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ORDER SHEET

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

AP/45/2025
ASHOK KUMAR GUPTA
VS
ANNAPURNA NIRMAN PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date :25th March, 2025

Appearance :
Mr. Soumyadeep Biswas, Adv.
...for petitioner
Mr. Prasayan Mukherjee, Adv.
...for respondent

The Court : This is an application for appointment of a learned Arbitrator in terms of the arbitration clause contained under Article XIV of the Development agreement dated February 20, 2019. The parties agreed that in case of any difference or dispute, the same shall be referred to an arbitrator to be nominated by both the parties and the award passed by the arbitrator shall be final and binding.

The petitioner contends that the respondent was required to complete the building in respect of which a flat was to be handed over to him within thirty months from the date of delivery of possession of the land, which was to

be developed. According to the petitioner, despite several requests and communications, the respondent failed and neglected to start the development work. The petitioner invoked the arbitration clause by way of a notice dated February 3, 2025.

By a letter dated February 27, 2025, the respondent denied the allegations of the petitioner and stated that the project was to be completed within thirty months from receipt of a sanction of the building plan from the Bidhannagar Municipal Corporation. Such sanction was not obtained from the Corporation, as the other surrounding lands were in the process of acquisition. The understanding between the parties was that the lands surrounding that of the petitioner would be acquired, amalgamated and a project would come up on the said land. The respondent informed the petitioner that some time would be required to amalgamate the plots and the period for completion of the work had not expired and stood extended in view of the pending issues with the surrounding land owners, for which, sanction could not be obtained from the Bidhannagar Municipal Corporation.

Learned Advocate for the respondent also opposes the prayer for reference of the disputes to the arbitration on the ground that the petitioner already approached the Consumer Forum, for similar reliefs.

Having considered the rival contentions of the parties, this Court finds that the Development agreement contains an arbitration clause. The parties agreed that any difference and dispute arising out of the said agreement shall

be referred to a sole Arbitrator. The petitioner invoked arbitration and the respondent refused to refer the dispute. Hence, the petitioner has no other alternative, but to approach this Court for appointment of a learned arbitrator.

The question as to whether the proceeding before the learned Consumer Forum will debar the arbitrator from adjudicating the claim of the petitioner, is a matter of jurisdiction of the learned arbitrator and includes a decision on arbitrability of a dispute. The respondent is at liberty to raise this point before the learned arbitrator, by filing an appropriate application.

The referral Court is only required to uphold the agreement between the parties and refer a dispute to arbitration in case there is a binding arbitration agreement. The duty of the referral Court is to give recognition to party autonomy and the doctrine of competence competence. The referral Court is not required to decide on the arbitrability or admissibility of the claims.

With regard to the issue of limitation, it appears to this Court that the claim cannot be said to be “deadwood”. The respondent is also at liberty to raise the question of limitation before the learned Arbitrator.

Under such circumstances, the application AP/45/2025 is allowed and disposed of by referring the dispute to the arbitration of the sole Arbitrator Mr. Ratul Das, learned Advocate Bar Library Club, is appointed as the learned Arbitrator.

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 the Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)

SN/JM.
AR(CR)