

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

AP/224/2025

RINKU KHAN

VS

TATA CAPITAL HOUSING FINANCE LIMITED AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 3rd February, 2026.

Appearance:

Mr. Asit Hossain, Adv.

Mr. Debraj Sinha, Adv.

Mr. S. Mondal, Adv. ..for petitioner.

Ms. Soni Ojha, Adv.

Ms. Sambrita B. Chatterjee, Adv. ...for respondent no.1.

Mr. Debjit Mukherjee, Adv.

Mr. L. R. Mondal, Adv. ...for respondent no2.

The Court: This is an application for appointment of an arbitrator. Clause 20 of the tripartite agreement dated 30th May, 2016 is the dispute resolution clause, which provides that any dispute between the parties in connection with the agreement or the security hereof or the validity, interpretation, implementation or alleged breach of the agreement shall be at the first instance to be resolved by a conciliation or negotiation and if such conciliation or negotiation fail, the same shall be settled by arbitration to be held at the place mentioned in Schedule-A of the loan agreement in accordance with the Arbitration and Conciliation Act, 1996. Schedule-A of the loan agreement mentions place as Kolkata where the execution of the agreement took place.

Learned advocate appearing for the finance company submits that although the finance company is a signatory to the said tripartite agreement, the home loan agreement was entered into between the petitioner and the finance company wherein the place of arbitration had been agreed to be either Chennai or Delhi. Under such circumstances, this court does not have

jurisdiction to entertain this application. The contention of the finance company is not accepted, inasmuch as, the petitioner has raised a dispute with regard to the breach of the conditions under the tripartite agreement by the developer and seeks enforcement thereof.

According to the petitioner, the tripartite agreement provides that the loan that was sanctioned in favour of the petitioner would be paid by the finance company directly to the developer. The petitioner was not under any obligation to pay the money to the developer. The money was to be paid directly to the developer towards consideration of the flat that was to be sold by the developer to the petitioner. In the event the developer failed to hand over possession to the purchaser, the money that had been sanctioned or released by the finance company in favour of the developer would be refunded by the developer directly to the finance company. Under such circumstances, it is submitted that the jurisdiction clause in the home loan agreement entered into between the petitioner and the finance company had been superseded by the jurisdiction clause in the tripartite agreement. The petitioners contend that they are not liable to pay any money to the finance company towards repayment of the loan. As the dispute arose out of the tripartite agreement in this case, the place of arbitration being agreed to be Kolkata, this court will have the jurisdiction to entertain the application.

Mr. Mondal, learned advocate appearing for the developer submits that the allegations of the petitioner are not accepted. The developer did not commit any breach of the agreement. The developer does not have any liability to repay the money to the finance company.

It appears that clause 20 of the tripartite agreement dated 30th May, 2016 contains an express arbitration clause. It also appears that the petitioner invoked arbitration by a notice dated 9th July, 2025. The respondent no.1 replied to the same by letter dated 21st July, 2025 with a request that the arbitration proceeding should be held within Kolkata. The

petitioner's case is that the agreement for sale was entered into in 2016, and thereafter the petitioner and the respondents entered into a tripartite agreement. The petitioner has raised a dispute not only with regard to the failure on the part of the developer to hand over possession of the flat in terms of the agreement for sale, but also stated that as the developer had sold away the flat to third parties, the petitioner was not liable to pay the instalments to the finance company. The petitioner claims to have adhered to the terms and conditions of the tripartite agreement. The developer was under the obligation to return the money to the finance company under the said agreement on failure to hand over the flat and the finance company could not have any claim against the petitioner for any default. Thus, the dispute arose not only for the breach of the agreement for sale, but also breach of the tripartite agreement. The petitioner further states that the finance company had been trying to initiate proceedings against the petitioner for default, but under the tripartite agreement, the developer should pay back the petitioner.

This court holds that, the issue of jurisdiction, whether the arbitration clause in the tripartite agreement will cover the entire dispute raised by the petitioner, whether the claims of the petitioner are barred by limitation etc., shall be decided by the learned Arbitrator as and when raised by the respondents. Whether part of the claim of the petitioner arises out of the tripartite agreement is also an issue of jurisdiction, which is to be decided by the learned Arbitrator.

Accordingly, Mr. Ayan Banerjee, learned Advocate [M:9830916210] is appointed as the learned Arbitrator to resolve the disputes between the parties. The learned Arbitrator shall fix his remuneration in terms of the Schedule of the Act.

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

All issues and objections raised by the respondents, shall be decided by the learned Arbitrator.

AP/224/2025 is accordingly disposed of.

(SHAMPA SARKAR, J.)

pkd.