

OCD-5

ORDER SHEET

AP-COM/96/2024

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

ABODE PROMOTERS PVT. LTD.
VS
SRI SAIBAL GHOSH AND ANR.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 26th February, 2024.

Appearance:

Ms. Arunima Lala, Adv.

Mr. Jit Ray, Adv.

Mr. Atish Ghosh, Adv.

Ms. Antara Dey, Adv.

..for the petitioner

Ms. Amrita Panja Moulick, Adv.

...for the respondents

The Court: The affidavit of service is kept on record.

Leave is given to the respondents to file the Vakalatnama in the Department in the course of the day.

The disputes between the parties arise out of a Development Agreement dated 9th October, 2012 executed between the petitioner who was to develop the land belonging to the respondents and construct a residential-cum-commercial building on the land. The rights of the petitioner/developer was

protected under Clause 2.4 of the Agreement in terms of reimbursement for costs for removing the tenants and payment of the developer's allocation.

The Development Agreement contains an arbitration clause.

Disputes arose between the parties after the petitioner had completed the construction/development in terms of the Agreement. The petitioner claims that besides the security deposit which continues to be with the respondents, the petitioner's dues include compensation for removal of the tenants and other expenses which the petitioner outlined in its notice invoking the arbitration clause on 4th December, 2023; the respondents did not reply to this letter.

Clause 2.4 of the Agreement clearly provides for the rights of the petitioner as the Developer of the land in question. The Clause provides for refund of various sums of money by the owners/respondents to the developer out of the realisation of the sale proceeds of the owners' allocation. Sub-clause (b) of Clause 2.4 reinforces the petitioner's rights. Admittedly, some of the flats of the building were sold in December, 2022 and January, 2023.

Since the disputes are admitted and the respondents have not replied to the invocation notice, this Court is of the view that the application for appointment of an Arbitrator under Section 11 of The Arbitration and Conciliation Act, 1996, should be allowed.

AP-COM/96/2024 is accordingly allowed and disposed of by appointing Mr. Sukrit Mukherjee, counsel, 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 28th February, 2024 along with the requisite details of the contact person of the petitioner.

(MOUSHUMI BHATTACHARYA, J.)

bp.