

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

AP/202/2024

PRODYOT KUMAR HALDER AND ANOTHER
VS
CAPITAL CONSTRUCTION COMPANY AND OTHERS

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 19th August 2025.

Appearance:

Mr. Shyamal Chakraborty, Adv.
Ms. Manju Jaiswal, Adv.
Mr. Achintyo Kr. Mukherjee, Adv. ...for petitioners.
Mr. Aritra Basu, Adv.
Ms. Sanjana Sinha, Adv....for respondents.

1. This is an application for appointment of an arbitrator under Clause 25 of the Agreement for Sale dated December 27, 1991.
2. The petitioners contend that they had agreed to purchase a flat from the respondents. The respondents are the developers.
3. Accordingly, the petitioners booked a flat being Unit no.51 at premises no.5A/B, Chowringhee Lane, Kolkata 700 016, for a total consideration of Rs.5,69,250/-.
4. Although the respondents were under an obligation to hand over the flat and register the deed of conveyance, the respondents did not do so. The petitioners drew attention to the Court to the electricity bills which were obtained in their names, upon payment of transformer charges.
5. According to Mr. Chakraborty, the terms and conditions of the Agreement provided that the developer was responsible for registration of the deed of conveyance upon acquiring title or upon causing such

registration through the owner, as the case would be. The petitioners were allegedly assured by the respondents that the conveyance deed would be registered in due course. In view of the disputes between the owner and the developer, the developer acquired title sometime in 2016. The petitioners were not informed. The petitioners waited for the registration and ultimately in 2024 invoked the arbitration clause, when the repeated requests went unheeded.

6. Mr. Basu submits that the claim is deadwood. The petitioners seek specific performance of an agreement for sale which was executed in 1991. Mr. Basu further contends that the respondents had time and again asked the petitioners to pay up the balance sum and take possession of the unit upon registration of the conveyance deed. The petitioners failed to perform their part of the contract.
7. Heard learned advocates for the respective parties. This Court is of the view that the issue of limitation is a mixed question of fact and law. Although it is contended by Mr. Basu that the respondents had time and again asked the petitioners to comply with their obligations, there are no contemporaneous documents before this Court in support of such contention. However, the respondents always have the liberty to adduce evidence to demonstrate that there were several meetings between the parties in this regard and the petitioners failed to perform their obligation under the contract. The petitioners also can adduce evidence and produce witnesses to prove the contrary. Thus, limitation is a mixed question of law and fact. In this agreement, time was not of the essence. Thus, the limitation would run from refusal to perform by

the respondents, but the date of such refusal is not ex facie available. The fact remains that until 2016, the respondents did not have the authority to transfer the property. The fact remains that the petitioners have paid more than Rs.5 lakhs, had obtained electricity connection and had also paid for the transformer.

8. For the referral court to decide the issue of limitation, at this juncture, would be improper, as triable issues have arisen which are within the domain of the learned Arbitrator. This Court finds some substance in the contentions of Mr. Basu. Thus, the issue of limitation and arbitrability of the disputes shall be raised before the learned Arbitrator at the appropriate stage. All points shall be decided by the learned Arbitrator.
9. This application is allowed, by keeping the question of limitation and other objections open, for a decision by the learned Arbitrator.
10. Under such circumstances, the application is disposed of. This Court appoints Mr. Sounak Bhattacharya, [Mob No: 9830420018] Advocate, 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 his remuneration as per the Schedule of the Arbitration and Conciliation Act, 1996.

(SHAMPA SARKAR, J.)