

OCD 17

ORDER SHEET
AP-COM/774/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

HOUSE AND BRIDGE (INDIA) PRIVATE LIMITED
VS
MOHAN KUMAR ROY

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 27th January, 2026.

Appearance:
Mr. Biswaroop Mukherjee, Adv.
Mr. Avijit Dey, Adv.
. . .for the petitioner.

Mr. Diptomoy Talukder, Adv.
Mr. Ashish Chakraborty, Adv.
. . .for the respondent.

The Court:

1. This is an application for appointment of an Arbitrator to resolve the disputes which have arisen between the parties, pursuant to a development agreement dated July 4, 2017. The petitioner is the land owner and the respondent is the developer. The agreement cast rights, liabilities and obligations on both the parties.
2. Clause 15.1 under Article XV deals with construction and completion. Clause 15.1, thereunder, provides that the construction shall be completed within 24 months from the date of sanction of the

proposed building plan by the Kolkata Municipal Corporation and a grace period of six months may be allowed.

3. It is alleged that the project has been partially completed and the owners' allocation was handed over. However, the owners found defects in the construction and raised a dispute. They asked the respondent to rectify those defects. The respondent did not take steps. Hence the dispute persisted. A notice invoking arbitration was issued on 19th June, 2025. Article XXIX deals with the dispute resolution clauses. Clause 29.1 provides that all disputes and differences between the parties, touching the agreement or the construction or interpretation thereof, shall be referred to arbitration. Each party shall nominate an Arbitrator and the nominees of the parties shall appoint the third or the presiding Arbitrator.
4. The petitioner submits that as the above mechanism has failed, the respondent has not agreed to the nomination of the petitioner. This Court may appoint a sole Arbitrator. Reference is made to a notice issued by the learned advocate for the respondent dated July 30, 2025, by which the respondent agreed to approach the Court for appointment of an Arbitrator.
5. Although, a question is raised with regard to the maintainability of the application in the commercial division of this Court, the Division Bench in Ashok Saraf and Ors. Vs. Asansol Durgapur Development Authority reported in 2025 SCC Online Cal 8829, held that any

element of profit making or of profit sharing if contemplated under the agreement shall make such agreement a commercial one. Thus, the dispute arises out of such a development agreement. The same is a commercial dispute, as there is a commercial motive in the enterprise and the developer had entered into the venture with the intention to earn profits, as a part of its regular business. In *Blue Nile Developers Private Limited Vs. Movva Chandra Sekhar and Ors.* reported in 2021 SCC Online AP 3964, the Andhra Pradesh High Court had held that under Section 2(1)(c)(vi) of the Commercial Courts Act, 2015, construction and infrastructure should be read as separate and distinct terms. It was improper to hold that only constructions involving infrastructural development could be treated as a commercial venture.

6. In any event, from the agreement between the parties, it appears that the construction was partly commercial and partly residential. The ground floor of the said building comprised of approximately 50% of saleable area including car parking and other constructed spaces for sale. The other floors were for residential units.
7. Under such circumstances, it is evident that the agreement between the parties was to commercially exploit the land by building thereupon and the respondent as the developer was required to render services. The consideration for such service was the developer's allocation which could be sold to third parties.

8. Thus, the construction was made by the developer with a profit earning motive, by selling residential and commercial units from the developer's allocation.
9. Under such circumstances, this Court allows the application by appointing a sole Arbitrator to adjudicate the disputes between the parties.
10. Mr. Ritoban Sarkar, learned Advocate, Bar Library Club, is appointed as the learned 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.
11. The learned Arbitrator shall fix his remuneration as per the Schedule of the Act.
12. All issues with regard to jurisdiction, arbitrability, admissibility and limitation etc., shall be decided by the learned Arbitrator in accordance with law, if raised.
13. The application is, accordingly, disposed of.

(SHAMPA SARKAR, J.)