

OD 6

ORDER SHEET
AP/116/2023
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

SUMAN SHAW AND ANR
VS
HAPPY INFRA AND ORS

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 19th July, 2024.

Appearance:

Mr. Om Narayan Rai, Adv.

Ms. Deblina Lahiri, Adv.

Mr. Debarshi Sarkr, Adv.

Mr. Piyas Chowdhury, Adv.

. . .for the petitioner.

Mr. Tanmoy Mukherjee Adv.

Mr. Souvik Das, Adv.

Mr. K.R. Ahmed, Adv.

Mr. Rudranil Das, Adv.

Mr. Soumava Satra, Adv.

Mr. Tapas Chatterjee, Adv.

. . .for the defendants.

The Court:- Learned counsel for the petitioners submits that there was a previous attempt to refer the matter to Arbitrator and two Arbitrators had been appointed, one by each of the parties. However, subsequently the reference did not take place and the matter was taken to the Consumer Disputes Redressal Forum by the respondent, where a mediation took place in terms of which the developers/respondent were to complete the project within a limited period. Allegedly, the developer having failed to do so, the petitioners invoked the arbitration clause afresh by issuance of a fresh notice under Section 21 of the

Arbitration and Conciliation Act, 1996. There being no consensus between the parties as to the Arbitrator, the present application has been filed under Section 11 of the said Act.

Upon hearing learned counsel for the parties, it transpires that in principle there is no dispute as to the matter being referred to arbitration. Clause 14(k) of the development agreement between the parties contains the arbitration clause which encompasses any dispute arising between the parties regarding construction or interpretation of any of the terms and complications contained therein or touching the said agreement or determination of any liability of the parties. As such, the present dispute between the parties comes squarely within the ambit of such arbitration clause and since the subject-matter of the dispute is otherwise arbitrable, there is no impediment in appointing an Arbitrator.

Accordingly, AP 116 of 2023 is allowed, thereby appointing Mr. Sagar Bandhopadhyay (Mob. No. 9830068294). a member of the Bar Association, as the sole Arbitrator to resolve the disputes between the parties, subject to obtaining declaration under Section 12 of the Arbitration and Conciliation Act, 1996 from the said Arbitrator. The learned Arbitrator shall, in consultation with the parties and in consonance with the provisions of the 1996 Act and Schedule - IV thereof, fix his own remuneration.

It is made clear that since no affidavits have been invited, it is deemed that none of the allegations made in the application are admitted by the respondents.

(SABYASACHI BHATTACHARYYA, J.)