

OD-1

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

AP/11/2025
SNIGDHA TANAY SINHA ROY
VS
S. S. BITUCHEM (INDIA) PRIVATE LIMITED AND OTHERS

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date :18th June, 2025

Appearance:
Mr. ShuvasishSengupta, Adv.
Mr. Balarko Sen, Adv.
Mr. Manish Shukla, Adv.
Ms. Ivi Banerjee, Adv.
Ms. DipaSinghal, Adv.
For petitioner

1. This is an application for appointment of a learned arbitrator in terms of an arbitration clause contained in the agreement for sale dated May 29, 2014. The clause is quoted below:-

“All disputes and differences between the parties hereto regarding the construction or interpretation of any of the terms and conditions herein contained or touching these presents or determination of any liability shall be referred to the sole Arbitrator, appointed by the mutual consent of the parties to these presents and the award/decision taken by the said sole Arbitrator will be binding upon the parties and all other disputes and issues will be covered and governed by the Indian Arbitration Act, 1996. The Vendors and the purchaser shall not

commence legal proceedings or to have any Receiver appointed in the said premises or the said building unless the same is first referred to arbitration and the Arbitrator has given his award. The Arbitrator shall have summary powers. The Arbitrator shall have the right to give interim awards and directions.”

2. The jurisdiction clause provides that Courts at Calcutta alone, shall have the Jurisdiction to entertain all suits and proceedings arising out of the said agreement.
3. The agreement for sale was in respect of a flat on the second floor of the proposed building consisting of two bedrooms, two bath cum privy, one hall cum dining, one kitchen and one half bathroom. The flat comprised of a super built-up area of 1200sq.ft, together with undivided proportionate share, right, title and interest in the land mentioned in the Schedule “A” of the agreement comprised in Dag Nos. 329 and 330 and Khatian Nos. 79 and 117, District-24 Parganas (South) being part of Municipal Holding No. 1, Gariahat Road, commonly known as premises no. P-236 Jodhpur Park, at present 1/236, Gariahat Road P.S. Lake, Kolkata – 700068.
4. The petitioner contends that parties agreed that the flat would be sold to the petitioner for a total consideration of Rs. 85 lakhs. Out of the said consideration, Rs. 40 lakhs was paid in advance

through a cheque bearing no.105726 dated May 29, 2014, drawn on Indian Overseas Bank, Kudghat Branch. In spite of such part payment, the respondent no.1 failed to hand over possession and the respondents failed to execute a deed of conveyance in respect of the said flat .Further case of the petitioner is that information was received as to sale of the said flat to a third party, on August 18, 2021. The purported registered deed of conveyance was void, and liable to be cancelled. Under such circumstances, disputes arose and a notice invoking arbitration was issued on March 2, 2024 and the petitioner suggested the name of a learned advocate who would act as the sole arbitrator. The respondent no.3 replied to the said letter, denying the contents of the notice invoking arbitration and mentioned the same to be illegal and improper. The respondent no.3 raised a question of impleadment on the ground that she was in no way connected with the deed of sale.

5. On the issue of the claim being alive, the petitioner was permitted to file a supplementary affidavit.
6. The supplementary affidavit discloses documents on and from February 2, 2017 up to 9th August 2019. Such documents show that the parties were communicating with each other by exchange of letters and emails. By letter dated February 2, 2017, the petitioner expressed disappointment in the way the respondent no. 1 had conducted itself and asked for immediate delivery of

possession of the apartment or in the alternative, for refund of the money. One Mr. Surajit Sen, said to be one of the directors of the respondent no. 1, acknowledged the delay and assured that the possession would be handed over promptly. As the problems with the tenants could not be resolved, the flat could not be made ready. By e-mail dated January 25, 2018, the representative of the respondent no. 1, sought support from the petitioner and requested the petitioner to pay a further sum of Rs. 40 lakhs, which was allegedly due. Similar correspondences continued between the parties. The representative of the respondent no. 1 ultimately alleged that due to non-payment of Rs. 40 lakhs within the time stipulated, the construction could not be completed. Thereafter, the project stood completed and the respondent no. 1 borrowed money from outsiders. The delay in completion of the construction was attributable to the petitioner. By the letter dated May 18, 2019, the respondent called upon the petitioner to pay Rs. 45 lakhs and take over possession. It appears from the communication of the respondent no. 1 that the petitioner intentionally did not take possession of the flat upon payment of the balance consideration. It also appears that the respondent no. 1 decided to dispose of the flat and forfeit the advance made.

7. The petitioner is aggrieved by the actions of the respondents and also believes that the flat had been sold. It is urged that, as the

respondent no. 1 was not entitled to forfeit the money advanced and sell off the flat, the matter must be referred to arbitration.

8. The existence of the arbitration clause is not in dispute. The parties have exchanged letters. The last of such letter, by which the respondent threatened to forfeit the advance and sell the flat, was issued on May 18, 2019. The notice invoking arbitration was issued on 2nd March, 2024. The petitioner contends that the flat was sold in August, 2018. It is submitted that the decision of the Hon'ble Apex Court in the suo motu writ petition by which the period between 15th March, 2020 and 28th February, 2022 was excluded in computing the period of limitation, will be available in computing limitation in this case.
9. Under such circumstances, this Court holds that the nature of correspondences between the parties, the relevant dates of the alleged sale etc., makes limitation a mixed question of law and fact. Thus, all questions are left open to be decided in the arbitral proceeding. This court has not entered into the merits of the claim.
10. Under such circumstances, the application is disposed of by appointing Mr. Ayan Banerjee, learned Advocate, Bar Association Room No. 2 as the sole arbitrator, to arbitrate upon the dispute between the parties.

11. The learned Arbitrator shall comply with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be at liberty to fix his remuneration as per the schedule of Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)