

ORDER SHEET

AP/658/2023

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

M/S. BBMG REAL ESTATE GROUP
VS
BABLU RUDRA AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 9th October, 2023.

Appearance:

Mr. Shashwat Nayak, Adv.

Mr. Anirban Guin, Adv.

...for the petitioner

The Court: Learned counsel appearing for the petitioner has placed the facts. The respondents were served on 12th September, 2023. The affidavit of service is on record.

This is the second time that the matter is appearing; the matter was adjourned on the first day on the ground of counsel appearing for the petitioner.

The disputes between the parties relate to a Development Agreement dated 7th February, 2018 whereby the petitioner, as the developer would develop a total built-up area on the land to be provided by the respondents/land owners. The owners' as well as the developer's allocations for development were specified in the said Development Agreement.

The Development Agreement contains an arbitration clause at Article XII.

The petitioner was to complete the construction within 18 months from the date of obtaining the sanction plan. The petitioner obtained the sanction plan on 14th October, 2020.

The petitioner, through learned counsel, however, complains that the respondents failed to hand over the possession of the land to the petitioner and the petitioner sent the first notice of possession on the respondents on 30th January, 2021. The said notice records that the petitioner requested the respondents several times to perform and honour the terms of the Agreement but that the respondents refused to deliver possession of the premises to the petitioner for making construction as per the building plan. The petitioner thereafter invoked the arbitration clause by way of a notice dated 16th February, 2023 nominating an Arbitrator and sent a second notice on 21st July, 2023 by reason of the respondents' silence. Counsel submits that the parties were in verbal communication throughout the intervening period but has not produced any written documents to that effect.

The second notice of invocation dated 21st July, 2023 is identical to the first notice, both of which were sent under Section 21 of the 1996 Act. The respondents have remained silent and not responded to either of the notice till date.

It is clear from the material placed before the Court that there is an existing dispute between the parties and one that is covered by the arbitration Agreement dated 7th February, 2018. The arbitration agreement does not

provide for a venue or a seat but the contract contains a governing jurisdiction clause conferring Courts with jurisdiction where the property is located. The Court has been informed that the property is located near the Lake Police Station.

This is hence a fit case where an Arbitrator is required to be appointed under Section 11(5) and (6) of the 1996 Act.

AP/658/2023 is allowed and disposed of by appointing Mr. Avishek Guha, Advocate to act as the Arbitrator subject to the learned Arbitrator communicating his consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

The petitioner's advocate-on-record shall communicate this order on the learned Arbitrator by 11th October, 2023 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)

bp.