

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

Misc. Application No. 437/2023 (Delay)

In

Appeal No. AT005000000144327 of 2023

Devi Shakti Realty LLP

... Applicant

Versus

Mr. Shailesh Mahadev Parkhe

... Non-applicant

Adv. Mr. Yash Mehta for Applicant

Adv. Mr. Nandu Pawar for Non-applicant

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

DR. K. SHIVAJI, MEMBER (A)

DATE : 21st December, 2023

(THROUGH VIDEO CONFERENCING)

ORDER

[PER : SHRIRAM R. JAGTAP (J)]

The Applicant, who is a Promoter, has moved this Application for condonation of delay of 53 days caused in preferring Appeal on the grounds enumerated in the Application primarily on the ground that Applicant had sufficient cause for not preferring Appeal within the period of limitation.

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2] The Applicant and Non-applicant will hereinafter be referred to as "Promoter" and "Allottee" respectively for the sake of convenience.

3] Brief facts, which are necessary for disposal of the present Application, are that the Allottee had filed Complaint No.CC005000000011020 against the Promoter on account of delay in delivering possession of the subject flat alongwith Occupancy Certificate. After hearing both the parties the then learned Chairperson, MahaRERA by his Order dated 21.01.2020, had transferred the Complaint to the Adjudicating Officer for adjudicating the issue of interest and compensation. This Order was not challenged by any of the parties. After hearing the parties i.e. Allottee and Promoter the then learned Adjudicating Officer, by his Order dated 23.10.2020, allowed the Complaint. This Order was also not challenged by any of the parties. Since the Order of learned Adjudicating Officer was not complied with by Promoter in full satisfaction, the Allottee has filed non-execution Application. The learned Adjudicating Officer was pleased to pass Order dated 30.11.2022 whereby the learned Adjudicating Officer has directed Tahsildar, Pune to take action for recovery of amount of Rs.28,49,325.39/- which includes stamp duty amount of Rs.1,68,

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900/-. Being dissatisfied with these Orders the Promoter has intended to challenge the Orders dated 21.01.2020, 23.10.2020 and 30.11.2022 by filing Appeal.

4] Promoter claims that the Appeal is within limitation from the date of Order dated 30.11.2022. The Promoter for the first time came to know about the said impugned Order on 03.01.2023. The Promoter had applied for certified copy of Order dated 30.11.2022 and received it on 30.01.2023. Thus, the Appeal is within limitation from 30.01.2023 as Applicant has presented the Appeal on 31.03.2023. However, while scrutinizing the Appeal the Officials of this Tribunal informed the Applicant that there is a delay of 53 days in filing the Appeal.

5] The Promoter has further contended that from the date of receipt of certified copy of impugned Order dated 30.11.2022 the Appeal is well within the limitation. However, in case this Tribunal comes to the conclusion that there is a delay in filing Appeal the same be condoned in the interest of justice and the Appeal be disposed of on merits. The delay is not intentional. The Appellant has sanguine hope of success in Appeal. 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

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would be decided on merits. With these contentions the Promoter has prayed to condone the delay of 53 days.

6] Non-applicant/ Allottee has remonstrated the Application by filing reply contending therein that the captioned Appeal is filed on 29.03.2023 after a delay of 2 years 2 months and 7 days. The Applicant has not offered explanation for the said period for condonation of delay. Besides, on 27.10.2021 Promoter had paid Rs.12,50,000/- to Allottee by cheque towards cancellation of booking of subject flat. This signifies that the Applicant/ Promoter was fully aware of the Order passed by the Adjudicating Officer MahaRERA, Pune for refund of amount of Rs.21,95,050/- and the Appellant had acted in furtherance of the said Order.

7] The Non-Applicant/ Allottee has further contended that warrant for recovery of amounts were issued against Promoter/ Applicant from time to time by the learned Adjudicating Officer, MahaRERA. Pursuant to Order dated 23.10.2020 Promoter/ Applicant had handed over cheque bearing No. 054803 dated 16.10.2022 drawn on Bank of Maharashtra for Rs.28,08,956.52/- to the Tahsildar, Pune towards compliance of the said impugned Order which demonstrates the readiness and willingness to comply with the said impugned Order by the Applicant/ Promoter. The

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Applicant/ Promoter did not prefer Appeal against the earlier Orders since the Applicant had no grievance against the said impugned Orders.

8] Further contention of Non-applicant/ Allottee is that by Application dated 06.09.2022 the Applicant/ Promoter had prayed to direct the Allottee to submit revised calculation for the balance amount to be paid by Promoter to Allottee. Pursuant to the said Application impugned Order dated 30.11.2022 came to be passed. Applicant has not offered satisfactory explanation for condonation of delay. With these contentions the Non-applicant/ Allottee has prayed for rejection of the Application with exemplary costs.

9] We have heard learned Advocate Mr. Yash Mehta for Applicant and Advocate Mr. Nandu Pawar for Non-applicant. The submissions advanced by learned counsel appearing for respective parties are nothing but reiteration of the contents of Application and reply. However, learned Advocate Mr. Yash Mehta for Applicant has further poignantly submitted that the delay was on account of lockdown imposed by the Government to battle the Covid-19 pandemic and its resultant difficulties. The Hon'ble Apex Court in Suo Moto Writ Petition took cognizance of these difficulties in filing appeals/ suits/ applications, etc and vide Orders passed

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from time to time in Suo Moto Writ Petition (Civil) No.3 of 2020 excluded the period of limitation across the nation in all Courts and Tribunals. Vide Order dated 10.01.2022 the Hon'ble Supreme Court extended the period of limitation by 90 days from 01.03.2022 which is until 30.05.2022. While computing the period of limitation the period for obtaining certified copy of impugned Orders requires to be excluded. The Applicant received the certified copies of impugned Orders on 30.01.2023. Thus, the Appeal is within limitation from the date of receipt of the certified copy of the impugned Order. However, due to unavoidable circumstances which are beyond the control of Applicant, the Applicant could not prefer Appeal within the time limit prescribed. The learned Advocate placed his reliance on the pronouncement of the Hon'ble Apex Court in the case of **Collector Land Acquisition, Anantnag Vs. Mst. Katiji and Others** [(1987) 2 Supreme Court Cases 107)]. Learned Advocate has further submitted that if the explanation does not smack of malafides or it is not put forth as part of a dilatory strategy it is expected that the Court must show utmost consideration to the Applicant. The Applicant has sanguine hope of success in Appeal. Applicant has good case on merits and if delay is not condoned the Applicant will suffer irreparable loss

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which cannot be compensated in terms of money. With these contentions learned Advocate Mr. Yash Mehta has prayed to condone the delay.

10] After taking into consideration the rival contentions of the parties only point that arises for our consideration is whether Applicant/ Promoter has established that the Applicant had sufficient cause for not preferring the captioned Appeal within the period of limitation? To which we answer the point in the negative for the reasons to follow.

REASONS

11] It is not in dispute that impugned Orders came to be passed on 21.01.2020, 23.10.2020 and 30.11.2022. As per Section 44 of RERA the Applicant was supposed to file Appeal within the period of 60 days from the date of the Orders. Admittedly, captioned Appeal came to be filed on 31.03.2023.

12] It is not in dispute that by filing Appeal the Applicant has challenged the first Order dated 21.01.2020 passed by the learned Authority whereby the learned Authority had referred the Complaint to the Adjudicating Officer for adjudication of compensation and interest. The learned Advocate Mr. Yash Mehta

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for Applicant has poignantly submitted that the large period of delay is covered by Covid-19 pandemic and in the light of the pronouncement of the Hon'ble Supreme Court the delay is liable to be condoned. We do not find substance in the said submissions of learned Advocate Mr. Yash Mehta.

13] The Applicant was supposed to file Appeal on 22.03.2020 from the date of first impugned Order dated 21.01.2020. We are of the view that the Applicant cannot take shelter of the Orders passed by the Hon'ble Supreme Court in Suo Moto Writ Petition (Civil) No.3 of 2020 extending the period of limitation to plead that the Miscellaneous Application for delay in filing Appeal is within limitation. The Applicant did not act vigilantly and has slept over his rights without any justifiable reasons. After computing the period of limitation in filing the captioned Appeal against the Order dated 21.01.2020 it is seen that there is delay of more than two years in filing the Appeal. Under the circumstance, it is difficult to digest that there is a delay of 53 days in filing Appeal against the impugned Order dated 21.01.2020 as alleged by Applicant.

14] The Hon'ble Supreme Court in **Sagufa Ahmad Vs. Upper Assam Plywood Products (P) Ltd.** [(2021) 2 SCC 317] has held that Judgment dated 23rd March, 2020 in cognizance for extension

of limitation (in *Suo Moto Writ Petition (Civil) No.3 of 2020*) is extending only period of limitation and it did not extend period upto which delay can be condoned in the exercise of discretion conferred by the statute. The Hon'ble Supreme Court has observed that-

18. To get over their failure to file an appeal on or before 18.03.2020, the appellants rely upon the order of this Court dated 23.03.2020 in *Suo Moto Writ Petition (Civil) No.3 of 2020*. It read as follows:

"This Court has taken *Suo Moto* cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/ applications/ suits/ appeals/ all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central or State).

To obviate such difficulties and to ensure that lawyers/ litigants do not have to come physically to file such proceedings in respective Courts/ Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is binding order within the meaning of Article 141 on all Courts/ Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/ Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks."

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19. But we do not think that the appellants can take refuge under the above order. What was extended by the above order of this Court was only "the period of limitation" and not the period upto which delay can be condoned in exercise of discretion conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. 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 sleep over them."

15] It is significant to note that the lockdown was only imposed on 24.03.2020. There was no impediment for the Applicant to file appeal before 24.03.2020. The Applicant has failed even to remotely show sufficient cause for not filing Appeal before 24.03.2020. It means the period of limitation for filing Appeal against impugned Order dated 21.01.2020 had already expired on 22.03.2020 i.e. before imposition of lockdown by the Government due to outbreak of pandemic Covid 19. Therefore, in view of the observations of the Hon'ble Supreme Court in **Sagufa Ahmed Vs. Upper Assam Plywood Products (P) Ltd** [(2021) 2 SCC 317] we are of the view that Applicant cannot take refuge under the Orders of the Hon'ble Supreme Court passed in Suo Motu Writ Petition (Civil) No.3 of 2020.

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16] It is not in dispute that the Applicant has also challenged the Order dated 23.10.2020 passed by the learned Adjudicating Officer. The Applicant was supposed to file Appeal within 60 days from the date of the said impugned Order. However, the Hon'ble Apex Court in Suo Moto Writ Petition (Civil) No.3 of 2020 has held that-

*"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.**"*

It means the Applicant was supposed to file the captioned Appeal on or before 30.05.2022. As indicated above admittedly captioned Appeal came to be filed on 31.03.2023. It means there is delay of 10 months 5 days in preferring the captioned Appeal. The Applicant did not bother to challenge the impugned Order dated 23.10.2020 within limitation. On the contrary, the material produced on record by Non-applicant/ Allottee completely indicates that the impugned Order dated 23.10.2020 passed by the Adjudicating Officer, MahaRERA was accepted by the Applicant/ Promoter. Pursuant to the Order dated 23.10.2020 the Applicant/ Promoter had paid Rs.12,50,000/- to Non-applicant/ Allottee vide

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cheque dated 27.10.2021. It is pertinent to note that by Application dated 06.09.2022 the Applicant/ Promoter had prayed to learned Adjudicating Officer to direct the Non-applicant/ Allottee to submit revised calculation for the balance amount to be paid by Promoter to the Allottee. This conduct of the Applicant signifies that the Applicant/ Promoter has no grievance against the said impugned Order. Having accepting the verdict passed in the Complaint the Applicant/ Promoter has issued cheque of Rs.28,08,956.52/- on 16.09.2022 in the name of Non-applicant/ Allottee and handed over the same to Tahsildar, Pune towards compliance of the Order dated 23.10.2020. The Applicant has miserably failed to demonstrate the sufficient cause for condonation of delay of 10 months 5 days in preferring the captioned Appeal against the Order dated 23.10.2020.

17] It is further seen that the Applicant/ Promoter has also challenged the Order dated 30.11.2022. On perusal of certified copy of impugned Order would show that the Applicant had applied for certified copy of impugned Order on 30.01.2023 and got it on the same day. The Applicant was supposed to file Appeal against the said impugned Order dated 30.11.2022 on 29.01.2023. Admittedly the Appeal came to be filed on 31.03.2023. It means

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that there is a delay of 2 months 2 days in preferring the Appeal against the impugned Order dated 30.11.2022.

18] In **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Academy and 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, behaviour 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*

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nonchalant manner requires to be curbed, of course, with legal Parameters."

19] A perusal of Application would show that Applicant has not offered explanation for condonation of delay. Considering the facts and circumstances of the case and in the light of principles laid down by the Hon'ble Supreme Court as above, the delay that has already occurred can be construed to be deliberate and intentional act. Moreover, 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 facts and circumstances of the instant case, we are of the considered view that Applicant is found to be casual, non-serious and non-vigilant in preferring Appeal against the impugned Orders. Overall conduct of the Applicant/ Promoter would show that he was not diligent in taking steps for filing Appeal. The Applicant is found to be negligent and found to have remained inactive. The Applicant/ Promoter has all requisite and conceivable resources at his disposal to prosecute the Appeal in time if there is any perceived grievance against the impugned Orders. The Applicant being Promoter also knows where his interest lies. The Applicant did not bother to protect his own interest and remained silent spectator till filing of the Appeal.

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Therefore, in the absence of cogent reasons, we are not inclined to condone huge delay in filing Appeal. The explanation offered by Applicant/ Promoter for not preferring the Appeal within limitation is not sufficient to condone the delay.

20] For the foregoing reasons we are of the view that no sufficient cause is made out by Applicant/ Promoter for condonation of delay and in the result delay cannot be condoned. The Application is devoid of merits thus, it deserves to be rejected. We therefore proceed to pass the following Order.

ORDER

- 1] Misc. Application No.437/2023 is dismissed.
- 2] In view of dismissal of Delay condonation Application, Appeal does not survive and the same accordingly stands disposed of.
- 3] Parties shall bear their own costs.
- 4] Copy of this Order be communicated to the Adjudicating Officer and the respective parties as per Section 44(4) of RERA, 2016.


(DR. K SHIVAJI)


(SHRIRAM R. JAGTAP)

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