

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

Misc. Application No. 990/2022 (Delay)

With

Misc. Application No. 991/2022(Stay)

In

Appeal No. AT006000000134064 of 2022

Siddhant Infrastructure Pvt. Ltd.

... Applicant

Versus

Sheetal Vastupal Ranka & Anr.

... Non-applicants

Alongwith

Misc. Application No. 992/2022 (Delay)

With

Misc. Application No. 993/2022(Stay)

In

Appeal No. AT006000000134065 of 2022

Siddhant Infrastructure Pvt. Ltd.

... Applicant

Versus

Sheetal Vastupal Ranka & Anr.

... Non-applicants

Alongwith

Misc. Application No. 994/2022 (Delay)

With

Misc. Application No. 995/2022(Stay)

In

Appeal No. AT006000000134066 of 2022

Sheetal

Siddhant Infrastructure Pvt. Ltd.

... Applicant

Versus

Vastupal O. Ranka & Anr.

... Non-applicants

Adv. Sujay Joshi for Applicant.

Adv. Sanket Bora for Non-applicants.

CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &

DR. K. SHIVAJI, MEMBER (A)

DATE : 11th March, 2024

(THROUGH VIDEO CONFERENCING)

ORDER

[PER : SHRIRAM R. JAGTAP (J)]

- 1) These three captioned Applications are preferred by Promoter against common order dated 9th August, 2021 passed by the Ld. Authority MahaRERA in three individual complaints filed by Allottees.
- 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 Applicant, who is Promoter, has moved these Applications for condonation of delay of 109 days caused in preferring instant appeals on the grounds enumerated in the applications, primarily on the ground that Applicant had

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sufficient cause for not preferring appeals within the period of limitation.

- 4) The Applicant is a company registered under the Companies Act, 1956, for the purpose of these applications, the applicant is represented by its director Mr. Kishor Patil, who was appointed as a director on 24th July, 2018. The applicant claims that in March, 2020, the Hon'ble Supreme Court took cognizance of surge of Covid-19 pandemic in the country and passed order in suo motu writ petition (civil) No. 3 of 2020, whereby, the Hon'ble Supreme Court had extended period of limitation for filing petitions/applications/suits/appeals/all other proceedings in courts/Tribunals across India with effect from 15th March, 2020 till further order. Thereafter, by order dated 10.02.2022, the Hon'ble Supreme Court has extended the period of limitation by 90 days with effect from 01.03.2022. The detail calculations of the limitation to file the present appeals in the light of the order of the Hon'ble Supreme Court as above are as follows.



Sr. No.	Particulars	Date
1.	Date of Judgment of Hon'ble Maha RERA Authority	09/08/2021
2.	Hon'ble Supreme Court's order dt.10.02.2022, excluding period of limitation.	From: - 23.03.2020 Till:- 28.02.2022
3.	The Hon'ble Supreme Court vide the same order provided 90 days limitation.	From: - 01.03.2022 Till: - 29.05.2022 (90 days extended limitation period)
4.	Therefore last date to file the present Appeals was	26.07.2022
5.	Date on which the promoter was supposed to file appeals	26.07.2022
6.	Thus for the Purpose of computation the period of limitation for filing the present Appeals is	From: - 26.07.2022 To:- 15.09.2022
7.	The appeals were filed on	15.09.2022
8.	Actual Delay Caused	52 Days

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- 5) The applicant further claims that the applicant has obtained possession of the project land on 7th July, 2020. Thereafter, the applicant got the revised building plans from Pune Municipal Corporation on 18th February, 2022. Thereafter, applicant had applied for registration of the project to MahaRERA. However, the applicant learnt that the subject project has already been registered with MahaRERA. Besides some of the home buyers had filed complaints before MahaRERA in which orders have been passed against the applicant.
- 6) The applicant started procuring the relevant documents. After scrutinizing the impugned order and necessary documents, the applicant came to know that the allottees namely Sheetal Vastupal Ranka and Vastupal Omprakash Ranka had filed complaints before the MahaRERA *inter alia* seeking relief under Section 18 of RERA, on account of delay in handing over the possession of the flats purchased by them. It was further transpired that the said allottees had served the complaints on the respondent no. 2, Mr. Deepak Yashwant Patil instead of the applicant, who had ceased to have any nexus with the applicant company since 24th July, 2018. The respondent no. 2



had appeared in the said complaint proceedings before the Authority and posed himself to be the representative of the applicant. The respondent no. 2 did not inform the factum of filing of complaints to the directors of applicant company. The allottees have filed applications for execution of impugned order before MahaRERA and the same would be listed before the Ld. Authority on 26th July, 2022.

7) The applicant further claims that the applicant put its appearance before the Ld. Authority on the schedule date and brought to the notice of Ld. Authority that in complaint proceedings the applicant was represented by a person, who had no nexus with the applicant. The Ld. Authority expressed view that in that case the applicant ought to have file an appeal before the Appellate Tribunal to seek a redressal of its grievances and was pleased to pass order for recovery of amount. The above mentioned circumstances constrained the applicant to file the present appeals.

8) The applicant has further contended that if the delay is computed from the date of knowledge about the passing of the impugned order then there is delay of 52 days. The delay is not intentional one as the applicant was not aware of the

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impugned order. The aforesaid circumstances are the just, sufficient and reasonable causes to condone the delay in filing instant appeals. The applicant has sanguine hope of success in appeals. The meritorious case of applicant cannot be thrown out at the very threshold and if the delay is condoned the highest that can happen is that the cause would be decided on merits. If delay is not condoned, then the applicant will suffer grave and irreparable harm, damages, loss and injury which cannot be compensated in terms of money. With these contentions, the applicant has prayed for condonation application.

- 9) The Non-applicant no. 1, Sheetal Vastupal Ranka in Misc. Application nos. 990 of 2022 & 992 of 2022 and Vastupal Omprakash Ranka, the Non-applicant no. 1 in Misc. Application no. 994 of 2022 have remonstrated the applications by filing their reply contending therein that the applicant has failed to establish sufficient cause for condonation of delay. No cause of action has arisen to applicant to file the captioned applications for condonation of delay.
- 10) The applicant has tried to take an undue advantage of order dated 10.02.2022 passed by the Hon'ble Supreme Court in suo



motu writ petition (civil) no. 3 of 2020 which provides for an exemption for limitation for the cases to be filed during the period of 23.03.2020 to 28.02.2022 and additional 90 days ending on 29.05.2022. Order of the Hon'ble Supreme Court was pleased to provide relief to litigants, who had previously missed out to comply with law of limitation due to the crisis of covid-19 pandemic. The applicant has tried to make baseless reliance and undue advantage of the order of the Hon'ble Supreme Court. The order of the Hon'ble Supreme Court cannot be made applicable to the cases that were adjudicated during the covid-19 pandemic period. Thus, the order of the Hon'ble Supreme Court in any way does not help the applicant for condonation of delay.

- 11) The respondents have further contended that as per provisions of Section 44(5) of RERA Act, 2016, the applicant was supposed to prefer appeals within 60 days from the date of order dated 09.08.2021. The applicant ought to have filed the instant appeals on or before 08.10.2021. However, the applicant has filed appeals on 15.09.2022. In Para No. 4, the applicant has contended that there is delay of 109 days, whereas, in Para No. 6, the applicant has claimed that there is

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delay of 52 days only and thereby, the applicant has made self-contradictory statements in the captioned applications.

- 12) The respondents have further contended that appeal memo discloses that the applicant has acquired the land for project on 04.05.2013. Therefore, the contention of applicant that applicant received the possession of the project land on 07.07.2020 is blatant lie. The project was registered with MahaRERA on 08.08.2017 by the applicant. Therefore, the contentions of applicant that applicant was unaware of the registration of project when applicant applied for registration of the project in the year 2020, are baseless.
- 13) The applicant was well aware of the fact that the allottees had filed complaints against the applicant before the Ld. Authority MahaRERA. The copies of complaints were served on the applicant on the registered address of the applicant as mentioned on the MahaRERA portal of the project. While registering the project with MahaRERA, the applicant has provided its contact details, on which MahaRERA itself as a matter of SOP duly served notices of hearings on the applicant and the applicant had very much participated in the hearings of the complaints. The current management of the applicant



company throughout acted negligently and therefore, one cannot make good of his own fault. Therefore, the doctrine of 'ex turpi causa non oritur actio' (one cannot make good of his own wrong) is applicable to the present proceedings. The receipt of revised sanction plan has no nexus with the delay in filing instant appeals.

14) The respondents have further contended that they being allottees are in no way concerned with the internal mismanagement of the applicant company. The copies of complaints were served on the applicant at the registered address, which was available on the portal of MahaRERA and not to any of the directors of the applicant company or alleged director of the applicant company. With these contentions, the respondents have prayed for rejection of the applications and consequent thereto, dismissal of appeals with cost.

15) We have heard learned Adv. Sujay Joshi for Applicant and Adv. Sanket Bora for Non-applicants. The submissions advanced by learned counsel appearing for respective parties are nothing but reiteration of the contents of applications and replies. After considering the submissions of learned counsel appearing for respective parties, pleadings of the parties and material on



record, following points arise for our consideration and we have recorded our findings thereupon for the reasons to follow:

Sr. No.	Points for consideration	Findings
1.	Whether the applicant has established that the applicant had sufficient cause for not filing an appeals within the period of limitation?	In the Negative
2.	What order?	As per final order

REASONS

- 16) It is not in dispute that the impugned common order came to be passed on 9th August, 2021. As per provisions of Section 44 (5) of RERA, the applicant was supposed to file appeals within the period of 60 days from the date of common order. Admittedly, captioned appeals came to be filed on 15.09.2022.
- 17) It is not in dispute that the Hon'ble Supreme Court took cognizance of surge of covid-19 pandemic and was pleased to pass an order in suo motu writ petition (civil) No. 3 of 2020, whereby, the Hon'ble Supreme Court had extended the period of limitation for filing petitions/applications/suits/appeals/all other proceedings in courts/tribunals across the country with effect from 15th March, 2020 till further order. Thereafter, by

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order dated 10.02.2022, Hon'ble Supreme Court has extended the period of limitation by 90 days with effect from 01.03.2022. The Hon'ble Supreme Court has held as under.

*"In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. **In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.**"*

- 18) Meaning thereby, the applicant was supposed to file the captioned appeals on or before 30.05.2022. As indicated above admittedly captioned appeals came to be filed on 15.09.2022. The only explanation offered by applicant for not preferring the captioned appeals within the time prescribed is that the present director of the applicant company was unaware of the complaint proceedings filed by allottees. The allottees had mentioned wrong registered address of the applicant company in their complaints and the allottees did not serve the notice of their complaints on the present director of the applicant company on the registered address of the applicant company. The allottees had served notices on the erstwhile director of the applicant company i.e. respondent no.

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2, Mr. Deepak Yashwant Patil. Mr. Deepak Yashwant Patil had ceased to have any nexus with applicant company from 24.07.2018. Though, the respondent no. 2 had appeared in the said complaint proceedings before the Ld. Authority posing himself to be the representative of the applicant company, but he did not take pains to inform the factum of filing of complaints to the present director of the applicant company. We do not find merits in the said contentions of the applicant.

- 19) It is not in dispute that on the date of the commencement of the RERA Act, 2016, the subject project was ongoing as a result thereof, it was registered with MahaRERA. The address of the applicant company is still reflected on the website of the MahaRERA. Applicant company is a legal entity and being promoter, is being managed by its directors and functional staff. The applicant company itself cannot transact its business. Under the circumstances, it was expected of the present director to make amendment on the web page of the MahaRERA with regard to the change of the address of the applicant company soon after expelling Mr. Deepak Yashwant Patil from the directorship of the applicant company. During the course of the argument, Ld. Adv. Sujay Joshi has

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submitted that the current management of the applicant company did not apply to the MahaRERA for change of the address of the applicant company on the web page of the MahaRERA. The respondents being allottees are in no way concerned with the internal management of the applicant company. Therefore, it cannot be expected from allottees that they were supposed to serve the notices on the changed address of the applicant company.

20) It is not in dispute that while registering the project with MahaRERA, the applicant company has provided its contact details. MahaRERA itself as a matter of SOP duly served notices of hearings on the address available on web page and the applicant company had very much participated in the hearings of the complaints. This conduct of the current management of the applicant company signifies that the current management of the applicant company throughout acted negligently.

21) 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

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to the statutory timeline. In the instant case, that is not the case. In **Esha Bhattacharjee Vs. Mg. Commit. of Raghunathpur Nafar Academy & Ors.** [(2013) 12 SCC 649] the Hon'ble Supreme Court has laid down following principles-

- "21.5 Lack of bona fide 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, behavior and attitude of a party relating to its negligence cannot be given 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, the Courts should be vigilant not to expose the other side unnecessarily to face such litigation;*
- 21.11 It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by take recourse to the technicalities of the law of limitation;*
- 22.1 An Applications 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 merit 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 Paramaters."*



22) As per above principles, the conduct, behavior and attitude of a party relating to its negligence are significant factors to be taken into account while considering the plea for condonation of delay. Ignoring the aforesaid conduct of the current management of the applicant, the allottees herein cannot be exposed to another law of litigation for no fault on their part. From the pleadings of the parties, it is evident that execution proceedings filed by allottees to release the fruits of the impugned order secured by them are on the stage of implementation and condoning, the delay for appeals would amount to reversal of all actions so far pursued painstakingly by allottees. Entertainment of appeal at this belated stage by condoning delay would not be proper in the absence of sufficient cause.

23) It is significant to note that according to applicant, the applicant got the revised building plans from Pune Municipal Corporation on 18th February, 2022. Thereafter, the applicant had applied for registration of the project to MahaRERA. However, the applicant learnt that the subject project has already been registered with MahaRERA. Moreover, some of the home buyers had filed complaints before MahaRERA



against the applicant in which orders have been passed against the applicant. It means the applicant came to know about the impugned order somewhere in the month of February, 2022 or in the month of March, 2022. We reiterate that applicant has filed the captioned appeals on 15.09.2022. The applicant has not offered satisfactory explanation for not filing appeal from March, 2022 till 15.09.2022. No doubt, as indicated above in view of the order passed by the Hon'ble Supreme Court, the applicant was supposed to file appeal on or before 29.05.2022. However, the fact remains that when the applicant came to know about the impugned orders somewhere in the month of February or March, 2022 in that situation the applicant was supposed to file appeal immediately after 29.05.2022. This conduct of the current management signifies that the current management has acted negligently and without diligence. The applicant has failed to file the captioned appeals on time and chose to do so only after 109 days as per its own convenience. The said situation can only be termed as non-seriousness of the applicant. The other party cannot be left suffering and desolated. Thus the



averments made in the application qua delay of 109 days cannot be classified as a reasonable delay in any manner.

- 24) 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 circumstances of the instant case, we are of the view that the applicant is found to be casual, non-seriousness and non-vigilant in preferring appeals against the impugned order. Overall conduct of the applicant would show that the current management of the applicant was not diligence in taking steps for filing appeals. The current management of the applicant is found to be negligent and found to remain inactive. The applicant/promoter has all requisite and considerable resources at his disposal to prosecute the appeals in time if there is any persuade grievance against the impugned order. The applicant being promoter also knows where his interest lies. The applicant did not bother to protect his interest and remained a silent spectator till filing of the appeals. Therefore, in the absence of cogent reasons, we are not inclined to condone huge delay in filing appeals. The explanation offered

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by the applicant/promoter for not preferring the appeals within limitation is not sufficient to condone the delay.

- 25) For the foregoing reasons, we have come to the conclusions that applicant has failed to establish its diligence and alacrity in filing appeals within time limit and inordinate delay that has occurred in filing instant appeals, therefore, cannot be condoned. The applications are devoid of merits. Thus, applications deserve to be rejected. We, therefore, proceed to pass following order-

ORDER

- a) Misc. application nos. 990 of 2022, 992 of 2022 and 994 of 2022 are dismissed with cost.
- b) In view of dismissal of delay condonation applications, the captioned appeals along with pending Misc. Applications do not survive and the same accordingly stand disposed of.
- c) Parties shall bear their own cost.
- d) Copy of this order be communicated to Authority and the respective parties as per Section 44(4) of MahaRERA, 2016.


(DR. K SHIVAJI)


(SHRIRAM R. JAGTAP)

Ajit