

AP/232/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONBANAJ DEVELOPERS PRIVATE LIMITED
VERSUS
REHANA BIBI

BEFORE:

THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA

DATE : 17TH JUNE, 2022

APPEARANCE:

Mr. Aniruddha Sinha, Advocate
.....for the applicant

The Court:- Affidavit of service filed by the applicant is taken on record. The respondent is served but no one is present on her behalf.

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

It has been pointed out by the learned counsel for the applicant that the development agreement dated 19th February, 2016 was entered into between the parties and the said development agreement contains the following arbitration clause.

“17.1 In the event of any dispute or difference between the parties touching or arising out of or concerning this Agreement the parties shall put their efforts to resolve the same amicably and if even then the disputes and/or differences are not settled and/or resolved the same shall be referred to arbitration of a sole Arbitrator and the arbitration proceeding shall be guided by the provisions of the Arbitration and Conciliation Act, 1996, or any amendment made thereto. The arbitrator so appointed shall pass his decision in the matter as expeditiously as possible and such decision shall be final and binding upon the parties.

It is, however, made clear that while considering the arbitration the arbitrator shall not be bound strictly to follow the provisions of the Evidence Act and/or the provisions of the Code of Civil Procedure, 1908, and the Arbitrator shall have the power to dispose of the arbitration proceeding in summary procedure.

17.2 The venue of Arbitration shall be Kolkata only.”

It has been further pointed out by the learned counsel for the applicant that the respondent has failed to act in terms of the agreement and also failed to commence the process of owners' allocation as per the agreement. Therefore, after the initial attempt, the notice dated 21.12.2021 was sent by the applicant to the respondent invoking the arbitration clause and proposing the name of the sole arbitrator. In the reply dated 13.01.2022, the respondent has denied the arbitration clause and has taken the stand that the agreement in question is not an arbitration agreement.

Having regard to the plea taken in the present case and that notice was served on the respondent and the respondent has not chosen to appear and deny the arbitration agreement or to controvert the plea taken in the application, I am of the opinion that a case for allowing the prayer for appointment of an independent arbitrator to resolve the dispute between the parties is made out.

Accordingly, AP is allowed. Ms. Debjani Ray (M:9433714737), an Advocate of this Court is appointed as Arbitrator to resolve the dispute between the parties.

The appointment is 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.

AP is accordingly disposed of.

(PRAKASH SHRIVASTAVA, C.J.)