

Feb 15,
BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL,
MUMBAI

MISC. APPLICATION NO. 1067 OF 2022 (Delay)
IN
APPEAL NO. AT0060000000134129

1. Murkala Krishnarao

2. Mrs. Neha Bhargava

109, Chilcombe Way Reading,
RG6DB, United Kingdom/England

... *Applicants*

~ *VERSUS* ~

1. Radius Estates & Developers Pvt. Ltd.

Through the Resolution Professional
Mr. Jayesh Sanghrajka having his office,
at 405-407, Hind Rajasthan Building,
D.S. Phalke Road, Dadar (East),
Mumbai – 400014.

2. MIG (Bandra) Realtors & Builders Private Limited

DB Central, Rangwala Compound,
Maulana Azad Road,
Near Jacob Circle, Mahalaxmi,
Mumbai - 400 011.

... *Non-applicants*

ALONG WITH



MISC. APPLICATION NO. 1066 OF 2022 (Delay)
IN
APPEAL NO. AT0060000000134130

1 Mr. Ramanjeet Singh Arora

2 Mrs. Navneet Arora

52, Cannought Gardens,
London, N135BS,
United Kingdom/ England

... *Applicants*

~ versus ~

1. Radius Estates & Developers Pvt. Ltd.

Through the Resolution Professional.
Mr. Jayesh Sanghrajka having his office.
at 405-407, Hind Rajasthan Building,
D.S. Phalke Road, Dadar (East),
Mumbai – 400014.

2. MIG (Bandra) Realtors & Builders Private Limited

DB Central, Rangwala Compound,
Maulana Azad Road,
Near Jacob Circle, Mahalaxmi,
Mumbai - 400 011.

... Non-applicants

ALONG WITH



MISC. APPLICATION NO. 1050 OF 2022 (Delay)
IN
APPEAL NO. AT0060000000134135

1. Mr.Akshay Sandeep Pasarkar

2. Mrs. Archana Pasarkar

51, Ashley Road, Hildenborough,
TN 11 9ED United Kingdom.

... *Applicants*

~ versus ~

1. MIG (Bandra) Realtors & Builders Private Limited

DB Central, Rangwala Compound,
Maulana Azad Road,
Near Jacob Circle, Mahalaxmi,
Mumbai - 400 011.

2. Radius Estates & Developers Pvt. Ltd.

Through the Resolution Professional
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D.S. Phalke Road, Dadar (East),
Mumbai – 400014.

... *Non-applicants*

Adv. Mr. Rakesh Misar for Applicants.

Adv. Mr. Abir Patel for Radius Estates & Developers.

Adv. Mr. Sushant Chavan for MIG (Bandra) Realtors & Builders.

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

DR. K. SHIVAJI, MEMBER (A)

DATE : 15th FEBRUARY 2024

(THROUGH VIDEO CONFERENCE)



ORDER

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

Heard learned counsel for parties *in extenso*.

2. By these captioned applications, Applicants are seeking condonation of 117, 117 and 110 days of delay in filing of captioned three Appeals respectively on 30th November 2022 beyond the permissible period by challenging the common impugned order dated 6th June 2022, passed by the learned Member, Maharashtra Real Estate Regulatory Authority (hereinafter referred to as "MahaRERA" in short) in Complaint Nos. CC 0060000000 196997, CC 0060000000 196993 and CC 0060000000 195529 lodged before MahaRERA under The Real Estate (Regulation and Development) Act of 2016 (herein after referred to as "the Act") wherein, Applicants have sought to direct non-applicants *inter alia* to refund of paid amounts along with interest as well the refund of all the amounts disbursed by financial institutions (namely India Bulls Housing Finance Limited "IHFL" and Housing Development Finance Corporation "HDFC") along with foreclosure charges including the unpaid pre-EMIs together with all other charges and interest towards foreclosure of loan account including the penalties for default by way of compensation for settling all the dues to be paid to Financial Institution foreclosure of loan account,
3. Captioned applications arise out of similar backgrounds and are giving rise to identical questions of law. Therefore, by consent of parties, these three applications are heard together and are being disposed of by this common order as hereunder.
4. It is the case of the Applicants that they are flat purchasers and were Complainants before MahaRERA. Non-applicants are promoters, who are



developing a duly registered project known as "Ten BKC" situated at Bandra East, Mumbai (in short "the Project"). For convenience, Applicants and non-applicants will be addressed hereinafter as Complainants and Promoters respectively in their original status before MahaRERA.

5. For the purpose of disposal of captioned applications, it is not necessary to narrate background in detail. Suffice it to say that applicants have availed loan from IHFL under subvention scheme for payment of the considerations of the flat. On account of *inter alia* delay in project completion, applicants filed the captioned three separate Complaints before MahaRERA seeking various reliefs including for direction to non-applicants for refund of paid amounts to complainants and also for refund of the amounts received by non-applicants from Financial Institution together with interest thereon as elaborated supra.
6. After hearing the parties, MahaRERA passed the common impugned order dated 06th June 2022 directing Promoters to refund the entire paid amounts along with interest to complainants under Section 18 of the Act.
7. Aggrieved Applicants have challenged this common impugned order by filing the present Appeals on 30th November 2022 the appeal nos.134129 & 134130 and on 23rd November 2022 the appeal no.134135, after the expiry of the prescribed limitation period of 60 days, seeking various reliefs as elaborated above and as mentioned in the appeal after examining the legality, propriety and correctness of the common impugned order.
8. Therefore, Applicants have sought condonation of delays of 117, 117 and 110 days respectively in preferring the present Appeals by filing above applications on various grounds *inter alia* as set out in above applications and learned counsel for Applicants made manifold submissions as follows: -



- a) Applicants learnt about the issuance of the common impugned order dated 06th June 2022 only on 30th June 2022, it is because Applicants did not receive email from MahaRERA about the uploading of the common impugned order.
- b) The reliefs sought by Complainants before MahaRERA in respect of repayment of outstanding loans availed from Financial Institution were not specifically granted in the common impugned order. Applicants were seeking opinion from the Advocates and examining to decide legal recourse and thereby it took some time.
- c) Applicants did not have the copy of their complaints, which were filed before MahaRERA. Hence, they had to apply for certified copies of the complaints and also the copy of this common impugned order for filing of these appeals.
- d) Filing of the captioned appeals took more time because all the applicants are residing in United Kingdom. Thereby, logistic and correspondence for filing these appeals have caused further delay.
- e) Learned Counsel for Applicants further contended in their rejoinders that the reasons for delay as explained in all the captioned applications are factually correct, genuine, and therefore, these grounds are coincidentally same in all the captioned applications. Moreover, the copy of the complaints placed on record are certified copies received from MahaRERA, which clearly demonstrate the genuineness of these reasons as these complaint copies have been procured from MahaRERA. It is because, these copies were actually not available with Applicants.
- f) Accordingly, stated delays in filing of the captioned appeals were not deliberate and were due to some unforeseen circumstances as mentioned above. In view of above, the said delay being bona fide, and applicants have



very good chance to succeed in respective appeals, learned Counsel for the applicants urged that the said delays in filing these appeals be condoned.

9. Per Contra, learned counsel for non-applicant no. 1 strongly resisted these applications and sought to reject prayers mentioned therein by submitting as hereunder; -
- a. Perusal of captioned three Misc. Applications for condonation of delays clearly reveal that Applicants have been negligent and deliberately delayed in filing these appeals. Moreover, they had no compelling reasons at all, which have prevented them from filing the appeals within the time.
 - b. The reasons for delays mentioned in para 5C of the captioned applications, are most absurd claims of not having the copies of their own respective complaints to all of them filed by none other than by themselves and are praying to condone delay in getting certified copies of the same from MahaRERA. This is the most absurd excuse for filing appeals beyond limitation period, because it highly unlikely that all of them had no complaints copies.
 - c. Other reasons for delay are by citing that applicants are residing outside India in United Kingdom, which has caused logistical challenges. However, Applicants have produced absolutely no evidence to show that attempt was made by them to file these appeals in time nor is there anything on the record to show that logistic/s have caused said delay in filing of the appeals. He further submits that the process of filing appeal is online. Therefore, reasons for delay because they are residing outside India causing logistical challenges, are highly misleading. Moreover, Applicants have not produced any details about when the Applicants have discovered about the passing of the impugned



order. Therefore, it shows that Applicants have not been following up for decision on their own complaints.

- d. Another reason for delay given in the application is about seeking opinion regarding the non-grant of loan liability by MahaRERA in the common impugned order. However, no document/evidence has been produced in support of these contentions.
- e. For condonation of delay, Applicants must show as to how were they prevented from filing appeals in time despite having taken all possible steps. But applicants are completely silent about any step undertaken by them in filing the appeal in time.
- f. Applicants have been negligent and as such, there is deliberate delay in filing of these captioned appeals. Therefore, non-applicants cannot be burdened/dragged into the present litigations specially, when Applicants, themselves have been lethargic in exercising the remedies available under the law.
- g. It is important to note that the reason for delays mentioned in all the applications are exactly same without any difference at all despite having been filled by three different Applicants and having very different background circumstances/ details. All these clearly reveals that the grounds mentioned for condonation of delays are not genuine, not bonafide and the said delays are deliberate as well as intentional.
- h. Moreover, Applicants are stated to be residing in United Kingdom, which is admittedly first world country from where any of the Applicant can very well reach India in one day without any difficulty.



- i. In view of above, it is clear that no sufficient cause nor any cogent/justifiable reason has been explained for condonation of the said delay. Moreover, condonation of delay is not a matter of right. Therefore, the delay ought not be condoned by the Tribunal more specifically because, the said delays are not small rather are running into more than 100 days and have not produced on the record any evidence nor any document in support of their calculations of the underlying period of limitation. As such, nothing on the record shows that when the order was intimated to the Applicants.
 - j. Therefore, delay is deliberate and intentional. Moreover, non-applicant no. 1 has come out of insolvency recently. Therefore, non-applicant no. 1 cannot be burdened with such avoidable litigations, which have not been filed vigilantly and is motivated with the intent to misuse the process of law. Therefore, non-applicant no. 1 cannot be dragged into frivolous litigations.
 - k. In the light of above, captioned misc. applications ought not be entertained and be dismissed with costs.
10. Learned Counsel appearing for non-applicant no. 2 also vehemently opposed the captioned misc. applications by submitting as follows:
- a. It appears that all the correspondence were exchanged only between the erstwhile management of non-applicant no. 1 and Applicants.
 - b. Non-applicant no. 1 was undergoing a corporate resolution insolvency process in pursuant to the order of NCLT, Mumbai.
 - c. Applicant has sought condonation of the said delays by submitting that the common impugned order was not intimated, and they did not receive any email from MahaRERA. However, perusal of the common impugned order itself shows that all the Applicants were duly represented before MahaRERA and were also



present. Moreover, the common impugned order is not an ex-parte order against applicants. Additionally, applicants have not disclosed that how and when they actually came to know about the issuance of common impugned order as well as they have not produced any documentary evidence in support of any of the reasons mentioned therein.

11. From the rival submissions and upon perusal of pleadings, a short point that arises for our determination is whether Applicants have explained with sufficient causes together with cogent reasons for condonation of delay in filing of the instant Appeals and to this, our finding is in the negative for the reasons to follow: -

REASONS

12. Before we advert to the merits of the controversy let us consider the settled positions of law on condonation of delay.
13. In case of Collector, Land Acquisition, Anantnag & Anr. -vs- Ms. Katiji and Others [1987 AIR 1353]; The Hon'ble Supreme Court in paragraph 3 reiterated 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 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 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.*
14. 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:
- a. *Lack of bona fide imputable to a party seeking condonation of delay are significant and relevant facts.*
 - b. *The concept of liberal approach has to encapsulate the concept of reasonableness and totally unfettered free play is not allowed.*
 - c. *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.*



- d. 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.*
- e. 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.*
- f. 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 lis on merits is seminal to justice dispensation system;*
- g. 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. In the above backgrounds, we have to now examine, whether causes put forth by Applicants amount to sufficient cause within the provisions of Section 44 of the Act.

16. It is not in dispute that captioned three complaints were disposed of by MahaRERA by its common order dated 6th June 2022, which has been challenged by Applicants by filing the captioned Appeals on 30th November 2022 beyond the prescribed permissible limitation period of 60 days. Learned Counsel for the Applicants submits that Applicants did not receive emails from MahaRERA communicating the issuance of the common impugned order dated 6th June 2022. Therefore, they applied for the certified copies on 11th October 2022 and received the copies on the same date. Thereby, they have filed the captioned Appeals after the said delays. However, perusal of the common impugned order reveals that Applicants were duly represented in the complaint



proceeding and were also present on the date of the final hearing before MahaRERA. Therefore, it is least expected by Applicants, who had filed captioned complaints themselves before MahaRERA, to be more vigilant and ought not be sleeping over their rights by not frequently checking about the upload of the impugned order on MahaRERA website from anywhere including from United Kingdom also. However, prima facie, it appears that applicants have not checked even the MahaRERA's website.

17. It is also important to note that all the three applicants have claimed for condonation of delay on the basis of the exact same grounds by submitting that all of them did not have the copy of their own complaints filed by themselves before MahaRERA. Therefore, they had to apply for the certified copy from MahaRERA, which are stated to have been issued to them after downloading from the website. This shows that complainants were casual careless and not vigilant about their rights. Moreover, even if the complaint copies were not available to them, then applicants could have easily downloaded the complaint copy from MahaRERA's website directly from any place including from United Kingdom itself and could have avoided delay.
18. It is also not convincing that how, all the Applicants have the exact same grounds for all of them for their condonation of delay in all the applications including the ground that all of them did not have their respective copy of complaint with them. This raises doubts about the ground raised by applicants about their genuineness.
19. The perusal of applications clearly reveals that none of the application contain even the calculations of the number of days of delays for which they are praying for condonation of delays in filing the respective appeals. This space in the



relevant sentences in all these applications are blank about the number of days of delay. Whereas applicants are expected to make proper calculation with sufficient convincing reasons and also required to justify each day of delay based on genuine and cogent explanations. Whereas it is settled position of law including in the above judicial pronouncements that "*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 lis on merits is seminal to justice dispensation system;*"

20. Learned counsel for applicants further submits that applicants are residing in United Kingdom. Thereby, logistic and correspondence caused further delay. This ground is also not convincing not plausible because there are time efficient modern communication systems between India more particularly from Mumbai to most of the parts of the United Kingdom including the telecommunication and other travel facilities.
21. Perusal of these applications further reveals that none of the grounds submitted in support of condonation of the instant delay are backed by any tangible supporting documentary proofs/evidence. Applicants have made only bare bald statements about the reasons for delay without any support document at all. Moreover, the reasons set out in all the applications are exactly the same despite having certain different background details. Accordingly, we are of the considered view that applicants have been very casual, careless and non serious, not alert about their own rights.



22. Furthermore, it is pertinent to note that The Hon'ble Supreme Court in para 19 of its judgement in the case of "Sagufa Ahmed and Others vs. Upper Assam Plywood Products (P) Ltd [(2021) 2 SCC 317]", has laid down as follows;
"19. 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 are vigilant about their rights and not those who sleep over them."
23. The above Judgment of The Hon'ble Supreme Court is in the context of the availing benefits for extension of limitation period in filing of appeal, but the core decision made therein by The Hon'ble Supreme Court shows that such benefits can be extended only to vigilant litigants and only to those, who are vigilant about their rights and not to those, who sleep over their rights.
24. However, in the present case, the impugned order is dated 6th June 2022, applicants have failed to produce even a single concrete evidence on record demonstrating tangible action, no step is seen taken by them at all for filing the captioned appeals in time within the limitation period. All these indicate that applicants have *prima facie* not taken any visible, tangible and demonstrable action. They were not vigilant about their rights and law will not benefit such non-vigilant litigants. Accordingly, it is more than evident that applicants being not vigilant, cannot now take shelter under the grounds mentioned in their applications and seek benefits of condonation of delay on these counts.
25. It is true that length of delay is not important, but acceptability of explanation is important criteria as primary function of Tribunal is to adjudicate disputes between the parties and to advance substantial justice. The Hon'ble Supreme Court has summarized the law on this issue in Basawaraj and Anr vs. Special



Land Acquisition Officer [(2013) 14 SSC 81]. In para 15 the Hon'ble Supreme Court held thus -

"15. The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "**sufficient cause**" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided. only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature".

26. In the instant case, applicants have made only vague and unsubstantiated submissions, which have been conclusively controverted by non-applicants on affidavit. Applicants, despite providing enough opportunities, failed even remotely to demonstrate any meaningful, convincing and cogent reason in support of the condonation of delay, much less the sufficient cause, which is required for condonation of delay.

27. Applicants slept over for a long time without any cogent and convincing justification. Keeping in view of the proposition of law laid down by the Hon'ble Supreme Court relating to condonation of delay and having regard to the totality of facts and circumstances of this case as discussed above, in our



considered view, applicants are found to be casual, non-serious and not vigilant in preferring the appeal against the impugned order in time. Therefore, in the absence of cogent reasons to condone enormous delay of 117, 117 and 110 days in filing respective appeals and in order to avoid injustice to non-applicant, we are of considered view that applicants are not eligible for condonation of delays. In the aforesaid circumstances, the captioned applications for condonation of delays are devoid of merits and do not deserve to be allowed. Therefore, the solitary point for determination is answered in the negative and we proceed to pass the following order: -

ORDER

- a. Misc. Application Nos. 1050 of 2022, 1066 of 2022 and 1067 of 2022 for condonation of delay stand rejected.
- b. In view of dismissal of Misc. Applications for condonation of delays, pending captioned Appeal Nos. AT-0060000000 134129, AT-0060000000 134130 and AT – 0060000000 134135 will not survive, consequently stand disposed of.
- c. No order as to costs.
- d. In view of the provisions of Section 44(4) of the Act of 2016, copies of the order shall be sent to the parties and to MahaRERA.


(Dr. K. SHIVAJI)


(SHRIRAM. R. JAGTAP, J.)