

AP-COM/415/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

SRI GOURI SHANKAR SHAW AND ANR.
VS
SRI NIMAI MITRA AND ANR

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 10th June, 2025.

Appearance:

Mr. Sudipta Kr. Das, Adv.

Mr. Soumya Chatterjee, Adv.

. . . for the petitioners.

Mr. Soumyajit Ghosal, Adv.

. . . for the respondents.

The Court:

1. This is an application for appointment of an Arbitrator under the provisions of Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said agreement). Disputes and differences allegedly cropped up between the petitioners and the respondents out of the agreement for sale dated August 14, 2017. According to the petitioners, who were described as tenant / purchasers in the said agreement, the respondents were required to hand over possession of three shop rooms in adjacent premises situated at 290A Gopal Lal Tagore Road, P.S. Baranagar, Kolkata 700036.
2. The petitioners allege that the shop rooms were handed over belatedly and in incomplete condition. The petitioners contend that the

agreement provides for compensation for each day's delay. Moreover, the allegation is that, the respondents had committed breach in not handing over the shop rooms as per the agreement between the parties. The petitioners issued several reminders and notices for joint inspection, measurement etc. and also called upon the respondents to initiate the process of registration. When the respondents did not pay any heed to the said requests, a notice invoking arbitration was issued.

3. Learned advocate for the petitioners relies on the arbitration clause as provided in the agreement for sale. Learned advocate for the respondents submits that by a notice dated May 19, 2025, all flat owners and commercial space holders were asked to contact the respondents for registration of their respective flats and commercial spaces. According to the learned advocate, there are no surviving disputes between the parties. The petitioners are not entitled to claim any compensation before an Arbitrator, under such circumstances.
4. It is further submitted that the entire building was not constructed for commercial purpose and as such the matter cannot be treated as a commercial dispute.
5. Having considered the rival contention of the parties, this Court finds that the petitioners have raised certain disputes with regard to the handing over of the shop rooms, which were constructed in the said building. The building is partly commercial. The petitioners also allege that the shop rooms were not constructed as per the specifications in the agreement.

6. In my opinion, there is an existing arbitration clause. Parties had agreed to refer their disputes to arbitrators and also further agreed that the decision of the Arbitrators would be final. The issue as to whether the dispute is commercial in nature, is not relevant for the purpose of reference to arbitration. Such issue can be decided at the appropriate stage.
7. All objections can be raised before the learned Arbitrator. The issues with regard to non-arbitrability of the claim, inadmissibility of the claim and limitation etc. can also be raised before the learned Arbitrator. The application is thus, allowed.
8. Both the parties submit that the quantum involved is miniscule. The disputes are simple in nature and the court must appoint a sole Arbitrator.
9. Upon such agreement and request being made on behalf of the parties this Court appoints a sole Arbitrator. Mr. Shayak Mitra, learned Advocate, Bar Library Club is appointed as the learned Arbitrator to arbitrate upon the dispute between the parties. This order is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.
10. The learned Arbitrator shall fix his/her own remuneration as per the schedule of the Arbitration and Conciliation Act.
11. AP-COM 415 of 2025 is accordingly disposed of.

(SHAMPA SARKAR, J.)