

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

Misc. Application No. 361/2023 (Delay)

In

Appeal No. AT006000000144452 of 2023

Lokhandwala Kataria Constructions Pvt. Ltd. ... Applicant

Versus

1. Mrs. Rita Anil Parmar &
2. Mr. Anil Parmar ... Non-applicants

Adv. Mr. Chirag Sarawagi for Applicant

Adv. Ms. Gaurangi Patil for Non-applicants

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

DR. K. SHIVAJI, MEMBER (A)

DATE : 21st December, 2023

(THROUGH VIDEO CONFERENCING)

ORDER

[PER : SHRIRAM R. JAGTAP (J)]

By this Application, Applicant/ Promoter has prayed to condone delay of 227 days caused in preferring Appeal primarily on the grounds as set out in the Application and submits that Promoter had sufficient cause for not preferring Appeal within the period of limitation.

S. Jagtap

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

3] Promoter claims that the impugned Order was passed on 20.04.2022. As per the prevalent practice, the Officials of RERA used to forward an intimation by email to the contesting parties about passing of the Order in the Complaint proceedings. However, in the present case, the Promoter did not receive any intimation email from the Officials of RERA. The Promoter thereafter tried to obtain information from the Registry of RERA. The Promoter learned that the impugned Order has been passed. The Promoter then filed an Application dated 01.07.2022 to obtain certified copy of the impugned Order and the same was received by the Applicant/ Promoter on 06.07.2022. The period of 60 days to file the Appeal from 07.07.2022 expired on 05.09.2022. The Applicant/ Promoter has filed Appeal on 20.04.2023.

4] The Promoter further claims that on 08.08.2022 the Non-applicants have also filed an Appeal bearing No. AT0060000000133947 of 2022 and challenged the same impugned Order dated 20.04.2022. Separate Attorneys were appointed in the proceedings before the MahaRERA by the Promoter. After

Sgator

passing of the impugned Order and the Appeal being filed by Non-applicants, there was change in the Attorneys of the Applicant. During the pendency of the Appeal of the Non-applicants, the new Attorneys of Applicant observed some substantial errors/ grounds in the impugned Order. Therefore, the new Attorneys advised the Applicant to challenge the impugned Order.

5] It is further contention of the Applicant that the Applicant is a Private Limited Company. The Applicant conducted Board Meeting to discuss the legal aspects of the matter. The representative of the Applicant thereafter, informed the Attorneys about their decision to challenge the impugned Order. On account of the voluminous nature of facts and documents on record, time was consumed for drafting the Appeal. Further various discussions were held between the Applicant and its Attorneys for finalization of draft of the Appeal, this entire process has taken considerable amount of time. Because of these facts there has been a delay in filing the Appeal.

6] The Applicant further claims that Mr. Moiz Lokhadwala, who was the Director of the Applicant, had expired on 27.09.2021. He was looking after the affairs of the subject project and was well conversant with the facts of the matter. Because of the sad demise

Sgagtop

of Mr. Moiz Lokhadwala the Applicant had to undergo several structural changes in the working of the organization. All this had a considerable impact in the decision making of the Applicant and in the day-to-day affairs of working of the project. Thus, it was only on account of the unforeseen and unfortunate circumstances which were beyond the control of the Applicant, the Applicant could not file Appeal within the time limit prescribed. The delay is non-intentional and non-deliberate.

7] The Applicant further claims that Applicant has a very good case on merits. If delay is not condoned the Applicant will suffer irreparable harm, loss and injury. Granting of reliefs would serve the cause of justice and non-granting thereof would result in miscarriage of justice. The Applicant however claims that if delay is condoned the Non-applicants will also get a fair opportunity to deal with the contentions raised in the Appeal and hence no prejudice will be caused to the Non-applicants. With these contentions the Applicant/ Promoter has prayed to condone delay of 227 days in filing the instant Appeal.

8] The Non-applicants have remonstrated the Application by filing reply contending therein that the Application is devoid of merits, frivolous, vexatious and misconceived therefore it should

Spatek

be dismissed with exemplary costs. The conduct of the Applicant is highly unprofessional, grossly negligent and the same is unparalleled to the reasonable standard of a prudent and cautious litigant. The Applicant has not produced documents to support its contentions in the Application. The Applicant has not offered plausible explanation and miserably failed to establish sufficient cause for condonation of delay. According to maxim '*vigilantibus non dormientibus aequitas subvenit*' which means Equity assists the vigilant, not those who sleep over their rights. It is apparent from the conduct of the Applicant that the Applicant has slept over its rights. The present Application is filed purely to defeat the valuable right accrued in favour of the Non-applicants. Despite having knowledge of the impugned Order, the Applicant chose not to file Appeal within the time limit.

9] The Non-applicants have further contended that the Applicant has filed the present Application with a view to prolong the litigation and to increase the multiplicity of the proceedings. It is settled law that liberal access to justice should not be construed by anyone as a mean to lead chaos and indiscipline and frivolous applications should be penalized with heavy costs. A bare perusal of Application reveals that Applicant has not explained the day-to-

Syed

day delay. The Applicant was aware of the impugned Order. Besides, the Applicant has put its appearance in the Appeal filed by Non-applicants challenging the same impugned Order. Thus, it is apparent from the above facts that the Applicant has not put forth sufficient cause to condone the delay. The delay is intentional and deliberate. Proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5 of Limitation Act. If sufficient cause is not proved the Application for condonation of delay is to be dismissed on that ground alone.

10] The Non-applicants have further contended that the Applicant has put its appearance in the Appeal filed by the Non-applicants and despite this the Applicant still chose not to file Appeal against the impugned Order. The explanation offered by the Applicant is concocted and the grounds urged in the Application are fanciful, and the Application is filed with a view to expose the Non-applicants unnecessarily to face such a protracted litigation.

11] The Non-applicants have further contended that the copy of Appeal filed by Non-applicants was served upon the Applicant on 11.08.2022. The Applicant while filing reply in the said Appeal on 15.12.2022 contested the Appeal filed by Non-applicants.

Sg

Having knowledge of the impugned Order by putting appearance in the Appeal filed by Non-applicants, the Applicant deliberately chose not to file an Appeal within the statutory period of 60 days as prescribed under Section 44(2) of the RERA Act. The Non-applicants have mentioned a gist of dates and events in their reply.

12] The Non-applicants have further contended that the Applicant has failed to explain the reasons for filing belated Application on 01.07.2022 for certified copy of the impugned Order. The Applicant has not approached the Tribunal with clean hands. The Applicant has intentionally not given the detailed account of uploading of the impugned Order by the Registry of RERA on its website. The Applicant in its reply to delay condonation Application filed by Non-applicants in their Appeal has taken contradictory stand, which is absolutely inconsistent with the averments made by the Applicant in the present Application. The Applicant has failed to give any clarification with respect to time period pertaining to change of Attorneys. The Applicant was represented throughout in the proceedings by its erstwhile Advocate before the MahaRERA and there was no change of Attorneys in the Complaint proceedings.

Sgatar

13] The Non-applicants have further contended that the present Advocate for Applicant has filed Vakalatnama on 23.07.2022 in the Appeal filed by Non-applicants. The newly appointed Advocate for Applicant had sufficient time and knowledge to take necessary steps for filing Appeal against the impugned Order. However, the Applicant deliberately chose not to file its Appeal within the prescribed period. The Applicant has not offered satisfactory explanation for condonation of delay. In **Lala Mata Din v. A Narayanan**, (1969) 2 SCC 770AIR 1970 SC 1953 (D.B.), the Hon'ble Supreme Court has held that there is no general proposition that mistake of counsel by itself is always a sufficient ground for condoning delay. Therefore, this ground put forth by Applicant for condonation of delay is not satisfactory.

14] The Non-applicants have further contended that the Applicant has vaguely averred about the time to draft the Appeal. Infact, the Applicant has time and again appeared and contested the Appeal preferred by Non-applicants. The Board Meetings are internal affairs of the Company. Internal discussion amongst the Directors of the Company cannot be a ground for condoning delay and the same cannot be attributed to the sufficient cause. While making an application for condonation of delay each and every day

Syngat

has to be explained in precise manner and not by the blanket submissions, which are devoid of particulars. If delay is condoned, then the Non-applicants will suffer grave prejudice and irreparable loss which would result in miscarriage of justice. The Applicant had sufficient time for taking appropriate steps but the Applicant had deliberately neglected to do so for the reasons mentioned above. With these contentions the Non-applicants have prayed to dismiss the Application with exemplary costs.

15] We have heard learned Advocate Mr. Chirag Sarawagi for Applicant/ Promoter and Advocate Ms. Gaurangi Patil for Non-applicants/ Allottees. The submissions advanced by learned counsel for respective parties are nothing but reiteration of contents of Application and reply. However, learned Advocate Mr. Chirag Sarawagi has further added that it is not in dispute that both the parties have challenged the impugned Order by filing Appeals. There was delay in filing Appeal by Non-applicants. After hearing the parties the Tribunal has condoned the delay and now the Appeal filed by Non-applicants is pending for adjudication on merits. In the meantime, the Applicant/ Promoter preferred the captioned Appeal challenging the same Order. No doubt there is delay of 227 days in preferring Appeal but at the same time it

S. Jagtap

cannot be ignored that lack of bona fides can be mitigated by imposing a cost against the Applicant/ Promoter. The delay can be condoned and Appeal filed by Applicant/ Promoter can be entertained to be heard and decided on merits analogously alongwith Appeal filed by Non-applicants.

16] Learned Advocate Mr. Chirag Sarawagi has further sorely submitted that the Applicant has good case on merits and Applicant has sanguine hope of success in Appeal. He further submits that if the explanation offered by Applicant does not smack of malafides or it is not put forth as a part of dilatory strategy then the delay by itself is no ground to deny the relief, the Non-applicants have also challenged the impugned Order, therefore by any stretch of imagination, it cannot be said that if the delay is condoned it would amount to deprive the Non-applicants of their valuable rights. It is not the case of Non-applicants that the valuable right has been accrued to them and if delay is condoned there is every possibility of depriving of their valuable rights.

17] Learned Advocate Mr. Chirag Sarawagi has strenuously submitted that it is well settled proposition of law that length of delay is no matter, acceptability of explanation is the only criterion. The explanation offered by Applicant/ Promoter is satisfactory. If

S. Sarawagi

delay is not condoned the Applicant will suffer irreparable loss which cannot be compensated in terms of money. On the other hand, the Non-applicants can be adequately compensated by imposing cost. Learned Advocate has placed his reliance on the following citations.

- (i) **N. Balakrishnan Vs. M. Krishnamurthy** (1998) 7 SCC 123
- (ii) **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors.** (2013) 12 SCC 649
- (iii) **Rajiv Sanghvi & Ors. Vs. Pradip R. Kamadar & Ors. (2022)** SCC Online Bom 11752
- (iv) **Municipal Corporation of Greater Mumbai Vs. Mahendra Builders & Ors.** MANU/SCOR/98274/2023

With these contentions, Advocate Mr. Chirag Sarawagi has submitted that the Application be allowed and the delay be condoned.

18] We have given thoughtful consideration to the submissions advanced by the Advocates appearing for respective parties. After considering the pleadings of the parties, material placed on record and submissions of the learned counsel for respective parties only point that arises for our consideration is whether the Applicant/ Promoter has established that the



Applicant/ Promoter had sufficient cause for not preferring Appeal within the time limit prescribed? To which we answer the point in the negative for the reasons to follow.

REASONS

19] It is not in dispute that impugned Order came to be passed on 20.04.2022. The Applicant/ Promoter has filed captioned Appeal on 20.04.2023. The Applicant/ Promoter was supposed to file Appeal within the statutory period of 60 days as prescribed under Section 44(2) of RERA, Act. If we compute the period of limitation it is seen that there is delay of 300 days for filing the captioned Appeal. The true test is to see whether the Applicant has acted with due diligence. Proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5 of Limitation Act. If sufficient cause is not established the Application for condonation of delay is liable to be dismissed.

20] A careful examination of Application reveals that the explanation offered by Applicant/ Promoter is that after passing of the impugned Order and the Appeal being filed by Non-applicants, there was change in the Attorney of the Applicant. The new Attorney of the Applicant, after going through the impugned Order,

Geeta

observed some substantial errors and as a result thereof advised the Applicant to challenge the impugned Order. It is further contention of Applicant that the Board of Directors of the Applicant discussed the legal aspects of the matter and determined to file Appeal. Considerable amount of time got consumed to finalize the draft of the Appeal. Because of these facts the Applicant could not filed Appeal within the time limit prescribed. We are of the view that time spent in discussing the legal aspects of the matter, in finalizing the draft of Appeal and engaging Counsel is not "sufficient cause" for condonation of delay in filing of Appeal.

21] It is significant to note that it is not in dispute that after receipt of Notice of the Non-applicants in the Appeal filed by Non-applicants, the Applicant/ Promoter put its appearance in the said Appeal on 23.07.2022. It is also not in dispute that the Applicant/ Promoter has filed reply to the Appeal filed by Non-applicants on 15.12.2022. It is worthy to note that the Applicant/ Promoter did not choose to file cross objection in the Appeal filed by Non-applicants. The Applicant/ Promoter has not offered explanation for not filing cross objection in the Appeal filed by Non-applicants. The Applicant/ Promoter had sufficient opportunity to file cross objection in the Appeal filed by Non-applicants. This conduct of the

S. J. K.

Applicant shows that explanation offered by the Applicant are concocted and the grounds urged in the Application are fanciful and flimsy.

22] It is to be noted that it is further case of the Applicant that one of the Directors of the Applicant Mr. Moiz Lokhadwala had expired on 27.09.2021. He was looking after the affairs of the subject project and was well conversant with the facts of the matter. Because of the sad demise of Mr. Moiz Lokhadwala the Applicant had to undergo several structural changes in the working of the organization. This had a considerable impact in the decision making of the Applicant. It is to be noted that the impugned Order came to be passed on 20.04.2022. Under circumstances, more particularly in the absence of supporting documents, evidence, it is difficult to digest that death of Mr. Moiz Lokhadwala had a considerable impact in the decision making of the Applicant, whether to file Appeal or not? We are of the view that the grounds put forth by Applicant are flimsy.

23] Scanning the Application, would show that the averments made with regard to consumption of time to draft the Appeal are vague. The Applicant has not given detailed and specific account of change of Attorney, date of Board meeting and made vague

Sgatar

averments in the Application. The criteria to be applied in condoning the delay in different claims may be different. When a right has accrued in favour of one party due to gross negligence of the other, the Court must refrain from exercising the discretionary relief. It has been held by the Hon'ble Apex Court in the case of

Balwant Singh Vs. Jagdish Singh (2010) 8 SCC 685 that-

" 25. We may state that even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation;

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise (sic a lis). These principles should be adhered to and applied appropriately. Depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

Sgptop

24] 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 nonchalant manner requires to be curbed, of course, with legal Paramaters."*

Syed

25] 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 one. Keeping in view the proposition of law laid down by the Hon'ble Supreme Court in catena of judgments relating to condonation of delay we are of the considered view that Applicant is found to be casual, non-serious and non-vigilant in preferring Appeal against the impugned Order. Applicant provided no satisfactory explanation for the 300 days delay. Overall conduct of the Applicant shows that he was not diligent in taking steps for filing captioned Appeal. The Applicant/ Promoter had an opportunity to file cross objection in the Appeal filed by Non-applicants however, the Applicant has not offered explanation for not filing cross objection in the Appeal filed by Non-applicants. This signifies that the Applicant is found to be negligent and found to have remained inactive. The Applicant/ Promoter has all requisite and conceivable resources at its disposal to file Appeal in time, if there is any perceivable grievance against the impugned Order. The Applicant being Promoter also knows where his interest lies. The Applicant did not bother to protect his own interest and remained as a silent spectator till filing of the Appeal. Therefore, in

Spent

absence of cogent reasons, we are not inclined to condone the huge delay in filing the Appeal.

26] For the foregoing reasons, we have come to the conclusion that no sufficient cause is made out by Applicant/ Promoter for condonation of delay, as a result thereof delay cannot be condoned. The Application is devoid of merits. Accordingly, we proceed to pass the following Order.

ORDER

- 1] Misc. Application No.361/2023 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 Authority and the respective parties as per Section 44(4) of RERA, 2016.


(DR. K SHIVAJI)


(SHRIRAM R. JAGTAP)

MBT/