

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

AP/156/2025
M/S PRAGATI CONSTRUCTION
VS
SRI ARDHENDU KUMAR DUTTA AND ORS

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date : 18th September, 2025

*Appearance :-
Mr. Mit Guha Roy, Adv.
Mr. Debarghya Banerjee, Adv.
for petitioner.
Mr. A. Kar, Adv.
Mr. S. Das, Adv.
...for respondent.*

1. This is an application for appointment of an Arbitrator in terms of clause 11 of the development agreement dated August 16, 2011. The petitioner seeks specific performance of the agreement dated August 16, 2021.
2. Article XIV provides the Disputes Resolution Clause. Clause 16 thereunder states that, save and except what has been provided in the foregoing paragraph of the said clause, all disputes and difference between the parties, which arose during the construction shall be referred to adjudication by two arbitrators; one to be appointed by each party and the third arbitrator shall be an independent arbitrator, jointly appointed as an umpire at the commencement of such reference. The proceedings shall be governed by the Arbitration and Conciliation Act, 1996.
3. It is submitted that the respondents failed and neglected to hand over possession of the property over which the construction was to be carried out by the developer/petitioner. Negotiations failed and, as such, a notice invoking arbitration was issued.

4. Mr. Kar submits that the submissions of the petitioner are not correct. The petitioner did not show any inclination to perform the obligations arising out of the agreement. The respondents were always willing to refund the advance paid by the petitioner.
5. Both the parties submit that a sole arbitrator be appointed and agree accordingly. Disputes raised by both the parties appear to be triable issues and, as such, the matter has to be referred to arbitration for adjudication on the basis of the evidence that may be led by the parties. Thus, all objections including the arbitrability and jurisdiction are left open to be raised at the appropriate stage.
6. Under such circumstances, Justice Nadira Patherya, former Judge of this Court is appointed as the learned Arbitrator. This appointment is subject to 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.
7. This application is disposed of accordingly.

(SHAMPA SARKAR, J.)