

ORDER

OD – 4

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

AP/153/2024
RAJIB GHOSAL & ANR.
VS
CANOPY PROJECTS PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 27th November 2025.

Appearance:-

Mr. Samridha Sen, Advocate
Mr. Malay Kr. Seal, Advocate
...for the petitioners.

Ms. Debanwita Pramanik, Advocate
Mr. Anirban Chatterjee, Advocate
... for the respondent.

The Court:- The learned advocate for the petitioners submits that the dispute should be referred to arbitration on the basis of clause 15.1 under Article-XV of the agreement for sale.

According to the said clause, all disputes arising out of the agreement shall be referred to arbitration.

The allegation is that the respondent failed to hand over a plot in the project named and styled as 'Olive Garden', on the basis of the agreement. Correspondence continued between the parties. Ultimately, sometime in 2024, the petitioner asked for refund of the advance payment and a reply was received from the learned advocate of the respondent, inter alia, informing the petitioner that as a gesture of goodwill, the money shall be refunded subject to certain standard deductions.

It is contended that, despite such letter, the refund was not made. Hence, the Court must refer the dispute to arbitration.

The notice invoking arbitration was issued on January 10, 2024 and it records that the respondent had failed to complete the project within the time specified and also within the time extended by conduct of the parties. The petitioners rely on a decision of a co-ordinate Bench. It is urged that in respect of a similar agreement containing the same clauses, another prospective buyer like the petitioners had approached this Court for appointment of an arbitrator and the Court had allowed the same.

Ms. Pramanik, learned advocate for the respondent submits that the claim is 'deadwood' and this Court should weed out such ex facie time barred claim and refrain from referring the dispute to arbitration. The respondent should not be unnecessarily dragged into a proceeding which does not have any legal basis.

Upon perusal of the records and the opposition filed by the respondent, this Court is of the view that even if the prayer for specific performance of the agreement is barred by limitation, whether the claim for refund is barred by limitation or not, is an arbitrable dispute. Such finding is based on the fact that the respondent had agreed to refund the advance payment upon certain standard deductions. As yet, such refund has not been made. Thus, whether the claim of the petitioner would be barred by limitation in such fact situation, must be decided by the learned arbitrator. The point of limitation is kept open. The arbitrability of the dispute in this case shall be decided by the learned

Arbitrator. Other objections available can also be raised before the learned arbitrator.

Under such circumstances, the application is allowed and accordingly disposed of by appointing Mrs. Shohini Chakraborty, [Mob. No. 9231661008], as an arbitrator to arbitrate upon the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix her remuneration as per the Schedule of the Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)

S. Kumar