

AP/589/2022

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTIONSK. AKBAR ALI AND ANR.
VERSUS
M/S. KUSUM DEVELOPERS AND ORS.BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 9TH SEPTEMBER, 2022

APPEARANCE:

Mr. Imtiaz Ahmed, Advocate
Mr. Ghazala Firdaus, Advocate
Mr. Sourajit Dasgupta, Advocate
Ms. Smita Saha, Advocate
Sk. Saidullah, Advocate
.... for the applicantsMr. Golam Mastafa, Advocate
Mr. T. S. Samanta, Advocate
Mr. S. Sabud, Advocate
Mr. S. Sardar, Advocate
.... for the respondents

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

Learned counsel for the applicants has pointed out that the Agreement dated 17th December, 2018 was executed between the parties, which contains the following arbitration clause:

“17. **Alternative Dispute Resolution**

17.1 ***Disputes*** : Disputes or differences in relation to or arising out of or touching this Agreement or the validity, interpretation, construction, performance, breach or enforceability of this Agreement (collectively Disputes) shall be referred to the Arbitral Tribunal described in Clause 18.1.1. below and finally resolved by arbitration under the Arbitration and Conciliation Act, 1996, with modifications made from time to time. In this regard, the Parties irrevocably agree that:

17.1.1 **Constitution of Arbitral Tribunal:** The Arbitral Tribunal shall consist of one arbitrator, who shall be an Advocate, to be nominated by the Legal Advisors.

17.1.2 **Place** : The Place of arbitration shall be KOLKATA only.”

He has also pointed out that the applicants have paid full consideration amount along with registration charges in pursuance to the said agreement, yet the flat has not been registered in their names. He has pointed out that since the disputes arose between the parties, applicants had sent notice dated 13th June, 2022 invoking the arbitration clause, suggesting the names of the proposed arbitrator. The notice was duly served upon the respondents who had given the reply dated 1st July, 2022 and had not accepted the prayer for appointment of arbitrator. The applicants had responded to the reply by sending the communication dated 11th July, 2022. Thereafter, the applicants have filed the present application.

The arbitration agreement between the parties is not in dispute. The only objection of learned counsel for the respondents is that the applicants have introduced some third party to the respondents who had committed fraud and taken away Rs.50 lakhs from the respondents. Such an objection does not come in the way of allowing the application under Section 11 of the Act. If the respondents have any objection on merit then they will be at liberty to raise it before the arbitrator.

Having regard to the aforesaid circumstances of the case, the present AP is allowed and Mr. Sardar Amjad Ali (Mob. No.9830503211), a senior advocate of this Court, is appointed as Arbitrator to resolve the dispute, 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.)