

AP/630/2022
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

EVERLINK INVESTMENT ADVISORY PRIVATE LIMITED
VERSUS
ECOPRIME HIGHRISE PRIVATE LIMITED

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 25TH NOVEMBER, 2022

APPEARANCE:
Mr. Debnath Ghosh, Advocate
Mr. Tanoy Chakraborty, Advocate
Mr. Sitikantha Mitra, Advocate
Mr. Keshav Kr. Daruka, Advocate
....for the applicant
Mr. Sourav Kr. Mukherjee, Advocate
Mr. Somnath Roy, Advocate
. . . for the respondent.

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

Learned counsel for the applicant has pointed out that two separate agreements for sale dated 20th November, 2013 were executed between the parties and both the said agreements were having the same arbitration clause which reads as under:-

“20.2. ARBITRATION – Dispute arising out of the agreement shall be referred to the sole arbitration of such person as be appointed by the Legal advisor (Arbitral Tribunal) being a reference within the meaning of the Arbitration and Conciliation Act, 1996. The Arbitral Tribunal shall decide the language, procedure and type of award (speaking or non speaking). The venue shall be Kolkata. The direction/award of the Arbitral Tribunal shall be final and binding on the Parties.”

He has also submitted that the applicant had paid the consideration amount and thereafter on the same issue the negotiation had taken place and the terms were also settled and the Conveyance Deed was drafted. The stamp duty and the registration charges thereon were also deposited but thereafter

the respondent has not come forward to execute the Deed. He has also pointed out that the notice dated 28th June, 2022 was served upon the respondent in terms of Section 21 of the Act invoking the arbitration clause, but in spite of receipt of the said notice no response was given.

Learned counsel for the respondent has raised an objection that there was an oral investment agreement which did not contain any arbitration clause. Therefore, the arbitrator cannot be appointed.

Having heard the learned counsel for the parties, it is noticed that the arbitration clause contained in the sale agreements dated 20th November, 2013 is not in dispute. It is also clear from the materials on record that the dispute exists between the parties and invoking the arbitration clause the applicant had served due notice under Section 21 of the Act to the respondent. The oral agreement of investment on the basis of which the respondent has raised an objection is inconsequential and has no bearing on the present dispute and also the arbitration clause which has been noted above. Hence, I am of the opinion that the case for appointment of the arbitrator is made out to resolve the dispute between the parties. Hence, the AP is allowed.

Counsel for the parties have suggested the name of Mr. Suman Dutt, Advocate, Bar Library Club. Accordingly, Mr. Suman Dutt, Advocate, Bar Library Club 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.

Accordingly, AP is disposed of.

(PRAKASH SHRIVASTAVA, C.J.)