

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

AP/13/2025

SRI SRIDHAR CHANDRA ROY & ORS.
VERSUS
DULAL REAL ESTATE PRIVATE LIMITED

BEFORE :

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 9th June, 2025.

Appearance:

Mr. Mohit Gupta, Adv.
Mr. Shameek Chakraborty, Adv.
Ms. Rukmini Basu Roy, Adv.
Mr. Suman Banerjee, Adv.
for the petitioners.

Mr. Rajarshi Dutta, Adv.
Mr. Aniruddha Saha Ray, Adv.
Mr. Pranav Sharma, Adv.
. . .for the respondent.

1. This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of a learned Arbitrator (hereinafter referred to as the said application).
2. The disputes and differences arose between the parties with regard to the development agreement which was entered into on October 10, 2013. According to the petitioners, various deeds of sale had been executed by the petitioners and the developer/respondent in favour of the prospective buyers. The constructed portion also contained the owners' allocation. According to the petitioners, the conveyances in favour of the buyers were registered in 2020, 2023 and 2024. According to the petitioners, who are the owners, the construction was

not as per the terms and conditions of the development agreement and the flats sold to the buyers lacked the minimum amenities. The essential works with regard to the installation of elevators, fixtures, drainage, sewerage etc. were incomplete. The petitioners contend that a dispute was raised before the local Panchayat authority and a meeting was held. It also appears that by a notice dated April 22, 2024 the petitioners gave one last opportunity to the respondent to complete the project as agreed upon. Thus, it is contended by the petitioners that on the failure of the respondent to complete the project in its totality, despite notice dated April 22, 2024 and the extension given by the said notice, the petitioners were left with no other option, but to invoke the arbitration clause. The petitioners invoked arbitration on October 1, 2024 and nominated a learned Advocate as the sole Arbitrator.

3. According to Rajarshi Dutta, learned Advocate for respondent, the arbitration clause could not be invoked prematurely as there are no arbitrable dispute. By a deed of 2022, the time for completion of the project was extended by a further period of 42 months with a grace period of 6 months from the date of execution of the deed no.9759 of 2022. Thus, it is prayed that the dispute must not be referred to arbitration and the application should be dismissed. Mr. Dutta further submits that the development agreement was executed some time in 2013. The time for completion of the project was at best four years from October, 2013. The said period expired in October, 2017. Thus,

the invocation of arbitration was beyond the period of three years and the claim of the petitioner is time barred.

4. Mr. Gupta, learned Advocate for the petitioner submits that the averments in the application as also in the notice invoking arbitration would clearly indicate that the parties were trying to resolve the issue amicably, although the agreement prescribed that the owners' allocation would be handed over within 42 months with a grace period of 6 months. Further time was given by the petitioners vide letter dated April 22, 2024, allowing the respondent to complete the project within two months from the date of issuance of the said letter. The said fact had been recorded in the notice invoking arbitration.
5. Under such circumstances, in my opinion, limitation in this case is a mixed question of fact and law. The referral Court can only assess whether the claim is deadwood, upon a prima facie enquiry. A mini trial cannot be conducted. Moreover, Mr. Dutta submits that the period for completion of the work had been extended for a further period of 42 months with 6 months grace period.
6. In the facts narrated hereinabove, this Court is of the view that the claim of the petitioners cannot be said to be deadwood at this stage as the project continued for a while and registration of deeds with the buyers have been made as late as in 2024. The other question which has been raised by Mr. Dutta that the respondent was entitled to a further period of 42 months plus 6 months grace period on and from

2022, which is denied by Mr. Gupta, is also a matter which touches on the issue of arbitrability and admissibility.

7. Under such circumstances, the application is allowed leaving it open to the respondent to raise all objection including the point of arbitrability, limitation, jurisdiction etc. before the learned Arbitrator. This Court has not gone into the merits except for, *prima facie*, assessment that there exists an arbitration clause and the dispute should be referred to arbitration. Accordingly, Mr. Sakya Sen, learned Senior Advocate is appointed as the sole Arbitrator to arbitrate upon the disputes between the parties.
8. 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.
9. The application being AP 13 of 2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)