

ORDER

OD - 15

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

AP/81/2026
PRERONA BASU
VS

BISWAJIT MAJUMDAR AND ANR.

BEFORE
HON'BLE JUSTICE GAURANG KANTH
Date: July 28, 2026.

*Appearance:-
Mr. Jayanta Sengupta, Adv.
Ms. Sampurna Chandra, Adv.
Ms. S. Datta, Adv.
...for petitioner.*

The Court:- Despite service, none appears for the respondents. Affidavit of service is taken on record.

The petitioner has preferred the present petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator for adjudication of the disputes and differences which have arisen between the parties in connection with and arising out of the registered Agreement for Sale dated 6th July, 2020.

Learned counsel for the petitioner submits that the petitioner entered into the agreement for sale with the respondents for purchase of a flat being "B-1" on the 2nd floor, holding No.9/2, Hari Charan Banerjee Road, P.O- Belurmah, P.S- Belur, Dist- Howrah- 711202 for a total sale consideration of Rs.27,00,000/-. Learned counsel for the petitioner further submits that out of total sale consideration, a sum of Rs.26,80,000/- has already been paid to the respondents. Under Clause 3 of the Agreement for Sale, the respondents were

under the obligation to deliver possession of the said flat to the petitioner within three years from the date of commencement of construction work of the proposed building or at the time of registration of the sale deed or whenever the said flat is completed or whichever is earlier with the proportionate undivided share of land and facilities attached thereto.

Learned counsel for the petitioner further submits that despite repeated assurances extended by respondent No.1 from time to time, including representations made in October 2022 and December 2022, neither was the sanctioned building plan furnished to the petitioner nor was any construction activity commenced. The petitioner contends that even as late as December 2023, no progress whatsoever had been made in relation to the project. Learned counsel for the petitioner further states that the petitioner issued a notice dated 10.03.2026 under Section 21 of the Arbitration and Conciliation Act, 1996 invoking the arbitration agreement contained in clause 10 of the Agreement for Sale dated 06.07.2020 and calling upon the respondents to concur in the appointment of a learned sole arbitrator. Despite receipt of the said notice, the respondents failed and neglected to take any steps for constitution of the Arbitral Tribunal or to respond to the notice of invocation within the statutory time period.

The existence of the arbitration clause in the said agreement is not in dispute. The contention of the petitioner that the disputes have arisen directly out of the Agreement for Sale is, *prima facie*, covered by the arbitration clause contained therein. It is evident that respondents had failed to act in terms of the agreed procedure for appointment of an arbitrator.

It is now well settled principle of law that the jurisdiction of the court under section 11 of the Arbitration and Conciliation Act, 1996 is confined to a *prima facie* examination of the existence and validity of the arbitration agreement.

In view of section 11(6A) of the Act:

“(6A)- the Supreme Court or as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall notwithstanding any judgment decree or order of any court, confine itself to the examination of the existence of an arbitration agreement.”

Accordingly, at the stage of exercising jurisdiction under Section 11 of this Act, this Court is only required to examine the existence of a valid arbitration agreement containing an arbitration clause.

In view of the same, this Court is, therefore, satisfied that the requirements under Section 11(6) of the Act stand fulfilled and that the disputes between the parties are fit to be referred to arbitration.

This Court deems it appropriate to appoint Mr. Atreya Chakraborty, Advocate (Mob. No. 9073349916) as a sole arbitrator to adjudicate the disputes which have arisen between the parties out of the agreement for sale dated 06.07.2020.

The learned Sole Arbitrator shall, before entering upon the reference, make the disclosure required under Section 12(1) of the Act, subject to the provisions of Section 12(5) thereof.

The learned Sole Arbitrator shall fix his remuneration in terms of the Fourth Schedule of the Act or as may be agreed between the parties.

A copy of this order shall be communicated by the petitioner to the learned sole Arbitrator for necessary action.

It is clarified that all questions relating to the arbitrability of the disputes, the admissibility of the claims, limitation, jurisdiction, and all other issues are left open to be urged before the learned arbitrator, who shall decide the same in accordance with law.

With the aforesaid directions, the present petition stands disposed of.

(GAURANG KANTH, J.)

R. D. Barua