case may be dismissed.

5. Now, I have to see as to whether this Court has jurisdiction to entertain the complaint petition of the complainant and may grant reliefs to the complainant against the Respondents?
6. The learned lawyer for the complainant submitted that total constructed area of the building comes to 14223 sq.ft, in which share of land owners comes to 5689 sq.ft., while the

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share of the Builder comes to 8534 sq.ft. As per Development Agreement Deed (para-8) the share of land owners and Builder is 40% and 60% respectively, but Respondents no.2 and 3 very cunningly allotted only 4523 sq.ft. in the share of land owners, which is 1166 sq.ft. less area than the actual admissible area for the land owners. He further submitted that the Respondents No.1 to 3 cunningly not allotted share of the complainant in all floors as per Development Agreement and they have also allotted share to the land owners only on 4th floor, which is against the terms and conditions of the Development Agreement. He further submitted that when the husband of the complainant, Ajit Kumar Jha died, she was mentally shocked and disturbed and during this period, the Respondents have persuaded her as well as Respondent No.4, Gopal Krishna Jha to make division of shares of the constructed building, which was/is incomplete and they got prepared Share Distribution Deed assuring that share of land owners shall be on 1st, 2nd and 3rd floors as well as on ground floor and thereafter obtained signatures of land owners, who signed on good faith. It was agreed that they will hand over possession of the building in June, 2014, but till date they are waiting for the same.

7. On other hand, learned lawyer for the Respondent submitted that after death of Ajit Kumar Jha, the construction

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work was stopped by the complainant. Later on 30-04-2013 the complainant and other land owners approached to the Respondent for Supplementary Agreement (Share Distribution) Deed for continuation of the work and believing the version of the land owners the Respondent agreed for Share Distribution amongst the parties in continuation of clause 8 and 9 of the Development Agreement and after due deliberations among the land owners and Developers, the Share Distribution Deed was registered on 30-04-2013, duly signed by the land owners and said Deed was witnessed by two sons of the complainant namely; Kumar Gaurav and Kumar Saurav. Thereafter, the Respondents No.2 and 3 also put their signatures. In this way, the said Deed is valid, legal and operative. He further submitted that the complainant has agreed to her share on 4th floor without pressure from any corner, so the share distribution deed was executed on her choice and now it is not possible to change/alter/cancel the Share Distribution Deed.

8. Admittedly, the complainant and Respondent No.4 are land owners and Respondents No.1 to 3 are Developers/Builders and as per Section-5 (1) of Bihar Apartment Owners Act, 2006, on 18/19-01-2010 registered Development Agreement was executed between both the parties for construction of multi storied building on 4110.58sq.ft. land of the landlords in the name and style as

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“Shailja Natheshwari Enclave”. The Respondent No.2 in collaboration with Bhawani Business Associates Pvt. Ltd. through its Director, Respondent No.3, Rakesh Chandra Malhotra decided to arrange the fund from its customers and construct and develop the land offered by the land owners on the terms and conditions mentioned in the Development Agreement. It was agreed in para-8 of the Development Agreement that 60% of constructed habitable area of the land with building will be allotted in the share of the Developers and 40% area will go in the share of land owners and it was also agreed that land owner will be provided their share in each floor of the multi storied building. It was also agreed between the parties that the project will be completed within two years from date of sanction of the plan from Patna Municipal Corporation (P.M.C.) with grace period of six months. It is also admitted case that before execution of Share Distribution Deed, Ajit Kumar Jha, husband of the complainant died on 29-10-2011 leaving behind the complainant and her two sons, Kumar Gaurav and Kumar Saurav.

9. On going through the record, it appears that admittedly after death of Ajit Kumar Jha Share Distribution Deed was executed on 30-04-2013 between both parties and complainant and Respondent No.4 as land owners and

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Respondent No.2 and 3 as Developers have also put their signatures and Kumar Gaurav and Kumar Saurav have also signed as witnesses of the Deed. Respondent No.4 has been allotted one flat on G-1 and another flat No.401 on 4th floor and the complainant was allotted two flats No.402, 403 of 4th floor, so constructed area of 4523 sq.ft. has been allotted to the owners, while Developers have been allotted share on 1st, 2nd and 3rd floors with total area of 9700 sq.ft. Hence, naturally share of Developers in constructed area is in excess 1166 sq.ft. than the land owners in light of para-8 of the Development Agreement, for which both sides have taken their own pleas about the manner of execution of Deed of Share Distribution. It is also written in the last line of the Deed that any area lessor more than the agreed percentage will be adjusted at the time of hand over of the Apartment. It is further written that the flats of owners share will be handed over by June, 2014 positively. It is also written that the flat area as mentioned above has been distributed on the basis of booking plan and the revised plan prepared by the Architect. I think, excess area allotted in share of Developers may/may not be reasonable.

10. This Court has jurisdiction to entertain cases falling u/s 12, 14, 18 and 19 of the Act, 2016. The complainant has not come simply to demand her share of flats from the

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Respondents no.1 to 3, rather she has sought relief for her 40% share in completed project on the basis of executed Development Agreement between both the parties. It also shows that the complainant is not satisfied with the allotted share in Share Distribution Deed. In this way, she has challenged the validity of Share Distribution Deed executed between the parties in respect of shares and demanded rent @ Rs.20,000/- per month as compensation from the Respondents No.1 to 3, which is beyond the jurisdiction of this Court, as this Court cannot cancel any Deed and such right is vested with the Civil Court, so if she is advised, then she may either file Civil Suit before the Civil Court for cancellation of Share Distribution Deed or as per para-23 of the Development Agreement Deed she may refer the case before the Arbitrator under the Arbitration Act, 1996.

11. Another important issue raised by both the parties before this Court is that one Vigilance Case No.221-A/2014 is pending before the P.M.C. in light of the order dated 10-05-2013 of the Hon'ble Court passed in C.W.J.C. No.8152/2013 and as per notice of the P.M.C. the construction work is stopped by the Respondents. Admittedly, there is deviation in construction of the building by the Respondents No.1 to 3. According to these Respondents, there is some minor deviation and they have already filed reply before the P.M.C.

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Commissioner with consent of the complainant. Annexures 2 to 3 filed by the Respondents show that 3 deviations have been found in survey of the P.M.C., which have yet not been removed. It further shows that still the construction of the project is stayed by the P.M.C. in light of the order of the Hon'ble High Court and unless and until the said stay is not vacated this Court cannot/should not pass any order with respect of the possession in favour of the complainant and against the Respondent.

Therefore, from the above discussions it is apparently clear that this Court has no jurisdiction to entertain the complaint of the complainant to make enquiry and decide the matter. Hence, this Court cannot grant relief to the complainant as prayed in the complaint petition. Accordingly, there is no need to make further enquiry by this Court. Therefore, in light of the above observations, the complaint case of the complainant is hereby disposed of.

Sd/-
(Ved Prakash)
Adjudicating Officer
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