

OD-12

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

AP/849/2023

BHASKAR KANTI SINHA AND ORS.
VS
MVK NIRMAN PRIVATE LIMITED AND ANR.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 18th December, 2023.

Appearance:

Mr. Meghajit Mukherjee, Adv.

Mr. Manas Dasgupta, Adv.

..for the petitioners

Mr. Deepnath Ray Chowdhury, Adv.

Mr. Aniruddha Chowdhury, Adv.

Mr. Roshan Pathak, Adv.

...for the respondent no. 2

The Court: The petitioners have made two attempts at serving the respondent no. 1 but have been unsuccessful. The respondent no. 2 is represented.

The dispute arises out of a Development Agreement dated 11th July, 2014 between the petitioners/land owners and the respondents/developers.

The respondents were to construct flats on the petitioners' land. The petitioners were given possession of these flats in 2019 but complain that the respondents have breached several terms of the Development Agreement. The petitioners' complaint is that despite being put in possession of the flats in 2019, the respondents are yet to hand over the completion certificate pertaining to the building. The petitioners invoked the Arbitration clause

contained in the Development Agreement on 16th February, 2023 and the respondents replied to the same on 6th April, 2023 disputing the existence of the Arbitration agreement. The respondents also say that the petitioners' claim, if any, is time barred.

The primary contention of the respondent no. 2 is that the respondent no. 2 resigned from the respondent no. 1 and should therefore be deleted from the arraignment of the parties.

It however appears to be a repeated fact that the respondent no. 2 was the Director of the respondent no. 1 and also was holder of the Power of Attorney at the relevant point of time. The very fact that the respondents have not handed over the completion certificate of the building in question to the petitioners itself beats any argument of limitation. The disputes are apparent, as also outlined in paragraph 7 of the petition with regard to the alleged breach committed by the respondents. The disputes are also relatable to the Arbitration agreement.

The parties agree that a Sole Arbitrator may be appointed to adjudicate the disputes.

AP/849/2023 is accordingly allowed and disposed of by appointing Mr. Avidipto Tarafdar, counsel to act as the Arbitrator to resolve the disputes and differences between the parties subject to the learned Arbitrator communicating his consent in the prescribed form to the Registrar, Original Side of this Court within three weeks from date.

The Advocate-on-Record of the petitioner will communicate this order on the Arbitrator by 20th December, 2023 along with the relevant details of the contact person.

The respondent no. 2 shall be at liberty for taking the point of resignation from the respondent no. 1 in the Arbitration.

(MOUSHUMI BHATTACHARYA, J.)

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