

ORDER SHEET

AP/392/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

SNEHALATA SARAF AND ANR.
Versus
IDEAL UNIQUE REALTORS PVT. LTD.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 3rd July, 2023.

Appearance:

Mr. M.S. Tiwari, Adv.

Ms. Manali Bose, Adv.

Mr. Paritosh Sinha, Adv.

Mr. Saubhik Chowdhury, Adv.

Ms. Tapasika Bose, Adv.

The Court: There is little doubt that an agreement exists between the parties. The Agreement is of 24th September, 2013 and was executed between the respondent as the vendor and the petitioners as purchasers for purchase of properties from the respondent vendor. The parties agree as to the existence of the Agreement. The Agreement at Clause 15 contains the arbitration clause, which outlines the procedure for dispute resolution and arbitration.

The dispute between the parties is also without doubt since the facts indicate and argued that the respondent vendor failed to hand over the flats/properties mentioned in the Agreement to the petitioners within the agreed period of time.

The related facts are that the respondent by a letter dated 19th December, 2019 informed the petitioners that the respondent has received the Completion Certificate dated 5th March, 2019 and requested the petitioners to clear the outstanding payment of approximately Rs.61.83 lakhs within seven days. The respondent informed the petitioners that the flats were ready for possession. It is argued on behalf of the respondent that there was no communication between the parties in the interregnum and that the petitioners wrote to the respondent almost three years later on 6th March, 2023 seeking handing over of the flats in question or refund of the amount paid by the petitioners along with interest. The amount of refund claimed was Rs.1.60 crores along with interest.

The dispute between the parties would further appear from the arguments made on behalf of the respondent where learned counsel submits that the petitioners have not shown any ground to question the eligibility of the named Arbitrator in the arbitration clause. Counsel seeks to file an affidavit on that point.

The arbitration clause, specifically in Clause 15.2 of the Agreement between the parties, names an Advocate who is to act as the Arbitrator. The clause specifies that the Arbitrator is to be nominated by the vendor who is the respondent before the Court. Apart from the settled legal position of a named Arbitrator being unilaterally appointed by one of the parties falling foul of the provisions of the 1996 Act, Clause 11.10 of the Agreement also shows that the named Arbitrator was to act as the Advocate of the respondent.

It is indeed surprising that the respondent would even run a case to counter that there is a dispute between the parties. The arbitration clause is clearly contrary to Section 12(5) as well as the Fifth and Seventh Schedules to the Act.

The named Arbitrator also acting as the Advocate of the respondent makes the nomination completely contrary to the settled legal position with regard to independence and neutrality of Arbitrators.

AP/392/2023 is accordingly allowed and disposed of by appointing Mr. Monojit Mondal, former Judge of this Court (Mob. No.- 7439506935) to act as the Arbitrator for resolving the disputes between the parties subject to the Arbitrator communicating his consent in the prescribed form and according to the provisions of the 1996 Act read with the Schedules to the Registrar, Original Side within three weeks from date.

The petitioner shall communicate this order on the Arbitrator forthwith.

(MOUSHUMI BHATTACHARYA, J.)