

AP/177/2022
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

M/S. GRENOMICS AGRO INDIA PVT. LTD. & ANR.
VERSUS
GANESH PAUL

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 15th December, 2022

APPEARANCE:
Mr. Pratip Mukherjee, Advocate
Mr. Arijit Ghosh, Advocate
....for the petitioners

The Court:- Affidavit of service filed today discloses that the respondent has been served by way of publication.

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

The learned counsel for the applicant has pointed out that the development agreement dated 14th July, 2014 was entered into between the parties which contains following arbitration clause:-

"19. That it may be mentioned if subsequently the title of the Land Owner/Vendor is found to be defective by any judgment of Civil Court of Competent jurisdiction or there is any legal lacuna appears in acquiring title or possession of his said land or in the event any boundary dispute appears or in case any problem cropped up in mutation or as regards status of land and if it is found that the Land Owner knowing fully well about such defect suppress the same before the Developer/Promoter and in the event unless the land Owner/Vendor act bona fide to remove such defects he shall compensate the loss that may be sustained by the Developer/Promoter by such act of the Land Owner/Vendor and before the Developer/Promoter in that event shall be entitled to cancel or rescind the agreement. Similarly if the Developer/Promoter after consuming full stipulation failed or neglected to Develop the proposed multistoried residential building over the land mentioned in Schedule 'A' hereunder written and/or failed & neglected to hand over Land Owner/Vendor's allocation complete in all respect with other service connections agreed to be provided as aforesaid, the Developer/Promoter will compensate the loss to be suffered by the Land Owner/Vendor for non-performance of Developer's obligations under this agreement and shall be entitled to cancel or rescind this Agreement & Power accordingly. However, both the parties are at liberty to go for specific performance of this agreement or its any clause before appropriate court of competent jurisdiction in the event of failure to perform his/its respective obligations as against his/its adversary provided however the parties shall at the first instance try to settle the matter through negotiation mutually or on his/its failure through Arbitrator, one to be appointed by Land Owner/Vendor & one by Developer/Promoter, who will jointly decide all or any dispute that may be arisen between themselves out of this

agreement and as regards meaning contents stipulations terms and conditions obligations performances, cancellations, compensation payments or otherwise as the case may be under this agreements & matters ancillary, thereto between the parties herein relating to this project in accordance with Arbitration & Conciliation Act 1996 & Rules and amendments thereto and will pass award jointly which will be binding on the both the parties. Provided however in case the Arbitrators failed to come in an unanimous decision, they will appoint an umpire who will decide all the aforesaid disputes after hearing & notice to the parties in accordance with Arbitration & Conciliation Act, 1996 & Rules and amendments thereto whose decision and/or award shall be binding on both the parties which both the parties herein agreed & accepted.”

He has further pointed out that since the dispute had arisen between the parties and even after making substantial payment, delivery of possession of subject plot was not given to applicant, therefore, invoking the arbitration clause, applicant had sent a notice dated 31.12.2019 in terms of Section 21 of the Act. The notice was duly served upon the respondent and the respondent had also replied the said notice on 13.2.2022 and had not appointed the nominee arbitrator.

Since in the present AP in spite of service of notice the respondent has not appeared, therefore, the above contentions of counsel for the applicant have remain unrebutted.

Having regard to the aforesaid, I am of the opinion that a case has been made out for appointment of the arbitrator to resolve the dispute between the parties.

Accordingly, the AP is allowed. Mr. Ratul Das, Advocate of this Court is appointed as Arbitrator to resolve the disputes between the parties, subject to submission of declaration by the Arbitrator in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court, within four weeks from today.

Let this order be conveyed to the Arbitrator by the Registrar, Original Side, forthwith.

(PRAKASH SHRIVASTAVA, C.J.)