

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

Misc. Application No. 561/2023 (Delay)

In

Appeal No. AT006000000144277 of 2023

In

Complaint No. CC006000000089945

Rituja Ravindra Parab & Anr.

... Applicants

Versus

Nirman Realtors & Developers Ltd.

... Non-applicant

Adv. Varsha Kule for Applicants.

None for Non-applicant.

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

DATE : 9th May, 2024

(THROUGH VIDEO CONFERENCING)

ORDER

[PER : SHRIRAM R. JAGTAP (J)]

- 1) The applicant, who is a promoter, has moved this application for condonation of delay of 225 days caused in preferring the appeal on the grounds enumerated in the application, primarily on the ground that they had sufficient cause for not preferring the appeal within the period of limitation.

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- 2) The applicants have claimed that they had booked a flat in the project of the non-applicant. The non-applicants had executed an agreement for sale in their favour by which the non-applicant had committed to hand over the possession of the subject flat. However, the non-applicant did not adhere to their commitment and failed to fulfill their obligations to hand over the possession of the subject flat to applicants. Being dissatisfied with the conduct of the non-applicants, they had filed a complaint against the non-applicant before learned Authority.
- 3) After hearing the parties learned Authority disposed of the complaint by his order dated 18.04.2022. The applicants were supposed to file appeal against the impugned order on or before 17.06.2022.
- 4) The applicants further claim that after passing of the impugned order a settlement talk was going on between the applicants and the non-applicant, because of which, for the time being, the applicants did not pursue appeal against the impugned order. However, upon the non-applicant not showing any interest in getting the matter settled, the applicants had no option but to contemplate the next step to

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be taken with regard to the impugned order. The applicants have been diligently pursuing their case and just on the basis of mere technical difficulty of not being able to file the appeal on time, the applicants should not be stripped off of with their legal rights. The applicants should not be punished to such a quantum that the applicants are barred from seeking the remedies available to them.

- 5) The applicants further claim that in allowing the instant application, the learned Tribunal will only be following the principles of imparting justice to the litigants. The essence of the Limitation Act is not to defeat the rights of the litigants but to ensure that the procedure happens in time bound manner. If any kind of limitation starts defeating the right of litigants, the court should step in and provide a more lenient way out in order to impart justice to the litigants. The applicants claim that they are guilty of ignorance of law, but such ignorance be dealt with ease and no severe repercussions be levied upon the applicants. The delay in filing the captioned appeal is without any malafide intention or ulterior motive. Due to genuine reasons, the applicants were prevented from filing the instant appeal within the period of limitation. If the Tribunal is



pleased to condone the delay, no harm or prejudice will be caused to the non-applicant. On the contrary, if the delay is not condoned the applicants will suffer grave and irreparable loss which cannot be compensated in terms of money. With these contentions, the applicants have prayed to condone the delay of 225 days caused in filing the present appeal.

- 6) Despite the service of notices, the non-applicant did not appear in the matter. Therefore, by order dated 13.03.2024, matter has been proceeded ex-parte against the non-applicant.
- 7) We have heard learned Adv. Varsha Kule for applicants. The submissions advanced by learned Adv. Varsha Kule are nothing but reiteration of the contents of application. Learned Advocate has placed reliance on the order passed by the Hon'ble Bombay High Court in the Chamber Summons No. 215 of 2015 arising out of suit no. 1521 of 2000 between Mr. Kishandas Bhagwandas Nagpal and Anr. Versus Mr. Jethanand Bhagwandas Nagpal and others.
- 8) After considering the averments made in the application and submissions advanced by adv. Varsha Kule only point that arises for our consideration is whether applicants have

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established that they had sufficient cause for not preferring appeal within the period of limitation? to which our answer is in the negative for the reasons to follow:

REASONS

- 9) A careful examination of the averments made in the application and material on record reveals that the impugned order came to be passed on 18.04.2022. The limitation to file appeal against the impugned order has expired on 17.06.2022. The applicants have filed appeal on 28.01.2023. The Applicants were supposed to file appeal within the period of 60 days from the date of impugned order. However, there is delay of 225 days in filing the appeal.
- 10) Only explanation offered by applicants for condonation of delay is that after passing of the impugned order, a settlement talk was going on between the applicants and the non-applicant, because of which, for the time being, the applicants did not pursue appeal against the impugned order. The learned Advocate appearing for applicants has invited our attention to the impugned order and poignantly submitted that the impugned order records that non-applicant had showed its willingness and readiness to refund the amount paid by the

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complainants. This conduct of the non-applicant signifies that the non-applicant was ready for settlement of the dispute. Since the learned Authority did not grant interest on the amount paid by the applicants, the applicants decided to approach non-applicant for settlement of the dispute before preferring the captioned appeal.

- 11) Learned Advocate has further submitted that during the hearing of the complaint, the non-applicant was ready to settle the dispute; therefore, the applicants were under impression that even after passing of the impugned order, the non-applicant may settle the dispute and therefore, after passing of the impugned order, the applicants approached the non-applicant for settlement of the dispute. A settlement talk was going on between the parties. However, the same was not worked out; therefore, the applicants decided to file appeal. Thus, it can be said that there were genuine reasons because of which applicants could not prefer appeal within limitation. We do not find substance in the submissions of learned advocate appearing for the applicants.

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- 12) On examination of impugned order shows that the non-applicant remonstrated the complaint by filing its reply but at

the same time, the non-applicant had shown its willingness and readiness to refund the amount paid by the complainants without any interest and compensation and that too in four equal installments. There is no material on record to show that at any point of time, the non-applicant was ready to settle the dispute between the parties. The applicants have not produced single document to strengthen their contention that the conduct of the non-applicant depicted the picture that non-applicant was/is ready to settle the dispute. It is pertinent to note that the learned Authority has granted relief to the applicants directing the non-applicant to refund the amount. However, at the same time, the learned Authority has refused to grant interest on the paid amount and compensation. Under the circumstances, it was expected of applicants to file appeal immediately if they were dissatisfied with the impugned order. On the contrary, the conduct of the applicants shows that having accepted the impugned order, the applicants did not choose to prefer appeal. If the applicants have grievance against the impugned order, then, certainly the applicants would have filed appeal immediately. The impugned order clearly indicates that the non-applicant has showed its

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willingness and readiness to refund the amount without any interest and compensation. Under the circumstances, it is difficult to digest that a settlement talk was going on between the parties.

13) In **Esha Bhattacharjee Vs. Mg. Commit. of Raghunathpur Nafar Academy & Ors.** [(2013) 12 SCC 649] the Hon'ble Supreme Court has laid down the following principles:

- "15. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
- 15. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and totally unfettered free play is not allowed.*
- 15. (ix) The conduct, behaviour and attitude of a party relating to its negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given total go-bye in the name of liberal approach;*
- 15. (x) 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.*
- 15. (xi) 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.*

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16. (a) *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.*
16. (d) *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."*

As indicated above, the applicants have miserably failed to offer plausible explanation for condonation of delay. The explanation offered by the applicants does not appeal us to hold that the applicants have established that the applicants have sufficient cause for not filing the appeal within the time limit prescribed. If a settlement talk was going on between the parties certainly that would have been some correspondence or some email communication between the parties. However, the applicants have not produced any single document to support their contention that a settlement talk was going on between the parties.

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14) The explanation offered by the applicants for condonation of delay is not satisfactory and it appears to be frivolous. The applicants have failed to file appeal on time and chose to do so only after 225 days and as per their convenience. The said situation can only be termed as non-seriousness of the applicants, and the other party cannot be left to suffer and desolated. Thus, the averments made in the application qua delay of 225 days cannot be classified as a reasonable delay in any manner. The overall conduct of the applicants reveals that the applicants are found to be negligent, not acted diligently and remained inactive. The applicants did not bother to protect their own interest and remained as a silent spectator without any sufficient cause for almost 225 days. This approach of the applicants is found to be casual, non-seriousness and non-vigilant in preferring appeal against the impugned order. Application is devoid of merits and therefore, it is liable to be rejected. We, therefore, proceed to pass following order:

ORDER

- a) Miscellaneous Application No. 561 of 2023 for condonation of delay is dismissed.

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- b) In view of dismissal of delay condonation application, appeal does not survive and the same is accordingly dismissed.
- c) Parties shall bear their own costs.
- d) Copy of this order be communicated to the learned Authority and respective parties as per Section 44(4) of RERA Act, 2016.


(DR. K SHIVAJI)


(SHRIRAM R. JAGTAP)

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