

ORDER SHEET
AP-COM/123/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

SRI ABANTI KUMAR MAITY AND ORS.
VS
M/S KAJI ENTERPRISE

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 26th February, 2025.

Appearance:
Mr. Arnab Sinha, Adv.
Mr. Sharanya Chatterjee, Adv.
Mr. Amartya Basu, Adv.
Mr. Indu Bhusan Roy, Adv.
...for the petitioners

The Court:

1. Despite service, none appears on behalf of the respondent.
2. The petitioners are the land owners. The respondent is a developer. An agreement for development of immovable property was entered into between the parties on November 29, 2018. According to the said agreement, the construction was to be completed within 24 months from the date of commencement of the work or until completion of the development work whichever was earlier. It was further provided that, subject to the owners meeting their obligations, the owners shall deliver vacant possession of the property to the developer and the developer shall commence the project within three months from the date of

sanction of the building plan, by the Kolkata Municipal Corporation. The agreement also provided that, in case the developer failed to deliver possession of the entire owner's allocation within the stipulated period mentioned in the agreement, a maximum extension of six months shall be granted to the developer jointly by the owners.

3. It is contended by the petitioners that, although the vacant possession was handed over to the developer, the developer did not take any initiative either to get the plan sanctioned or to start construction. Accordingly, the developer was issued a notice by the learned advocate for the petitioners, thereby, terminating the development agreement, revoking the power of attorney and invoking the arbitration clause, for adjudication of the dispute which had arisen between the parties.
4. The said notice was delivered to the addressee, that is, the developer. On December 12, 2024, another notice invoking arbitration was issued by the learned advocate for the petitioners. It also appears that the learned Judge, Commercial Court at Alipore had passed an order of injunction restraining the respondent from raising any construction on the land and from creating third party interest.
5. The dispute arises out of the said development agreement. The development agreement contains an arbitration clause, i.e., Clause 17 of the said agreement and is set out hereunder:

“17. All disputes and differences between the parties hereto in any way relating to this agreement and/or arising out of the provisions hereof shall be referred to arbitration. Sri Srinjay Sengupta, Advocate, High Court Calcutta, having its chamber at

29, Manoharpukur Road, Police Station Lake, Kolkata 700 029 shall be appointed as the sole arbitrator. If both the parties failed to mutually accept him, in that event 2 arbitrators will be appointed, one to be appointed by each of the parties. The arbitrators will be entitled to appoint an Umpire. Such arbitration proceedings shall otherwise be in accordance with the Arbitration and Conciliation Act, 1996. Both the parties will jointly bear the fees of the arbitrator or umpire as the case may be.”

6. The clause provides that, the disputes shall be settled by a panel of three Arbitrators. Although the Dispute Resolution mentions the named Arbitrator and provides that if both the parties mutually fail to accept the learned advocate named in the said dispute resolution clause, in that event two arbitrators will be appointed, one by each of the parties. Thereafter, the two arbitrators will appoint an umpire. The petitioner does not agree to the named arbitrator and prays for constitution of an Arbitral Tribunal by this Court in terms of the said clause.
7. Accordingly, Mr. Srinjay Sengupta, Advocate, shall be nominee of the respondent. Mr. Souri Ghosal, Advocate, shall be the nominee of the petitioners and Mr. Arindam Mandal, Advocate (Mob. No.8777874415) shall act as the presiding Arbitrator. All questions with regard to the jurisdiction, arbitrability, limitation, admissibility of the development agreement in evidence etc., shall be decided by the learned Arbitral Tribunal.

8. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.
9. The learned Tribunal shall fix the remuneration as per the Schedule of the Act.
10. AP-COM/123/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)