

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION**

(Original Side)

A.P. No. 549 of 2019
(Through Video Conferencing)

Reserved on: 14.12.2021

Pronounced on: 23.12.2021

DEEPAK MEHRA AND OTHERS

....Applicant(s)

Through : Mr. Jishnu Chowdhury,
Mr. Syed Nurul Arefin,
Mr. Rahul Singh, Advocates

v/s

SUJOY KUMAR NAG AND OTHERS

....Respondent(s)

Through : Mr. Anant Kumar Shaw,
Ms. Puspall Chakraborty,
Ms. Prishanka Ganguly, Advocates

**Coram : HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

Prakash Shrivastava, CJ:

1. This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed by the applicants for appointment of arbitrator to resolve the dispute between the parties.

2. The case of the applicants is that they are involved in hospitality industry and real estate whereas, the respondents had represented that they were the owners of the land in question and interested to develop a housing complex and hotel. Therefore, the agreement dated 5th August, 2009 was executed between the parties. The said agreement contains following arbitration clause:

“25. In case of any disputes and differences arising between the parties hereto as regard to the completion of the aforesaid project, such differences and disputes shall be referred to arbitration and both the parties shall jointly appoint the sole Arbitrator who will hear out the same and pass award as per the Arbitration and Conciliation Act, 1996.”

3. According to the applicants, initially, the respondents had represented for construction through local contractor and the applicants were to supervise but subsequently, the supervision was also withdrawn and on completion of the project, the respondents are using the property without giving the share to the applicants. The applicants had given notice dated 08th July, 2019 invoking the Arbitration Clause and suggesting the name of the sole Arbitrator. The said notice was replied on 15th July, 2019 by the respondents refusing to accept the prayer for arbitration.

4. The submission of the learned Counsel for the applicants is that the arbitration agreement exist and that mere filing of complaint by the respondents before the National Consumer Disputes Redressal Commission will not take away the right of the applicants to invoke the Arbitration Clause and that the applicants have no remedy to file counter-claim before the National Consumer Disputes Redressal Commission.

5. The objection of the learned Counsel for the respondents is that the respondents have already approached the National Consumer Disputes Redressal Commission by filing the complaint which is pending and in which the written statement has already been filed by the applicants, therefore, they cannot invoke the Arbitration Clause now.

6. Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that the agreement and the Arbitration Clause therein is not in dispute. Nothing has been pointed out by the learned Counsel for the respondents to show that the applicants have any remedy of filing the counter-claim before the

National Consumer Disputes Redressal Commission. Hon'ble Supreme Court in the matter of **Rosedale Developers Private Limited vs. Aghore Bhattacharya and Others, (2018) 11 SCC 337**, has held that availability of remedy of arbitration to the complainant does not bar the jurisdiction of the Consumer Forum. The judgments in the matter of **Faqir Chand Gulati vs. Uppal Agencies Private Limited and Another, (2008) 10 SCC 345; Bunga Daniel Babu vs. Sri Vasudeva Constructions and Others, (2016) 8 SCC 429 and Skypak Couriers Ltd. Vs. Tata Chemicals Ltd., (2000) 5 SCC 294** provides for a remedy to the owner/holder of land before the Consumer Forum in respect of deficiency of service with reference to construction. There is no bar to entertain the present petition at the instance of the developer invoking the undisputed arbitration clause. Hence, the objection raised by the respondents is rejected.

7. The dispute exist between the parties, hence the application is allowed and Retd. Justice Ashim Kumar Banerjee, resident of 'THNAI', BB 21, New Town, Kolkata – 700156 (Mobile No. 9830929720) is appointed as arbitrator to settle the dispute between the parties. The arbitrator shall be at liberty to fix his remuneration to be shared equally between the parties. Office to obtain declaration from the above arbitrator in terms of Section 12(1) of the Act in the form prescribed in VI Schedule of the Act.

8. The application is also accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

KOLKATA

23.12.2021

PA(RB)