

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/691/2025
REALMARK ORACLE PROJECT LLP
VS
PRIYAMA MAJUMDER ALIAS PRIYAM MOZUMDER AND ORS.

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

Appearance:
Mr. Aditya Chakraborty, Adv.
Mr. Tuhin Subhra Raut, Adv....for petitioner.

Ms. Satabdi Dutta, Adv.
Mr. Sankha Subhra Dutta, Adv. ...for respondents.

1. The dispute arose out of a development agreement dated March 16, 2016 and the supplemental agreements dated February 7, 2017, November 26, 2018 and June 10, 2019.

2. The petitioner is the developer. It is contended that the agreement for developing a commercial-cum-residential complex was entered into between the parties. The owner's allocation and the developer's allocation were mentioned in the agreement. Thereafter, there were changes in such allocations and supplemental agreements were entered into.

The development has an arbitration clause. The supplemental agreements also provide that the terms and conditions of the development agreement shall be applicable in respect of the said agreements. Hence, it is prayed that the dispute which had arisen on account of the owners not accepting possession of the 11th floor and not paying the GST and other service charges, should be referred to a sole arbitrator as per clause 25 of the development agreement.

3. The arbitration clause provides that, parties shall try to settle the disputes amicably and in case of failure to do so, the disputes shall be

referred to a sole arbitrator to be jointly appointed by the parties. The provisions of the Arbitration and Conciliation Act, 1996 shall apply. The arbitration proceeding shall be exclusively conducted in Kolkata and shall be governed by the laws of India. The language of arbitration shall be in English.

4. According to the petitioner, the respondents have been requested to take possession and pay the service charges and other statutory dues as per the conditions of the agreement, on and from 2021. It is alleged that the respondents failed to do so and they committed breach which necessitated issuance of the notice invoking arbitration.

5. Prior to the filing of an application before this court, the petitioner had unilaterally appointed an arbitrator. The respondents raised objection and the said proceedings were dropped, allowing the parties to proceed in accordance with law. Thereafter, this application has been filed for appointment of an arbitrator by the court. The provision for appointment of an arbitrator unilaterally, is no longer permissible in law.

6. Learned advocate for the respondents submits that the disputes are not arbitrable as the claims of the petitioner are neither supported by the terms of the contract nor by the supplemental agreements entered into between the parties. It is also submitted that the claims are barred by limitation.

7. Having considered the rival contentions of the parties, this court comes to the, prima facie, finding that, there are existing disputes. The land owners also have several allegations against the developer with regard to the construction and have also alleged breach. These factual aspects will have to be decided by the learned arbitrator. The issue of arbitrability of the disputes, whether the supplemental agreements are covered by the arbitration clause or whether the claims of the petitioner are covered by the development agreement, etc. are all matters which will have to be decided by the learned arbitrator, on the basis of the materials to be produced by the parties.

8. Leaving all questions open to be decided by the learned Arbitrator, this application is disposed of.

9. Accordingly, Mr. Sundar Gopal Bhattacharyya, (9830716384) learned Advocate, is appointed as the learned Arbitrator.

10. This order is passed subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

11. The learned Arbitrator shall fix his remuneration in terms of the Schedule of the Act.

12. AP-COM/691/2025 is accordingly disposed of.

(SHAMPA SARKAR, J.)

S. Mandi/pkd.