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ORDER SHEET
AP-COM/460/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

ELLENBARRIE AGRO PRODUCTS LIMITED
VS
IDEAL UNIQUE REALTORS PRIVATE LIMITED AND ORS

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 13th November, 2025.

Appearance:
Mr. Ayan Dutta, Adv.
Mr. Rajib Mullick, Adv.
Ms. Ayantika Saha, Adv.
. . .for the petitioner.

Mr. Meghajit Mukherjee, Adv.
Ms. Sonia Das, Adv.
. . .for the respondents.

The Court:

1. The dispute arises out of an agreement for sale dated March 4, 2020.

The same was executed between the petitioner, the developer who is the respondent no.1 and the respondent nos. 2 to 7 (land owners). S. K. Himmat Singha as the constituted attorney of the landowners and also as the Director of the developer/respondent No. 1, signed the agreement. Service upon the other respondents are complete, but it is informed that the respondent nos. 4, 5 and 7 have expired. Despite best efforts, the petitioner is unable to obtain the name of the heirs of

the deceased owners. The learned advocate for the respondent no.1, who was requested to furnish the names, has expressed his inability to do so. Under such circumstances, the petitioner submits that the petitioner wants to proceed only against the respondent no.1 and the names of the respondent nos. 2 to 7 be struck off from the array of the respondents.

2. Such prayer is allowed. If the petitioner wants to proceed against the developer alone, it is the petitioner's choice. The petitioner shall strike off the names of the respondents Nos. 2 to 7 here and now. If the other land owners and their heirs are required to be added in the proceeding before the learned Arbitrator, they make choose to do. The learned Arbitrator also may pass necessary directions if the learned arbitrator deems it fit to implead them as parties in the proceeding. The developer can also make a prayer. Moreover, the constituted attorney of the landowners was the developer.
3. Admittedly, the issue of misjoinder or non-joinder is within the domain of the learned arbitrator. The arbitrator can decide the same. This is an application for appointment of an Arbitrator in terms of Clause 18.1 of the agreement for sale dated March 4, 2020. The parties agreed that all disputes and differences arising out of or touching the agreement or the validity, interpretation, construction, performance, breach or enforceability of the agreement shall be referred to the Arbitral Tribunal as described in Clause 18.1.1 of the said agreement.

4. All disputes shall be resolved by arbitration under the Arbitration and Conciliation Act, 1996. Clause 18.1.1 deals with the constitution of the Tribunal. It provides that the Tribunal shall consist of one Arbitrator who shall be an advocate or a person of repute, to be nominated by the legal advisors of the developer. The petitioner contends that, the registration of the agreement for sale was not completed by the developer company. The director of the company was acting as the constituted attorney of the landowners as well.
5. The developer failed and neglected to carry out the registration.
6. Mr. Mukherjee learned advocate for the respondent submits that the claim is time barred. The petitioner is seeking to enforce an unregistered agreement for sale. He relies on a decision of the Hon'ble Apex Court in the matter of *Vinod Infra Developers Ltd. Versus Mahaveer Lunia and Others*. in Civil Appeal No. 7109 of 2025 reported in 2025 *SCC Online SC 1208*, to substantiate that the claim is liable to be rejected at the threshold as the same was made long after the period prescribed by law to put the said agreement for sale for registration had expired. He relies on Section 23 of the Registration Act.
7. According to Mr. Mukherjee, the application for appointment of an Arbitrator ought to have been filed within the period specified under the said section of the Registration Act, instead the agreement was entered into in 2020 and the petitioner approached the respondent for the first time on 31st July, 2024, seeking registration of the document.

8. The records reveal that the agreement for sale was entered into on March 4, 2020 and the petitioner was given a letter of possession unit/flat on October 12, 2023. The letter of possession issued by the developer is available in the records. The factum of the agreement of the sale is not in dispute. It is contended by the petitioner that they have neither been given physical possession nor has the developer proceeded to register the agreement for sale. These are the breaches complained of.
9. The decision cited by Mr. Mukhrjee does not help the case of respondent at this stage, inasmuch as, while discussing the provisions of Registration Act, their Lordships held that the disputes were factual in nature and were triable and as such the rejection of the plaint by the High Court on the ground that the relief was barred by limitation, as the agreement was unenforceable in law for not having been registered at the appropriate stage, was held to be incorrect. In this case also the issue of limitation is a triable issue.
10. In any event, the notice invoking arbitration enumerates the alleged breaches committed by the respondent according to the petitioner. The prayers can also be moulded before the learned Arbitrator, if necessary. Enforceability of the unregistered agreement for sale cannot be looked into at this stage. The same is left open to be decided by the learned Arbitrator.

11. Under such circumstances, the application is disposed of by appointing Mr. Swatarup Banerjee learned Advocate (Mob. No. 9831113566), as the Arbitrator, to arbitrate upon the disputes between the parties.
12. All issues are kept open to be decided at the appropriate stage.
13. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix his/her own remuneration as per the Schedule of the Act.
14. The application is, accordingly, disposed of.

(SHAMPA SARKAR, J.)