

O-16

ORDER SHEET

IA NO: GA/2/2024

In CS/1/2023

IN THE HIGH COURT AT CALCUTTA

Ordinary Original Civil Jurisdiction

ORIGINAL SIDE

YUDHBIR CHHIBBAR

VS

KAMRUP REAL ESTATE PVT. LTD. AND ORS.

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : June 12, 2024.

Appearance:

Mr. Nirmalya Dasgupta, Adv.

Mr. Jitendra Patnaik, Adv.

... for the plaintiff

Mr. Rittick Chowdhury, Adv.

Mr. D.N. Maiti, Adv.

Ms. Akshita Singh, Adv.

... for the defendant nos.1 to 5

The Court: Mr. Nirmalya Dasgupta, learned counsel, is appearing for the plaintiff. Mr. Rittick Chowdhury, learned counsel, is appearing for the defendant nos.1 to 5.

Counsel for the plaintiff has filed affidavit of service. Let the same be kept with the record.

The plaintiff has filed this suit praying for a decree for a sum of Rs.4,88,10,938/- along with interest and allied reliefs.

The plaintiff has also filed an application being GA/2/2024 praying for judgment on admission. Though the learned counsel for the

plaintiff has argued the matter on merit but the learned counsel for the defendants has raised the preliminary objection with regard to the suit and submitted that there is an Arbitration Clause in the development agreement entered between the plaintiff and the defendants and has referred Clause 23 of the said agreement which reads as follows :

“23. Arbitration

23.1 **Disputes and Pre-referral Efforts:** The Parties shall attempt to settle any disputes or differences in relation to or arising out of or touching this Agreement or the validity, interpretation, Construction, performance, breach or enforceability of this Agreement (collectively **Disputes**), by way of bilateral discussions and negotiations. To this end, each of the Party shall use its reasonable endeavors to consult or negotiate with the other Party in good faith and in recognizing the Party's mutual interests and attempt to reach a just and equitable settlement satisfactory to both the Parties.

23.2 **Referral to Arbitration:** If the Party and/or Parties have not settled the Disputes by negotiation within 30 (thirty) clear days from the date in which negotiations are initiated, the Disputes shall be referred to and finally resolved by arbitration by an Arbitration Tribunal formed in the manner given below, in terms of the Arbitration and Conciliation Act, 1996.

23.3 **Place :** The place of arbitration shall be Kolkata city only.

23.4 **Language :** The language of the arbitration shall be English.

23.5 Jurisdictional Court : In connection with the aforesaid arbitration proceedings, the courts at Kolkata and/or the Hon'ble High Court at Calcutta only shall have jurisdiction to receive, entertain, try adjudicate and determine all actions and proceedings concerning the disputes between the parties.”

Learned counsel for the plaintiff on instruction has also agreed that there is an Arbitration Clause in the development agreement and the plaintiff is agreed to refer the matter to arbitration in terms of clause 23 of the agreement.

Both the parties have agreed for appointment of an Arbitrator by this Court, accordingly, Mr. Debnath Ghosh, learned Advocate of this Bar is appointed as an Arbitrator to decide the disputes between the parties in terms of the development agreement entered between the parties on 30th October, 2017.

The Arbitrator is entitled for the fees in terms of Schedule IV of the Arbitration and Conciliation Act, 1996.

The parties are directed to pay the fee of the learned Arbitrator in accordance with Schedule IV of the Arbitration and Conciliation Act, 1996.

The parties shall raise all the issues before the learned Arbitrator.

In view of the above, GA/2/2024 along with CS/1/2023 is disposed of.

As the matter is referred to arbitration in terms of Clause 23 of the development agreement, the department is directed to return the court fee deposited by the plaintiff and the plaintiff is at liberty to use the said court fee in subsequent suit.

(KRISHNA RAO, J.)

RS