

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL  
MUMBAI**

**MISC. APPLICATION NO. 910 OF 2022 (Delay)**  
**WITH**  
**MISC. APPLICATION NO. 911 OF 2022 (Stay)**  
**IN**  
**APPEAL NO. AT006000000134069**

**Glider Buildcon Realtors Pvt Ltd.**

8<sup>th</sup> floor, Piramal Tower,  
Peninsula Corporate Park,  
Ganapatrao Kadam Marg,  
Lower Parel, Mumbai – 400 013.

... *Applicant*

*versus*

**1. Dr. Aftab S. Shaikh**

**2. Dr. Nilofer Aftab Shaikh**

2/8, Dhanvantri No.2, Flat No. 8,  
Sir J. J. Hospital Campus,  
Byculla (East), Mumbai– 400 008.

**3. Omkar Realtors Projects Pvt. Ltd.**

Omkar House, Off. Eastern Express Highway,  
Opp. Sion, Chunabhatti Signal,  
Sion (East), Mumbai – 400 022.

... *Non-Applicants*

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*Mr. Rubin Vakil, Advocate for Applicants.*

*Mr. Mithil Sampat, Advocate for Non-applicant Nos.1 & 2.*

*None for Non-applicant No.3.*

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

**DATE : 8<sup>th</sup> AUGUST 2023**

*(THROUGH VIDEO CONFERENCE)*



**ORDER [PER: DR. K SHIVAJI, MEMBER (A)]**

Applicant has challenged the orders dated 17<sup>th</sup> February 2022 and 4<sup>th</sup> July 2022 passed by learned Member, MahaRERA in Complaint Nos. CC 006000000 79278 lodged before MahaRERA by filing the captioned appeal on 27<sup>th</sup> September 2022 under The Real Estate (Regulation and Development) Act of 2016 (hereinafter referred to as, "the Act") with delays of 61 and 10 days respectively beyond the permissible period of 60 days under the Act. By this application, applicant is seeking condonation of these delays in filing of the captioned appeal under Section 44 of the Act.

2. Heard learned counsel for parties *in extenso*.
3. Applicant is engaged in real estate business and is currently constructing a building known as "SOUTH TOWER" located at lower Parel, Saatrasta, Mumbai 400011 ('said Project'). Applicant has issued an allotment letter to Non-applicant nos. 1. and 2 for booking of flat no. 1106 along with other amenities including car parking etc., in the said project under its approved subvention scheme at total consideration of ₹5.67 crores. For convenience, Applicant and Non-applicants nos. 1 and 2 will be addressed as promoter and complainants respectively. Non-applicant no.3 is a proforma Respondent.
4. For the purpose of disposal of present application, it is not necessary to narrate facts of the case in detail. Suffice it to say that complainants filed the above complaint before MahaRERA owing to *inter alia* non-execution of agreement for the sale/purchase of the said flat and due to certain non-clarification relating to subvention scheme as well as about the GST and also due to not taking steps for formation of registered society of allottees under the provisions of the Act, whereby sought direction to applicant to



execute agreement for sale in accordance with the payment scheme as promised and also to enter into a Tripartite Agreement as per the advertisement of the scheme of 20:50:30 subvention within 30 days.

5. Captioned complaint was transferred to learned Adjudicating Officer, by interim order dated 24<sup>th</sup> February 2020 *inter alia* for appropriate decision. This interim order dated 24<sup>th</sup> February 2020 was challenged earlier in this Tribunal, whereby the said appeal was disposed of on 9<sup>th</sup> December 2021 and the complaint was remanded by restoring it to the stage prior to considering the application for amendment in the complaint to MahaRERA by keeping the rights and contentions of the parties open.
6. Upon hearing the parties, learned Member allowed the amendment in the complaint sought by the complainants on 17<sup>th</sup> February 2022. This order has been challenged by the applicant under this appeal.
7. Upon hearing the parties, learned Member finally disposed of the complaint vide order dated 4<sup>th</sup> July 2022 *inter alia* with direction to Promoter to refund the entire paid amount together with interest.
8. Aggrieved Applicant challenged these two orders dated 17<sup>th</sup> February 2022 and 4<sup>th</sup> July 2022, seeking *inter alia* to quash and set aside these two orders by filing the captioned appeal on 27<sup>th</sup> September 2022 with delay of 61 and 10 days respectively beyond the permissible time limit of 60 days on various grounds as set out in the application and learned counsel for Applicant made manifold submissions as follows: -
  - a) In order to overcome difficulties being faced by litigants on account of the then prevailing COVID-19 pandemic, The Hon'ble Supreme Court vide its order dated 10<sup>th</sup> January 2022 in *Suo Moto* Writ Petition (C) no. 3 of 2021, has extended the limitation period from 15<sup>th</sup> March 2022 up to 28<sup>th</sup> February 2022 unconditionally.



- b) Applicant received the first order in rozanama dated 24<sup>th</sup> February 2022 on 25<sup>th</sup> February 2022. After taking benefits of the extension of limitation period allowed under the said order of the Hon'ble Supreme Court, wherein, 90 days are permitted from 1<sup>st</sup> March 2022 and 60 days are permitted under Section 44 of the Act. Hence, Applicant is permitted to file captioned appeal up to 28<sup>th</sup> July 2022. Therefore, delay in filing of the captioned appeal against the first impugned order is only 61 days.
- c) While the intimation about the passing of the second impugned order dated 4<sup>th</sup> July 2022 was received by Applicant only on 12<sup>th</sup> July 2022 and based on the application filed on 13<sup>th</sup> July 2022, its certified copy was received on 20<sup>th</sup> July 2022. Thereby delay in filing of the captioned appeal against the second impugned order is of only 10 days.
- d) These delays in filing of the appeal happened for getting the legal advice from the advocate, for getting required documents and notarizations etc, and for other preparations and for filing it. There is no malafide intention and delay was due to genuine reasons beyond the control of the Applicant.
- e) The said delay is neither intentional nor deliberate nor attributable to any inaction or negligence on the part of Applicant, the Applicant has very good case to succeed on merits and thus grave irreparable loss, harm and prejudice will be caused to Applicant, if underlying delay is not condoned.
- f) As such, first impugned order has merged with the second impugned order and thereby, the delay is being sought to be condoned in the interest of justice so that the matter be adjudicated on merits.
- g) Delay in filing of the captioned appeal is due to bonafide reasons and Applicant will suffer irreparable loss, if the present application is not

allowed, and no prejudice will be caused if the delays are condoned by allowing the application. The balance of convenience also lies in favour of the applicant and therefore, the delays in filing the above appeal be condoned in the interest of justice.

9. Per Contra, learned counsel for Non-applicants strongly resisted the application and sought to reject its prayers by submitting as hereunder; -
- a. Order of the Hon'ble Supreme Court dated 10<sup>th</sup> January 2020 extending the limitation period permitted with the condition only for cases "*where the limitation would have expired during the period between 15<sup>th</sup> March 2020 till the 28<sup>th</sup> February 2020... all persons shall have the limitation period of 90 days....*" therefore, Applicant is not eligible for getting the benefits of the said order of The Hon'ble Supreme Court and Applicant cannot take shelter under the order of The Hon'ble Supreme Court.
  - b. However, in the instant case, certified copy of the second impugned order dated 17<sup>th</sup> February 2022 was received on 25<sup>th</sup> February 2022 and therefore, limitation period of 60 days expires on 26<sup>th</sup> April 2022. Accordingly, Applicant cannot take advantage of the COVID based order of the Hon'ble Supreme Court for the benefit of the 90 days of limitation period starting from 1<sup>st</sup> March 2022. However, the Applicant has taken 90 plus additional 60 days under Section 44 of the Act, thereby, has taken total of 150 days, which is not correct. Therefore, the actual delay is of 154 days and not only 61 days as stated by the Applicant. Actually, it is more than double rather of 2.5 times more.
  - c. Compulsory tenets of limitation and for condonation of delay are that the reasons for delay must be bonafide, must not be vague and casual, must be relevant and maintainable and each and every day of delay must be explained with the sufficient reasons. However, Applicant has not given





cogent reasons for any delay against the first nor for the second impugned order and calculation of the delay is incorrect. In fact, the only reason, which the Applicant has shown for delay is in procuring legal advice. However, the reason cited herein for condonation are vague. It is because the details of the legal advice are not given with regards to the date of legal advice was asked, when the advice was obtained, along with specifics of the legal advice, from whom the legal advice was sought and when the drafting for filing of appeal started etc., such details of the purported legal advice are not seen mentioned nor explained.

- d. In view of the above, it is more than clear that Applicant has filed this application for condonation of delay by miscalculating the number of days of delay and the reasons cited are generic, ambiguous and stereotype without explaining each and every day of delay, the delays are not bonafide and reasons cited by Applicant are prima facie totally irrelevant as well as incorrect, are untenable and not maintainable.
- e. In view of above more particularly because of the casual and lackadaisical approach with lack of bonafide and no harms or inconvenience will be caused to anyone, if the appeal is dismissed by rejecting the miscellaneous application. Therefore, urged that the application is liable to be rejected and appeal be dismissed with costs.
10. From the rival submissions and upon perusal of pleadings, a short point that arises for our determination is whether Applicant has explained sufficient cause with cogent reasons for condonation of delay in filing instant appeal and to this our finding is in the affirmative for the reasons to follow: -

### **REASONS**

11. Before we advert to the merits of the controversy let us consider the settled position of law on condonation of delay.



12. In the case of *Collector, Land Acquisition, Anantnag & Anr. -vs- Ms. Katiji and Others* [1987 AIR 1353]; The Hon'ble Supreme Court in paragraph 3 has laid down the principles as follows: -

- a) Ordinarily a litigant does not stand to benefit by lodging an appeal late.
- b) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned, then the highest that can happen is that a cause would be decided on merits after hearing the parties.
- c) "Every day's delay must be explained", does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
- d) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
- e) There is no presumption that delay is occasioned deliberately or on account of culpable negligence or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.
- f) It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. It is needless to state that there should be liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, but at the same time 'sufficient cause' should be understood in proper spirits and to be applied in proper perspectives to the facts and situations of a particular case.



13. In this connection, principles culled down by the Hon'ble Supreme Court in *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Academy and Ors.* [(2013) 12 SCC 649] are to be referred here. Those principles are:
- Lack of bona fide imputable to a party seeking condonation of delay are significant and relevant facts; -
  - The concept of liberal approach has to encapsulate the concept of reasonableness and totally unfettered free play is not allowed.
  - The conduct, behavior and attitude of a party relating to its negligence. . . . . cannot be given a total go-bye in the name of liberal approach.
  - 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; -
  - 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; -
  - Application for condonation of delay should be drafted with careful concern and not in haphazard manner harboring notion that the Courts are required to condone the delay on the bedrock of the principle that adjudication of *//s* on merits is seminal to justice dispensation system; -
  - 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".
14. In the above background, we have to now examine, whether causes put forth by Applicant amount to sufficient cause within the provision of Section 44 of the Act. It is not in dispute that the orders in complaint was passed by MahaRERA on 17<sup>th</sup> February 2022 and 4<sup>th</sup> July 2022, whereas appeal is filed on 27<sup>th</sup> September 2022.





15. According to learned counsel for Applicant, COVID-19 pandemic hits the country with advent of various waves/variants. It was further contended that during this time period, a series of partial and full lockdowns with various restrictions were imposed, due to which, Applicant could not file appeal within the prescribed limitation period.
16. Learned counsel for Applicant further submits that by taking cognizance of Pandemic, The Hon'ble Supreme Court has passed order dated 10<sup>th</sup> January 2022, whereby period starting from 15<sup>th</sup> March 2020 till 28<sup>th</sup> February 2022, has been completely excluded for the purpose of limitation under any general or a special law including for appeals under the Act of 2016. This exclusion of limitation period has been ordered as unconditional as well as without any qualification whatsoever. Accordingly, after exclusion of the eligible period and after computing for permissible period of 90 days, as per the order of the Hon'ble Supreme Court, appeal was permitted to be filed by 29<sup>th</sup> May 2022. Against this, appeal has been filed on 27<sup>th</sup> September 2022. Accordingly, further delay in filing appeal has happened entirely due to factors beyond control of Applicants in seeking legal advice. Therefore, the delay occurred is unintentional and without any negligence on the part of Applicants.
17. It is apposite to reproduce para 5.3 of the order of The Hon'ble Supreme Court of India in Suo Motu writ petition (C) no. 3 of 2020 in para 5 of its order dated 10<sup>th</sup> January 2022 as follows.

*i. "The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*



- ii. *Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
- iii. *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. It is more than evident from the order of The Hon'ble Supreme Court in *Suo Motu* (Civil) Writ Petition No.3 of 2020 (*supra*) more particularly in view of order in para [5.3.iii] that the said order is without any qualification *for all judicial or quasi-judicial proceedings and is ordered to be extended to all persons for limitation period of 90 days from 01.03.2022* and it is, thus, squarely applicable to the present applications.
19. It is also a settled principle of law for condonation of delay that ordinarily litigant does not stand to benefit by lodging an appeal late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, then the highest that can happen, is that matter would be decided on merits after hearing the parties.
20. Facts of the case on hand as mentioned herein above, reflect that Applicant does not appear to have gained undue benefits by delay in filing of the appeal, has been making *bona fide* efforts, delay happened to be unintentional and not deliberate etc. In the light of the settled position of law that if, reasons put forth by Applicant do not indicate any smack of *malafides*, or if it is not advanced as part of dilatory strategy, then, Court ought to show utmost consideration to Applicant. In this background, particularly, when the aforesaid delay being not intentional, nor deliberate, Applicant *prima facie* appears to have made *bona fide* efforts in filing appeal



despite difficulties faced by Applicant due to then prevailing pandemic and in the interest of justice, we are inclined to allow the application. Accordingly, the solitary point is answered in the affirmative and we proceed to pass the following order.

**ORDER**

- (a) Delay in filing the above appeal is condoned subject to costs of ₹5000/- (Rs. Five thousand only) to be paid directly to Complainants within 15 days from the date of uploading of the order.
- (b) Payment of costs is condition precedent.
- (c) Captioned Misc. Application No. 910 of 2022, is allowed and disposed of on the above terms.
- (d) In view of the provisions of Section 44(4) of the Act, a copy of the order be sent to parties and MahaRERA.



**(DR. K. SHIVAJI)**



**(SHRIRAM R. JAGTAP, J.)**