

**BEFORE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI**

**MISC. APPLICATION NO. 764 OF 2022 (Delay)
IN
APPEAL NO. AT006000000123941 OF 2022**

Mrs. Anita Radheyshyam Verma
(Since Deceased) through her legal
representatives-

- 1] Mr. Rajeev Radheshyam Verma
- 2] Master Mayank Rajeev Verma
- 3] Miss. Masoom Rajeev Verma

.. Applicants

-VS-

M/s Arihant Associates & Ors.

.. Non-Applicants

**WITH
MISC. APPLICATION NO. 768 OF 2022 (Delay)
IN
APPEAL NO. AT006000000123945 OF 2022**

Mr. Rajeev Radheshyam Verma

.. Applicant

-VS-

M/s Arihant Associates & Ors.

.. Non-Applicants

**WITH
MISC. APPLICATION NO. 770 OF 2022 (Delay)
IN
APPEAL NO. AT006000000123946 OF 2022**

Mr. Rajeev Radheshyam Verma

.. Applicant

-VS-

M/s Arihant Associates & Ors.

.. Non-Applicants

Signatures

WITH
MISC. APPLICATION NO. 772 OF 2022 (Delay)
IN
APPEAL NO. AT006000000123947 OF 2022

Mrs. Anita Radheyshyam Verma
(Since Deceased) through her legal
Representatives-

- 1] Mr. Rajeev Radheshyam Verma
- 2] Master Mayank Rajeev Verma
- 3] Miss. Masoom Rajeev Verma

.. Applicants

-VS-

M/s Arihant Associates & Ors.

.. Non-Applicants

WITH
MISC. APPLICATION NO. 774 OF 2022 (Delay)
IN
APPEAL NO. AT006000000123950 OF 2022

Mrs. Anita Radheyshyam Verma
(Since Deceased) through her legal
Representatives-

- 1] Mr. Rajeev Radheshyam Verma
- 2] Master Mayank Rajeev Verma
- 3] Miss. Masoom Rajeev Verma

.. Applicants

-VS-

M/s Arihant Associates & Ors.

.. Non-Applicants

WITH
MISC. APPLICATION NO. 766 OF 2022 (Delay)
IN
APPEAL NO. AT006000000133944 OF 2022

Mr. Rajeev Radheshyam Verma

.. Applicant

-VS-

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M/s Arihant Associates & Ors.

.. Non-Applicants

Adv. Mr. Omkar Gupte for Applicants.

Adv. Mr. Aditya Deolekar for Non-Applicant Nos.1 & 2.

**CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &
DR. K. SHIVAJI, MEMBER (A)**

DATE : 26th July 2023.

(THROUGH VIDEO CONFERENCING)

COMMON ORDER

[PER: SHRIRAM R. JAGTAP, MEMBER (J.)

The five applications out of the six captioned applications are preferred against the common order dated 30th May 2019 and one application bearing No. M.A. 766 of 2022 is preferred against the order dated 3rd October 2019 passed by the learned Member-1, MahaRERA (for short "the Authority") in six individual complaints filed by the applicants who are allottees, in these applications.

2] As the facts, circumstances, question of law and reliefs involved in these applications are identical, therefore, the same are being decided by this common order.

3] The applicants have moved these applications for condonation of delay caused in preferring appeals on the grounds set out in the

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applications, mainly on the ground that they had sufficient cause for not preferring these appeals within the period of limitation.

4] The applicants claimed that after receipt of certified copy of the impugned orders they have preferred instant appeals after 1054 days. According to applicants there is no delay in filing the appeals. The impugned orders demonstrate that the promoter is supposed to pay interest on the money paid by the complainants from 1.5.2017 till actual date of possession at the rate prescribed by the MahaRERA. Since the promoter has not handed over possession of the subject units to allottees, therefore, there is no delay in filing instant appeals. The applicants have further claimed that if at all there is delay in preferring appeals, it may be of 343 days. According to applicants MahaRERA has accorded extension from to time for completion of project and last revised date for completion of project was 30.10.2020. The respondent nos.1 and 2 did not obtain occupation certificate in respect of subject project till 30.10.2020. This also caused applicants to prefer appeals beyond the period of limitation.

5] The applicants have further claimed that they could not file appeals due to lockdown imposed by the Government on account of outbreak of Covid 19 pandemic. The Hon'ble Supreme Court took cognizance of the outbreak of Covid 19 pandemic and passed orders in

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Sou Motu Writ Petition (Civil) No.3 of 2020 and extended statutory period of limitation from time to time. Apart from this by order dated 31.3.2022 passed in Writ Petition bearing No.444 of 2022, the Hon'ble Bombay High Court has directed the respondent no.2, his brother and his family members to deposit all moneys received by them for their project into designated account. The project is abandoned, therefore, there is a remote possibility to get possession of the subject units in near future. The above circumstances caused delay in preferring the appeals against the impugned orders.

With these contentions the applicants have submitted that they had sufficient cause for not filing appeals within period of limitation and therefore the delay is liable to be condoned.

6] The non-applicants have strongly remonstrated the applications by contending in their reply that the applicants have not specifically mentioned the dates of receipt of certified copies of the impugned orders. There is delay of 1120 days after excluding 60 days period available to the applicants for filing captioned appeals. However, the applicants claimed that there is delay of 343 days without any basis whatsoever. The captioned applications suffer from defects and latches. The applicants did not disclose the sufficient cause which necessitates the

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condonation of delay. The non-applicants have placed reliance on the following citations –

- (1) **The Collector of Land Acquisition, Anantnag Vs. Mst. Katiji** [AIR 1987 SC 1353].
- (2) **Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumba.**
- (3) **G. Ramegowda, Major and Others Vs. Special Land Acquisition Officer, Bangalore.**
- (4) **P.K. Ramchandran Vs. State of Kerala and Ors.**
- (5) **Cicily Kallarakal Vs. Vehicle Factory.**
- (6) **Balwant Singh (Dead) Vs. Jagdish & Others.**
- (7) **Basawaraj Vs. The Spl. Land Acquisition Officer.**
- (8) **Easha Bhattacharjee Vs. Managing Committee of Raghunathpur Academy & Ors.**
- (9) **Sagufa Ahmed & Others Vs. Uppar Assam Plywood Products Pvt. Ltd.**

7] The non-applicants have further contended that the Hon'ble Apex Court in catena of judgments settled the position of law that delay has to be condoned when a party shows sufficient cause for doing so and is able to give reasonable and justifiable explanation for such delay to be

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genuine and not caused on account of its negligence, ignorance and lethargy. The non-applicants have further contended that the applicants have not disclosed any cause either sufficient or material in nature which necessitates condoning the inordinate delay that has occurred in filing appeals. The applicants throughout the Misc. Applications sought to only plead about the contents of operative part of the impugned orders and/or some other aspects which are neither related to Real Estate Project in respect of which such common orders are passed and/or where the respondent no.1 is either a promoter and/or is involved in any manner whatsoever. Therefore, whatever stated by the applicants in their applications do not amount to sufficient or material cause for condoning the delay.

8] The non-applicants have further contended that the applicants cannot take shelter of orders passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No.3 of 2020 extending the period of limitation to plead that the Misc. Applications for delay in filing appeals are within limitation. The applicants did not act vigilantly and have slept over their rights without any justifiable reason. The applicants have miserably failed to disclose any sufficient cause whatsoever and also have failed to demonstrate any due diligence and/or due care to avoid delay on

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their part.

With these contentions the non-applicants have prayed to reject applications for condonation of delay.

9] We have heard learned Advocate Mr. Omkar Gupte for the applicants and learned Advocate Mr. Aditya Deolekar for non-applicants.

10] From the divergent pleadings of the parties and submissions advanced by the parties only point that arises for our determination is that whether applicants have established that they had sufficient cause for not filing appeals within prescribed timeline and to this our findings are in the negative for the reasons to follow.

REASONS

11] On careful examination of averments made in the applications and material on record would show that the impugned orders came to be passed on 30.5.2019 and 3.10.2019. Admittedly the appeals came to be filed on 5.8.2022. The applicants were supposed to file appeals within the period of 60 days from the date of copy of direction/order or decision made by the learned Authority or Adjudicating Officer is received by the aggrieved person. After computing the period of limitation in filing instant appeals it is seen that there is delay of more than 1055 days in filing the appeals. Under the circumstances it is difficult to digest that there is delay

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of 343 days in filing appeals as alleged by the applicants. If we compute the period of limitation, it is seen that there is delay of more than two years in filing appeals. The condonation of delay beyond the period of limitation is contemplated only in a case where an aggrieved party intended to file appeal, but intervening compelling reasons made it impossible for such a party to prefer appeal adhering to the statutory timeline. In the instant case that is not the case. The applicants claimed that due to lockdown imposed by the Government on account of outbreak of Covid 19 pandemic and taking cognizance thereof in Suo Motu Writ Petition No.3 of 2020 the Hon'ble Supreme Court extended the period of limitation for filing writ petitions/applications/appeals/suits and other proceedings, within the period of limitation prescribed under the general law of limitation, the applicants could not file appeals. According to applicants a large period of delay is covered by Covid 19 pandemic and in the light of the aforesaid pronouncement of the Hon'ble Supreme Court the delay is liable to be condoned. We do not find substance in the said submissions of the applicants.

12] The Hon'ble Supreme Court in **Sagufa Ahmad Vs. Upper Assam Plywood Products (P) Ltd [(2021) 2 SCC 317]** has held that Judgement dated 23rd March, 2020 in cognizance for extension of

limitation (in Suo Motu writ petition Civil No.3 of 2020) is extending only period of limitation and it did not extend period upto which delay can be condoned in the exercise of discretion conferred by the statute.

The Hon'ble Supreme Court has observed that –

"18. To get over their failure to file an appeal on or before 18.03.2020, the appellants rely upon the order of this Court dated 23.03.2020 in Suo Motu Writ Petition (Civil) No.3 of 2020. It read as follows :

"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/ applications/ suits/ appeals / all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and or State).

To obviate such difficulties and to ensure that lawyers / litigants do not have to come physically to file such proceedings in respective Courts/ Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India

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and declare that this order is a binding order within the meaning of Article 141 on all Courts /Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/ Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks."

19. But we do not think that the appellants can take refuge under the above order. What was extended by the above order of this Court was only "the period of limitation" and not the period upto which delay can be condoned in exercise of discretion conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two latin maxims, one of which is *Vigilantibus Non Dormientibus Jura Subveniunt* which means that the law will assist only those who sleep over them. "

13] It is worthy to note that the lockdown was only imposed on 24.3.2020. There was no impediment for the applicants to file appeals before 24.3.2020. The applicants have failed even to remotely show sufficient cause for not filing appeals before 24.3.2020. It means the

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period of limitation for filing appeals against impugned orders had already expired on 30.7.2019 and 3.12.2019 respectively i.e. before imposition of lockdown by the Government due to outbreak of pandemic Covid 19. Therefore, in view of the observations of the Hon'ble Supreme Court in **Sagufa Ahmed Vs. Upper Assam Plywood Products (P) Ltd [(2021) 2 SCC 317]** (Supra) we are of the view that applicants cannot take refuge under the orders of the Hon'ble Supreme Court passed in Suo Motu Writ Petition (Civil) No.3 of 2020.

14] In **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Academy and Ors. [(2013) 12 SCC 649]** the Hon'ble Supreme Court has laid down following principles :

" 21.5 *Lack of bonafide imputable to a party seeking condonation of delay is a significant and relevant fact;*

21.7 *The concept of liberal approach has to encapsulate the conception of reasonableness and totally unfettered free play is not allowed;*

21.9 *The conduct, behaviour and attitude of a party relating to its negligence Cannot be given a total go-bye in the name of liberal approach;*

21.10 *If the explanation offered is concocted or the grounds urged in the applications are fanciful,*

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the Courts should be vigilant not to expose the other side unnecessary to face such litigation;

21.11 It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of the law of limitation;

22.1 An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harboring the notion that the Courts are required to condone the delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system;

22.4 The increasing tendency to perceive the delay as a non-serious matter and hence lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, with legal parameters."

15] Considering the facts and circumstances of these cases and in the light of principles laid down as above by the Hon'ble Supreme Court, delay that has already occurred can be construed to be deliberate and intentional act. Moreover, keeping in view the proposition of law laid down by the Hon'ble Supreme Court in catena of judgments relating to condonation of delay and having regard to the totality of facts and

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circumstances of the present cases, we are of the considered view that applicants are found to be casual, non-serious and non-vigilant in preferring appeals against the impugned orders.

16] Overall conduct of the applicants would show that they were not diligent in taking steps for filing appeals even after receipt of copies of impugned orders. The applicants are found to be negligent and found to have remained inactive. The applicants did not bother to protect their own interest and remained silent spectators for almost two years.

17] In the light of above observations, we are unable to accept the contentions of the applicants and find that sufficient cause is not made out for inordinate delay in filing instant appeals. We are of the considered view that the applicants have failed to establish their diligence and alacrity in filing the appeals within time limit and the inordinate delay that has occurred in filing instant appeals, therefore, cannot be condoned. The applications are devoid of merits and thus deserve to be rejected. Hence, we proceed to pass the following order.

ORDER

- i] Misc. Application Nos.764 of 2022, 766 of 2022, 768 of 2022 770 of 2022, 772 of 2022 and 774 of 2022 are dismissed.
- ii] In view of dismissal of delay condonation applications, appeals do not survive and the same are accordingly

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dismissed.

- iii] Pending Misc. Applications, if any, also stand dismissed.
- iv] Parties shall bear their own costs.
- v] Copy of this order be communicated to the parties and the learned Authority as per Section 44(4) of RERA, 2016.


(DR. K. SHIVAJI)


(SHRIRAM R. JAGTAP)

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