

ORDER SHEET

AP/606/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AJANTA SAHA MANDAL AND ANR.
VS
M/S. TIRUPATI PROPERTIES AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 6th September, 2023.

Appearance:

Mr. Shamba Chakraborty, Adv.

Mr. Abhiraj Tarafder, Adv.

...for the petitioners

Mr. Supriyo Ranjan Saha, Adv.

Mr. Suman Kumar Mukherjee, Adv.

...for the respondents

The Court: The dispute between the parties arises out of the following admitted fact. The petitioners entered into an agreement for sale dated 28th March, 2015 which contains an arbitration clause. The respondents builders were to deliver the flat which was the subject matter of the agreement for sale to the purchasers/petitioners by 31st December, 2017. Part-III of the agreement provides for this. There was admittedly a delay of about 39 months thereafter and the respondents delivered the flat to the petitioners on 5th March, 2021.

The petitioners hence claim interest at 12% on the payments made by the petitioners towards the agreed consideration for the flat.

The respondents on the other hand say that there is no dispute since the deed of conveyance dated 5th March, 2021 mentions in the Recital that the purchasers/allottees shall not have any claim against the vendor (respondents).

The very fact that the petitioners say that they are entitled to interest at 12% on the consideration paid by the petitioners together with expenses incurred for accommodation in the interregnum, i.e., 31st December, 2017 – 5th March, 2021 and the respondents deny the claims on the basis of the deed of conveyance, would show that there is an existing dispute between the parties. The petitioners' notice under Section 21 of the 1996 Act invoking the arbitration clause is also on record. The notice was sent on 5th June, 2023; the respondent did not reply to the notice.

The arbitration clause names an Arbitrator which would fall foul of Section 12(5) of the 1996 Act read with the Schedules to the Act. The Court is hence satisfied that not only is there an arbitration agreement between the parties but that there is also a dispute.

AP/606/2023 is accordingly allowed and disposed of by appointing Mr. Kumarjit Banerjee, Counsel to act as an Arbitrator for resolving the disputes and differences between the parties subject to the learned Arbitrator communicating his consent in the prescribed form to the Registrar, Original Side within three weeks from date.

The Advocate-on-Record of the petitioner will communicate this order on the learned Arbitrator by 11th September, 2023 along with the relevant details of the contact person.

(MOUSHUMI BHATTACHARYA, J.)

T.O.
A.R. (C.R.)