

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL  
MUMBAI**

**MISC. APPLICATION NO. 1082 OF 2022 (Delay)  
IN  
APPEAL NO. AT006000000134165  
IN  
COMPLAINT NO. CC006000000192688**

**1. Taruna Khattar**  
**2. Gautam Khattar**  
B-1305, Lake Pleasant,  
Lake Homes, Powai  
Mumbai – 400 076.

-VS-

**1. Sunny Vista Realtors Pvt. Ltd.**  
514, Dalamal Towers,  
211 FPJ Marg Nariman Point,  
Mumbai – 400 021.  
**2. Persipina Developers Pvt. Ltd.**  
Olympia Building, Hiranandani Business Park  
Powai, Mumbai – 400 076.

... Applicants

... Non-applicants

*Ms. Divya Vishwanath, Advocate for Applicants.*

*Mr. Anwar Landge, Advocate for Non-applicant No.2.*

*None for Non-applicant No.1 ex-parte.*

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

**DATE : 22<sup>nd</sup> AUGUST, 2023**

*(THROUGH VIDEO CONFERENCE)*

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

By this captioned Misc. Application No. 1082 of 2022, Applicants are seeking for condonation of delay of 30 days under Section 44(2) of The Maharashtra Real Estate (Regulation and Development) Act of 2016, in filing

of the captioned appeal on 29<sup>th</sup> November 2022 beyond the prescribed/ permissible limitation period of 60 days against the orders dated 29<sup>th</sup> August 2022 passed by Ld. Adjudicating Officer as well as against an interim order dated 17<sup>th</sup> February 2022 passed by learned Member, MahaRERA.

2. Heard learned counsel for parties *in extenso*.
3. Applicants are flat purchasers and original complainants before MahaRERA. Non-applicant No.1 is the original developer/ Promoter, who was developing the building known as "Aura" in the Project namely "Hiranandani Fortune City", located at Panvel Taluka, Raigad District. ("said Project"). Non-applicant No.1 had issued an offer letter dated 03<sup>rd</sup> April 2010 for the sale of the subject flat to Applicants and the provisional Allotment letter dated 31st July 2010 was also issued. Non-applicant No.2 is the present developer/promoter of the said project, who has purchased the rights of the said project under an auction. For convenience, Applicants will be addressed hereinafter as Complainants and Non-applicant Nos.1 and 2 collectively will be referred as Promoters in their original status before MahaRERA.
4. Applicants booked residential Flat No.1701 in the said project of the Promoters for a total consideration of Rs. 59,81,010/- which was subsequently revised to a total consideration of Rs. 63,81,010/- with one car parking space etc., Registered agreement for sale dated 07<sup>th</sup> April 2012 was also executed between the parties, wherein the possession was to be handed over on or before June 2014.
5. On account of the delay in delivery of possession of the subject flat, captioned complaint came to be filed before MahaRERA seeking various reliefs including to handover the possession of the subject flat.
6. Non-applicant No.2 refuted the allegations made in the complaint and contested these grounds raised by the Complainants.

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7. Upon hearing Applicants and Non-applicant No.2, Ld. Member, MahaRERA, vide its order dated 17<sup>th</sup> February 2022, transferred the captioned complaint to Ld. Adjudicating Officer, MahaRERA *inter alia* for suitable decision as per the provisions of the Act and Rules made thereunder and for Ld. Adjudicating Officer, MahaRERA to decide the issue of compensation by keeping all the points/issued open for the parties.
8. Upon hearing the Applicants and Non-applicant No.2, learned Adjudicating Officer, MahaRERA, vide order dated 29<sup>th</sup> August 2022 dismissed the Complaint.
9. Aggrieved and dissatisfied by this order, Applicants have challenged these two orders and sought various reliefs including to quash and set-aside the impugned orders dated 29<sup>th</sup> August 2022 and 17<sup>th</sup> February 2022 passed by learned Adjudication Officer and MahaRERA Authority respectively and also prayed for remand of the captioned complaint to MahaRERA for fresh adjudication in time bound manner.
10. Applicants have sought condonation of delay of 30 days in filing captioned appeal on various grounds as set-out in the application and learned counsel for Applicants made further manifold submissions as follows: -
  - (a) Delay in filing the appeal happened due to the fact that Applicants are residents of Dubai, who had to identify and appoint new advocate for filing of the captioned appeal. This was possible only after obtaining the complete set of the case papers from the erstwhile advocate/s, who had handled the case before MahaRERA. The entire process took longer time because of the cross-country communications and other associated difficulties inherently faced by Applicants and by their advocates in this peculiar facts and circumstances of the case.
  - (b) There was no deliberate delay nor any negligence on the part of the Applicants in filing the captioned appeal and Applicants have very good



case on merits. If the delay is not condoned, grave harm and irreparable loss, injury and prejudice will be caused to Applicants.

(c) Accordingly, Applicants have prayed to accept captioned appeal on the file of the Tribunal by condoning the delay of 30 days in filing the appeal.

- 11.** Per contra, learned counsel for Non-applicant No.2 strongly resisted the application and sought to reject their prayers by submitting that captioned application has no merits, Applicants have not come with clean hands and is misleading the Tribunal by presenting the distorted facts of the case as follows; -
- a. Applicants had first filed Complaint No. CC00600000057175 in November 2018 against Non-applicant No.2, seeking withdrawal from the project and refund. This complaint was disposed of on 15<sup>th</sup> November 2019 on the ground of contradiction in the prayers. However, Applicants have filed Second Complaint No. CC006000000192688 in March 2020 before MahaRERA, whereby, Applicants prayed for the possession of flat with interest for the delay in possession wherein, MahaRERA passed an interim order dated 01<sup>st</sup> March 2021 to handover the possession of the flat to Applicants.
  - b. MahaRERA passed another interim order dated 17<sup>th</sup> February 2022 and transferred the Complaint to learned Adjudicating Officer for suitable decision as per the Act and Rules wherein, learned Adjudicating Officer passed an order dated 29<sup>th</sup> August 2022 dismissing the Complaint because, Applicants have not made out any case for grant of compensation on any equitable grounds. However, Applicants have filed the present appeal *inter alia* to set aside these orders and for remand of the matter for consideration afresh in the current appeal by filing it beyond the permissible limitation period of 60 days. The only reasons,



applicants have cited is that they are residents of Dubai and therefore, this cannot and ought not be considered as sufficient cause of delay in filing the captioned appeal.

- c. Applicants have already appointed a power of attorney way back in 2016, who stays in India, for legal representation work.
  - d. Even though, Applicants reside in Dubai, it cannot be considered as sufficient cause for condonation of delay in today's technological and digital advancement, wherein physical distance across the globe is now, no longer a barrier in any communications. Besides that, Applicants have failed to establish any sufficient cause for condonation of above delay because law helps only to those litigants who are vigilant and not to those who sleeps over their alleged rights. Besides that, Applicants do not have any merits because the impugned orders are not in favor of Applicants and therefore this will multiply the proceedings.
  - e. Applicants have filed this appeal to remand the matter back to the Authority for afresh adjudication with malafide intention, to continue to harass Non-applicant No.2 and to extort monies.
  - f. Remanding the matter back to the Authority will hit the doctrine of *Res-judicate*, wherein no court will have the power to try any fresh suit or issues which have already been settled in the former suit between the same parties. Accordingly, the Misc. Application and the appeal preferred by Applicants are false and with malafide intentions, thereby, both the application and appeal are liable to be dismissed with costs.
- 12.** From the rival submissions and upon perusal of pleadings, a short point that arises for our determination is whether Applicants have 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**

- 13.** Before we advert to the merits of the controversy let us consider the settled position of law on condonation of delay.
- 14.** 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 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.

**15.** 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 //is 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".

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- 16.** 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.
- 17.** It is not in dispute that the orders in the complaint were passed by MahaRERA and learned Adjudicating Officer on 29<sup>th</sup> August 2022 and 17<sup>th</sup> February 2022, whereas appeal is filed on 29<sup>th</sup> November 2022.
- 18.** According to learned counsel for Applicants, the delay happened in filing the captioned appeal is bonafide and is on account of the facts that Applicants are residents of Dubai. Being located in an overseas country, it took longer than normal time to identify and appoint new advocate/s for filing of the above appeal after collecting relevant documents etc. Thereby, delay in filing the appeal was entirely unintentional and these constitute sufficient causes. Besides these, no harm or prejudice will be caused to the other side, if delay is condoned. Perusal of record reveals that Applicants are living abroad, and this fact has not been disputed by the Non-applicant No.2. Whereas the delay in filing of the appeal is stated to be 30 days. It appears to be natural that collecting papers, after identifying suitable advocates for filing the appeal from overseas location, takes comparatively longer time than time taken while living within India and thereby, it took time longer than 60 days, despite the improved communication technologies between Dubai. Learned counsel for Non-applicant No.2 has specifically contented that applicants have already appointed an attorney, who stays in India and also has further contended that applicants have failed to establish any sufficient cause for condonation of above delay because law helps only to those litigants, who are vigilant and not to those who are sleeping over their alleged rights. Upon consideration of the overall submissions made by rival parties and on perusal of record reveals that the delay of 30 days happened on account



of collecting papers and identifying advocate/s, more particularly because the applicants are residing in overseas location in Dubai. It happened despite making their best efforts to file the captioned appeal. The Applicants have filed an affidavit by submitting that there was no deliberate delay nor any negligence on the part of applicants in filing the captioned appeal, and the applicants have very good case on merits and sought for condonation of delay. In view of above, we are of the considered view that applicants have *prima facie* made bonafide efforts in filing of the captioned appeal and the delay happened despite their best bonafide efforts. Moreover, applicant's *prima facie* does not appear to have gained any undue benefits on account of captioned delay and there is no smack of malafide in filing the appeal.

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 be happened is that a cause would be decided on merits after hearing the parties.
20. Facts of the case on hand as mentioned herein above, reflect that Applicants have been making *bona fide* efforts, delay happened to be unintentional and not deliberate. In the light of the settled position of law that if, reasons put forth by Applicants 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 Applicants. In this background, particularly, when the aforesaid delay being not intentional, nor deliberate, Applicants *prima facie* appear to have made *bona fide* efforts in filing appeal despite difficulties 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 captioned Appeal No. AT006000000134165 is condoned.
- b. Captioned Misc. Application No. 1082 of 2022, is allowed and disposed of on above terms.
- c. Parties shall bear their own costs.
- d. In view of the provisions of Section 44(4) of the Act, copy of order be sent to parties and MahaRERA.

  
(DR. K. SHIVAJI)

  
(SHRIRAM R. JAGTAP, J.)