IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE

RESERVED ON: 22.09.2026
DELIVERED ON: 14.10.2026

PRESENT:
THE HON'BLE MR. JUSTICE GAURANG KANTH

AP 2 OF 2026

SRI SUBHOMOY CHAKRABORTY AND ANR.
VERSUS
SRI RUPESH KUMAR SINGH AND ORS.

Appearance: -

Mr. Jayanta Sengupta, Adv.
Ms. Shebatee Datta, Adv.
Mr. Satwik Beriwala, Adv.
..... for the Petitioners

Mr. Apurba Kumar Ghosh, Adv.
Ms. Swarupa Seth, Adv.
..... for the Respondent Nos. 1 and 2

JUDGMENT

Gaurang Kanth, J. **:-**

1. The Petitioners have preferred the present petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of a Sole Arbitrator in respect of disputes arising out of the Development Agreement dated 15.08.2020, registered on 01.12.2020, entered into between the Petitioners, Respondent Nos. 3 to 6 and Late Sila Bose, as owners, and Respondent Nos. 1 and 2, as developers.

2. The subject property comprises land measuring about 3 cottahs 1 chittack together with an old dilapidated structure at Premises No. 158, Dewangazi Road, P.O. and P.S. Bally, District Howrah, within Ward No. 53 of the Howrah Municipal Corporation, formerly Bally Municipality (hereinafter referred to as

"the subject property"). The Petitioners, Respondent Nos. 3 to 6 and Late Sila Bose were the owners of the subject property. Respondent Nos. 1 and 2 carry on partnership business under the name and style of "Shree Ganesh Kali Construction".

3. On 15.08.2020, the owners entered into a registered Development Agreement with Respondent Nos. 1 and 2 in respect of the subject property. On the same date, the owners also executed a registered Development-cum-General Power of Attorney in favour of Respondent Nos. 1 and 2. In terms of Clauses 5.1, 8.2 and the Third Schedule to the Development Agreement, the original title documents were handed over to Respondent Nos. 1 and 2. According to the Petitioners, vacant possession of the entire property was thereafter also handed over to Respondent Nos. 1 and 2.

4. Under Clause 8.1 of the Development Agreement, Respondent Nos. 1 and 2 were required to pay a total sum of Rs.10,00,000/- to the owners in three instalments, namely, Rs.1,00,000/- upon execution of the agreement, Rs.4,00,000/- upon handing over of vacant possession and the balance Rs.5,00,000/- upon sanction of the building plan. According to the Petitioners, only the first instalment of Rs.1,00,000/- was paid and the sum of Rs.4,00,000/- payable upon handing over of possession remains unpaid.

5. Under Clauses 9.2 and 9.3 of the Development Agreement, Respondent Nos. 1 and 2 were required to provide the owners with an allocation of constructed area aggregating 2,850 sq. ft., comprising a 700 sq. ft. flat at the front of the first floor with verandah, a 600 sq. ft. flat at the front of the second floor with verandah, a 350 sq. ft. flat at the back of the ground floor, three flats measuring 350 sq. ft. each at the back of the ground/first floor and an open garage measuring 150 sq. ft.

6. Clause 5.6 of the Development Agreement contemplated delivery of possession within 36 months from the date of sanction of the building plan or from the date of handing over of physical possession, whichever was later, with a further grace period of six months.

7. Sila Bose died unmarried on 28.12.2020. Respondent Nos. 3 to 6 are stated to be her heirs and legal representatives.

8. According to the Petitioners, despite having received the title documents and vacant possession, Respondent Nos. 1 and 2 failed to apply for or obtain sanction of the building plan.

9. Petitioner No. 1, through his Advocate, addressed a letter dated 29.11.2022 to Respondent Nos. 1 and 2, on his own behalf and on behalf of Respondent Nos. 3 to 6, calling upon them to pay within 30 days, with interest, the sum of Rs. 4,00,000/- that fell due under Clause 8.1 of the Development Agreement upon the handing over of possession on 16.04.2021, failing which civil and criminal proceedings would be initiated. Respondent Nos. 1 and 2 replied on 19.12.2022, contending that the notice was bad in law. They further contended that the owners had failed to hand over vacant possession within six months of registration as stipulated in Clause 5.4, despite the developer having paid rent for their alternative accommodation, and had also failed to furnish the original documents under Clause 5.1, by reason of which the developer could not proceed with mutation and sanction of the building plan.

10. Thereafter, on 27.09.2023, Petitioner No. 1 made an application under Section 6 of the Right to Information Act, 2005 before the S.P.I.O., Bally Municipality. By a communication dated 07.11.2023, he was informed that no building plan had been sanctioned in respect of the subject property.

11. The Petitioners thereafter addressed a further letter dated 15.01.2025 to Respondent Nos. 1 and 2, which was received by Respondent No. 1, stating that vacant possession and all original documents had been delivered on 15.09.2020. The letter called upon them to obtain a sanctioned building plan and start construction within 15 days, failing which legal action would follow.

12. Respondent Nos. 1 and 2 replied on 10.02.2025 stating that the owners had neither handed over vacant possession nor furnished the original documents, without which the plan could not be submitted. The reply called upon the owners to do so within seven days, failing which the developer would stop paying rent for their alternative accommodation.

13. The Petitioners responded through their Advocate on 27.02.2025, denying these allegations, reiterating that possession and documents had been delivered on 15.09.2020, and stating that legal action would be taken.

14. The Development Agreement contains an arbitration clause providing, *inter alia*, that disputes or differences between the parties relating to the property, the development agreement, its terms, any breach thereof or its interpretation, shall first be attempted to be resolved amicably and, failing such resolution, shall be referred to a Sole Arbitrator. The arbitration proceedings are to be held at Kolkata in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

15. Disputes having arisen between the parties, the Petitioners issued a notice dated 09.06.2025 under Section 21 of the Act, invoking the arbitration agreement and nominating a Sole Arbitrator. According to the Petitioners, Respondent Nos. 1 and 2 neither accepted the nomination nor furnished any response thereto within the prescribed period. The Petitioners further allege that, after receipt of the notice, Respondent Nos. 1 and 2 threatened to

commence construction without a sanctioned building plan and to part with possession of the subject property.

16. The Petitioners have accordingly approached this Court under Section 11 of the Act seeking appointment of a Sole Arbitrator to adjudicate the disputes and differences arising out of the Development Agreement dated 15th August, 2020.

Submissions on behalf of the Petitioner

17. Mr. Jayanta Sengupta, Learned Advocate appearing for the Petitioners submitted that the existence and validity of the arbitration agreement contained in the registered Development Agreement dated 15.08.2020, executed by the Petitioners, Respondent Nos. 3 to 6 and Late Sila Bose, as owners, and Respondent Nos. 1 and 2, as developers, are not in dispute. The agreement provides for reference of disputes arising out of or in relation to the agreement and the subject property to a sole Arbitrator, with the seat of arbitration at Kolkata. Respondent Nos. 3 to 6, being co-owners, support the Petitioners' case, and the developers are the only contesting parties. It was submitted that the disputes arising between the parties are arbitrable in nature.

18. It was further submitted that the owners duly performed their obligations under the agreement by handing over the original title documents in terms of Clauses 5.1, 8.2 and the Third Schedule thereto and by delivering vacant possession of the entire property to the developers. However, Respondent Nos. 1 and 2 paid only Rs. 1,00,000/- towards the deposit stipulated under Clause 8.1, leaving a balance of Rs. 4,00,000/- payable upon delivery of possession. The developers have also failed to obtain a sanctioned building plan, as evidenced by the communication dated 07.11.2023, issued by the S.P.I.O.,

Bally Municipality, and their own letter dated 10.02.2025. The plea that the requisite documents had not been handed over was an afterthought, raised for the first time in the reply dated 19.12.2022, following the Petitioners' complaint regarding delay by their letter dated 29.11.2022. No contemporaneous document prior thereto records any demand for such documents. In any event, copies of the public documents were furnished again on 22.08.2025, by way of abundant caution. It was contended that the developers had deliberately withheld further development to compel the owners to accept amended terms.

19. Mr. Jayanta Sengupta, learned Advocate further submitted that, upon disputes having arisen, the Petitioners issued a notice dated 09.06.2025, under Section 21 of the Arbitration and Conciliation Act, 1996, invoking arbitration and nominating a sole Arbitrator. Respondent Nos. 1 and 2 neither accepted the nomination nor took steps to constitute the Arbitral Tribunal within the statutory period of thirty days. Instead, they allegedly threatened to commence construction without a sanctioned building plan and to part with possession of the property. The pleas of limitation, estoppel, waiver, acquiescence, non-joinder and misjoinder were denied. Relying upon the correspondence dated 29.11.2022,19.12.2022, 15.01.2025, 10.02.2025 and 27.02.2025 it was contended that the disputes concerning the delay in obtaining the sanctioned building plan and commencing construction remained subsisting and that the correspondence evidenced the continuing jural relationship between the parties. Mr. Jayanta Sengupta, accordingly prayed for appointment of a fit and proper person as sole Arbitrator to adjudicate the disputes arising out of the Development Agreement dated 15.08.2020.

Submissions on behalf of the Respondent No. 1 and 2

20. Per contra, Mr. Apurba Kumar Ghosh, learned Advocate appearing for Respondent Nos. 1 and 2 opposed the petition, contending, at the outset, that the claims were *ex facie* barred by limitation. It was submitted that the notice invoking arbitration had been issued after expiry of the prescribed period of limitation and that the mere exchange of correspondence between the parties could not extend the period of limitation. Relying upon ***Bharat Sanchar Nigam Ltd. v. Nortel Networks India (P) Ltd.,*** reported as ***(2021) 5 SCC 738***, learned Advocate contended that the referral court could decline reference where the claims were manifestly time-barred and no subsisting dispute existed.

21. Learned Counsel appearing for Respondent Nos. 1 and 2 further opposed the petition by submitting that the Petitioners had failed to comply with their obligations under Clauses 5.1 and 8.2 of the Development Agreement by not furnishing all the original documents within the stipulated time, including the death certificates of the predecessors-in-interest and co-sharers. In the absence of such documents, the developers could not proceed with mutation before the B.L. & L.R.O. and the Municipal Authority or obtain sanction of the building plan. It was contended that the delay in development was attributable to the owners and that the Petitioners were, therefore, not entitled to claim the balance sum of Rs. 4,00,000/- at this stage. Despite repeated assurances at several meetings, the requisite documents were not furnished. The developers, however, remained ready and willing to proceed with the development. Learned Advocate maintained that the contents of the letters dated 19.12.2022 and 10.02.2025 were correct and denied the

allegations that the developers had threatened to commence construction without a sanctioned plan or to part with possession of the property.

22. Learned Counsel further submitted that Respondent Nos. 1 and 2 had duly replied to the Petitioners' letter dated 09.06.2025 by their Advocate's letter dated 09.07.2025 reiterating their grievance regarding non-furnishing of the title deeds, link deeds, death certificates of the erstwhile co-sharers and municipal and settlement records, and declining the proposal for arbitration. The allegation that the Respondents had failed to reply was, therefore, denied. It was also contended that no valid notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act, 1996, had been issued and that no sufficient ground had been made out for reference of the disputes to arbitration.

Legal Analysis

23. This Court heard the arguments advanced by the parties and examined the records and the judgments cited at bar.

24. The core issue in the present matter is whether, in exercise of jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996, this Court should appoint a sole Arbitrator to adjudicate the disputes arising out of the Development Agreement dated 15.08.2020. Related to this is the question of whether the objections raised by Respondent Nos. 1 and 2, particularly the objection that the claims are barred by limitation, can be decided at the referral stage or must be left open for adjudication by the Arbitral Tribunal.

25. The scope of enquiry by a referral court under Section 11 has been settled by a consistent line of recent decisions of the Supreme Court. Section 11(6A), inserted by the 2015 Amendment, confines the referral court to examining the existence of an arbitration agreement. Although Section 11(6A) was omitted

by the 2019 Amendment, that omission has not been notified, and the provision continues to govern. In ***In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899, 2023 INSC 1066***, a seven-Judge Bench relied on the Statement of Objects and Reasons of the 2015 Amendment. It held that at the stage of appointment, the Court must examine only the *prima facie* existence of an arbitration agreement and not other issues. Those other issues include any question whose examination would amount to unnecessary judicial interference in the arbitral process. The Bench emphasised the principle of competence-competence embodied in Section 16 of the Act, under which the Arbitral Tribunal is the preferred first authority to decide questions of its own jurisdiction, including questions of arbitrability and admissibility.

26. On the question of limitation, the earlier view was expressed in ***Vidya Drolia v. Durga Trading Corporation,*** reported as ***(2021) 2 SCC 1***, and ***Bharat Sanchar Nigam Ltd.*** *(supra).* In ***Bharat Sanchar Nigam Ltd.*** *(supra)*, the Supreme Court held that limitation goes to the admissibility of the claim and must ordinarily be decided by the Arbitral Tribunal. It also held that the referral court may decline to refer only in the very limited category of cases where there is not even a vestige of doubt that the claim is *ex facie* time-barred, and that if there is even the slightest doubt, the rule is to refer. Notably, the reference was refused in ***Bharat Sanchar Nigam Ltd.*** *(supra)* because the claimant had taken no action for over five and a half years after its claim was rejected. There was also no averment of any intervening fact that could extend limitation.

27. In ***Arif Azim Co. Ltd. v. Aptech Ltd.,*** reported as ***(2024) 5 SCC 313***, the Supreme Court held that an application under Section 11(6) is governed by

Article 137 of the Limitation Act, 1963. Time begins to run only after a valid notice invoking arbitration has been issued and the other party has failed or refused to comply with it. The Court also laid down a two-pronged test, requiring the referral court to examine both whether the Section 11 petition is within time and whether the claims are *ex facie* dead.

28. The second limb of that test was revisited in ***SBI General Insurance Co. Ltd. v. Krish Spinning*****,** reported as ***2024 SCC OnLine SC 1754***, in the light of *In* ***Re: Interplay*** *(supra)*. The Supreme Court clarified that, on the issue of limitation, the referral court must limit its enquiry to whether the Section 11(6) application itself has been filed within three years, computed as explained in ***Arif Azim*** *(supra)*. The Court further held that the referral court must not conduct an intricate evidentiary enquiry into whether the claims are time-barred, and must leave that question to the Arbitrator.

29. This position was reiterated in ***Aslam Ismail Khan Deshmukh v. ASAP Fluids Pvt. Ltd. & Anr.*** reported as ***2024 INSC 849.*** There, the respondents contended that the substantive claims were hopelessly time-barred, while the claimant relied on subsequent correspondence and a continuing breach. The Supreme Court declined to decide when the cause of action arose or whether the correspondence affected limitation, holding that these questions required an evidentiary enquiry reserved for the Arbitral Tribunal. It reiterated that at the Section 11 stage, the referral court need only examine whether an arbitration agreement exists, "nothing more, nothing less". The Court also noted that no appeal lies against an order under Section 11, so a referral court that strays into the Tribunal's domain and rejects the application risks leaving the claimant without a remedy. Any abuse of process can instead be addressed by the Tribunal through an appropriate order on costs.

30. Applying these principles, this Court first examines the existence of the arbitration agreement. Clause 26 of the registered Development Agreement dated 15.08.2020 provides arbitration as a dispute resolution mechanism. The execution and registration of the Development Agreement are not in dispute, and Respondent Nos. 1 and 2 have not questioned the existence or validity of the arbitration clause. Their own letters dated 19.12.2022 and 10.02.2025 rely on Clauses 5.1 and 5.4 of the same agreement. Respondent Nos. 3 to 6, the remaining co-owners and signatories, are before this Court and support the Petitioners. Late Sila Bose's interest is represented by Respondent Nos. 3 to 6 as her heirs, and under Section 40 of the Act the arbitration agreement is not discharged by the death of a party. The disputes concern the developer's alleged failure to pay the balance consideration, obtain a sanctioned plan and construct and deliver the owners' allocation. The developer's counter-allegation is that the owners failed to furnish documents and deliver vacant possession. These are disputes arising out of and relating to the agreement and its breach, and fall squarely within the clause. The existence of the arbitration agreement is therefore established.

31. Respondent Nos. 1 and 2 contend that no formal notice under Section 21 was issued. This contention cannot be accepted. The letter dated 09.06.2025 (Annexure "G") sets out the arbitration clause and states that the Petitioners request that the dispute be referred to arbitration. It also nominates Mr. Debapriyo Biswas, Advocate, as Arbitrator. Section 21 requires only a request for the dispute to be referred to arbitration, and it prescribes no particular form. Respondent Nos. 1 and 2 themselves admit in paragraphs 22 and 24 of their affidavit-in-opposition that they replied to this notice by their Advocate's

letter dated 09.07.2025. In that letter they declined to proceed with arbitration. The objection is thus contradicted by their own pleadings.

32. As to the limitation of the present application, the notice invoking arbitration was issued on 09.06.2025 and Respondent Nos. 1 and 2 refused to concur by their letter dated 09.07.2025. The right to apply under Section 11 accrued, at the earliest, upon that refusal. The present petition was filed on 05.01.2026, well within three years under Article 137 of the Limitation Act. The petition is therefore not barred by limitation.

33. The principal objection of Respondent Nos. 1 and 2 is that the claims themselves are time-barred and that the mere exchange of letters does not extend limitation. Following ***Krish Spinning*** *(supra)* and ***Aslam Ismail Khan Deshmukh*** *(supra)*, this question falls within the domain of the Arbitral Tribunal. Even under the more stringent standard laid down in ***Bharat Sanchar Nagam Ltd.*** *(supra),* the present case is not one of deadwood. Unlike ***Nortel*** *(supra)*, the record here shows continuous correspondence between the parties from 29.11.2022 to 27.02.2025 regarding the performance of the agreement. In their letter dated 10.02.2025, Respondent Nos. 1 and 2 themselves called upon the owners to hand over documents so that the project could commence, and offered to pay the stipulated amount thereafter. This shows that the parties treated the agreement as subsisting.

34. Under Clause 5.6, the developer's time for completion runs from the date of sanction of the building plan or delivery of physical possession, whichever is later. The plan has admittedly not been sanctioned, and the developer disputes that vacant possession was ever delivered. When the cause of action arose, whether there is a continuing breach, and what effect the correspondence has on limitation are all questions that require an evidentiary

enquiry. It cannot be said that there is not even a vestige of doubt that the claims are time-barred. This Court therefore declines to examine the question further, and leaves it to be decided by the learned Arbitrator.

35. The remaining objections are general and unparticularised: that the petition is barred under the Transfer of Property Act, the law of partition, the law of partnership and the Code of Civil Procedure, that it is bad for non-joinder or misjoinder, and that it is barred by estoppel, waiver and acquiescence. No specific provision or fact has been pointed out in support of any of them. All signatories to the Development Agreement, or their successors, are parties to this application. The rival contentions on whether the original documents and vacant possession were handed over, whether Rs. 4,00,000/- has fallen due, and who is responsible for the delay go to the merits of the dispute, which are for the Arbitral Tribunal.

36. The requirement of amicable discussion in the arbitration clause does not stand in the way of a reference either. The correspondence of 2022 and 2025 shows that the parties tried and failed to resolve the matter, and Respondent Nos. 1 and 2 expressly refused arbitration on 09.07.2025.

37. The agreed venue of arbitration is Kolkata, and Clause 27 of the Development Agreement confers exclusive jurisdiction on the Courts at Howrah and Kolkata in connection with the arbitration proceedings. This Court is therefore competent to entertain the present petition. The parties have not agreed on the person of the sole Arbitrator. The Petitioners' nomination was not accepted, and a unilateral nomination by one party cannot bind the other. The appointment must therefore be made by this Court.

38. Accordingly, this Court appoints Mr. Dipanjan Datta, Adv. (Mob. No. 9830468018) as the Sole Arbitrator to adjudicate upon the disputes between the parties.

39. The learned Sole Arbitrator shall enter upon the reference after making the disclosure in terms of Section 12(1) of the Act and subject to the provisions of Section 12(5) thereof.

40. The learned sole Arbitrator shall be entitled to fix the remuneration in accordance with the Fourth Schedule of the Act or as may be mutually agreed between the parties.

41. A copy of this order shall be communicated by the petitioner to the learned sole Arbitrator for necessary action.

42. It is clarified that all questions relating to the arbitrability of the disputes, maintainability, claim, counter-claim, limitation, jurisdiction, and all other issues are left open to be urged before the learned Sole Arbitrator, who shall decide the same in accordance with law.

43. With the aforesaid directions, the present petition stands allowed.

(GAURANG KANTH, J.)

SAKIL AMED (P.A)