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ORDER SHEET  
IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
ORIGINAL SIDE

AP/203/2025  
PRIYA MUKHERJEE  
VS  
BAGHBAZAR SARBOJANIN DURGOTSAV AND  
EXHIBITION AND ORS.

BEFORE:  
The Hon'ble JUSTICE SHAMPA SARKAR  
Date: 16<sup>th</sup> December, 2025.

*Appearance :*

*Mr. Dipankar Saha, Adv.*  
*Mr. Deepranjan Mukhopadhyay, Adv.*  
*Mr. Subhom Kr. Das, Adv.*  
*Mr. S. K. Kabir, Adv. ...for petitioner.*

*Mr. Aman Agarwal, Adv.*  
*Mr. Arun Kumar Singh, Adv. ...for respondent nos.1-4.*

The Court: This is an application for appointment of an arbitrator for adjudication of the disputes between the parties. The disputes arose out of a Memorandum of Agreement dated August 1, 2017. The said Memorandum of Agreement was entered into between the respondent no.1 Society and the petitioner. The respondent no.1 Society, was described as the owner and was represented by its President, General Secretary and Treasurer, namely, Mr. Samar Kumar Paul, Mr. Dipak Kumar Banerjee and Mr. Partha Roy.

According to the petitioner, who was a tenant under the said Society, the agreement provided that, upon completion of the construction, the owner would hand over khas possession of the flat to the tenant, in a habitable condition, in the newly constructed building mentioned in Schedule-B of the said agreement. The tenant would not make payment for construction. Only the registration charges for the deed of sale to be executed between the Society and the petitioner, would be borne by the petitioner. The petitioner was also required to surrender the existing electric meter, which

was in her own name to the CESC Ltd. After construction of the building, a new electric meter would be provided by the owner at its own cost.

The specific contention of the petitioner is that, in spite of the construction having been completed, the owner had not handed over possession of the flat in question. The owner had not shown any inclination to execute the deed of sale. The said Memorandum of Agreement contains an arbitration clause. It provides for settlement of disputes through arbitration. The petitioner's allegation is that sometime in 2024, the petitioner came to know about the completion of the building and wrote to the Executive Engineer (Building), Borough-I, Kolkata Municipal Corporation, with a query as to whether a completion certificate had been issued in respect of the said building or not. It was informed to the petitioner that the completion certificate had already been issued. By notice dated March 18, 2024, the learned advocate for the petitioner requested the President, General Secretary and Treasurer to hand over possession of the flat in favour of the petitioner as per Schedule-B of the Memorandum of Agreement.

As the letter did not lead to any fruitful result, Title suit no.604 of 2024 was filed before the learned Judge, 10<sup>th</sup> Bench, City Civil Court at Kolkata. The respondent filed an application under sections 5 and 8 of the Arbitration and Conciliation Act, 1996. The respondents prayed for stay of the suit or in the alternative, the suit be referred to arbitration under section 8 of the Arbitration and Conciliation Act, 1996.

The specific contention of the respondents before the learned Civil Court was that the unregistered agreement provided that, disputes between the parties would be settled by arbitration. Thus, the respondent contended that the subject matter of the suit was covered by the arbitration clause. By an order dated July 14, 2025, the learned Court referred the dispute to arbitration. A notice invoking arbitration was issued on 10<sup>th</sup> September,

2025. The respondents did not take steps. Accordingly, the petitioner has filed this application before this court.

Learned advocate for the respondents submits that the application should fail for mis-joinder of parties. The President, General Secretary and Treasurer had signed the agreement and their names appeared in the agreement, but they have not been impleaded by name in this proceeding, but by designation.

I find that the Memorandum of Agreement dated August 1, 2017, was entered into between the petitioner and the Society. The society was depicted as the owner and was represented by the then President, General Secretary and Treasurer. A registered Society has to be represented by an office bearer. Three of the office bearers represented the Society at the time of execution of the Memorandum of Agreement. The office bearers change at regular intervals. Thus, the President, General Secretary and Treasurer have been impleaded by their designation.

This court does not find any illegality or irregularity in impleading these respondents, however, the issue of mis-joinder of parties can be decided by the learned Arbitrator and this point may be raised before the learned Arbitrator at the appropriate stage by the respondents.

With regard to limitation, it is submitted by the learned advocate for the respondents that the averments in the application under section 9 of the Arbitration and Conciliation Act, would indicate that sometime in 2015, the petitioner was aware that her name was not included in the list of tenants, who were eligible to be handed over the flat in the newly constructed building. Thus, the claim for specific performance of the Memorandum of Agreement is barred by limitation. The arbitration clause should have been invoked within three years from the knowledge that the name of the petitioner was omitted from the list of tenants.

In my, prima facie, view this contention can be negated, inasmuch as, in August, 2017, the agreement was entered into between the parties. This means that in 2017 the petitioner was recognised as a tenant and there was a promise to hand over possession of a flat to her, after the building was constructed. Time was not the essence. The agreement does not mention the period within which the flat would be handed over. The time for completion of the construction is also not mentioned. Thus, in this case, limitation is a triable issue, which will have to be decided on evidence. The specific case of the petitioner is that, the construction was completed in 2024. She came to know about such construction in 2024. She approached the respondents, seeking delivery of possession of the flat in question. The respondents did not take steps. She was compelled to file a suit. The respondents themselves prayed before the learned Civil Court for reference of the dispute to arbitration.

Under such circumstances, this application is allowed. Mr. Jayjit Ganguly, learned Advocate, Bar Library Club (Mob:- 9830052031), is appointed as the arbitrator, to adjudicate the disputes between the parties.

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

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

AP/203/2025 is accordingly disposed of.

(SHAMPA SARKAR, J.)