

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

AP/165/2021

ISWAR GOPALESWAR MAHADEB AND ORS
VS
KYAL DEVELOPERS PRIVATE LIMITED AND ANR.

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 3rd February, 2026

Appearance:

Ms. Prajaaini Das, Adv.
...for the petitioners.

Ms. Labanyasree Sinha, Adv.
Ms. Somali Bhattacharya, Adv.
Ms. Megha Das, Adv.
...for the respondents.

The Court: This is an application under Section 11 of the Arbitration and Conciliation Act, 1996. The matter had been heard on diverse occasions and in view of the nature of disputes repeated opportunities were granted to the parties to arrive at an amicable settlement.

The disputes arise out of a development agreement dated 17 April, 2011 by and between the petitioners and the respondents. By the said agreement, the petitioners were *inter-alia* entitled to 50% of the constructed space in a new building to be constructed at the said premises alongwith 50% the roof thereof together with building right and also 50% of car parking spaces in the building together with 50% undivided proportionate impartible part or share in the said premises attributable thereto and together with 50% in all common areas, facilities and amenities.

Clause 24 of the agreement provides as follows:

“24. ARBITRATION:

The Parties shall attempt to settle any disputes of differences in relation to or arising out of or touching this Agreement or the validity, interpretation, construction, performance, breach of enforceability of this Agreement (collectively Disputes), by way of negotiation. To this end, each of the Parties shall use its reasonable endeavors to consult or negotiate with the other Party in good faith and in recognizing the Parties’ mutual interests and attempt to reach a just and equitable settlement satisfactory to both Parties. If the Parties have not settled the Disputes by negotiation within 30 (thirty) days from the date on which negotiations are initiated, the Disputes, if not solved/settled, shall be referred to, and finally resolved by, arbitration by an Arbitration Tribunal formed in terms of the Arbitration and Conciliation Act, 1996 and Rules and amendments made thereunder. The arbitration proceedings shall be conducted at Kolkata and in English.”

It is submitted on behalf of the petitioners that they have not been given the entire allocation in terms of the agreement and there has been a breach of the obligations under the agreement by the respondents. In such circumstances, the petitioners has invoked the arbitration clause and seeks reference to arbitration.

On behalf of the respondents it is submitted that the agreement stood novated by different agreements entered into by and between the parties. It is also contended that the entire obligations of the respondents have been duly performed and discharged. In such circumstances, there is no dispute capable of being referred to arbitration and the instant application is liable to be dismissed.

By a notice dated February 5, 2021 issued under Section 21 of the Arbitration & Conciliation Act, 1996, the petitioners had invoked the arbitration clause and requested for appointment of an Arbitrator. The disputes enumerated in the notice touch upon the construction and the interpretation of the

development agreement dated 17 November, 2011. It is evident that the disputes *inter-alia* pertain to the discharge of the obligations of the respondents under the above agreement.

In view of the clear and unequivocal language contained in the arbitration clause, there is no ground to disallow the reliefs prayed for. To this extent, the arguments made on behalf of the respondents, *i.e.*, novation, performance and discharge and all matters are all within exclusive the domain of the Arbitrator.

In such circumstances, there is no other ground for rejection of this application.

In view of the above, Mr. Amitesh Banerjee, Senior Advocate is appointed as Sole Arbitrator in terms of the above clause to adjudicate the disputes by and between the parties. The appointment is subject to the Sole Arbitrator communicating his consent in the prescribed format to the Registrar, Original Side of this Court within three weeks from date.

With the above directions, AP/165/2021 stands allowed.

(RAVI KRISHAN KAPUR, J.)