

Mar, 03,
**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL,
MUMBAI**

**MISC. APPLICATION NO. 458 OF 2022 (Delay)
ALONG WITH
MISC. APPLICATION NO. 690 OF 2023 (Prod.of Docs)
IN
APPEAL NO. AT0060000000154518 OF 2023**

1. Amit Saxena

2. Mrs. Suchita Saxena

B-1602, Lokhandwala Residency,
LN Pappan Marg, Worli, Mumbai – 400 018.

... *Applicants*

~ versus ~

1. MIG (Bandra) Realtors & Builders Private Limited

Thr. Its Directors

Faizan Pasha and Jessie Kuruvila

DB House, General A. K. Vaidya Marg,
Goregaon (East), Block, Mumbai – 400063.

2. Radius Estates & Developers Pvt. Ltd.

Through the Resolution Professional

Mr. Jayesh Sangharika having his office,
at 405-407, Hind Rajasthan Building,
D.S. Phalke Road, Dadar (E), Mumbai – 14

.... *Non-applicants*

ALONG WITH



MISC. APPLICATION NO. 457 OF 2022 (Delay)

ALONG WITH

MISC. APPLICATION NO. 689 OF 2023 (Prod.of Docs)

IN

APPEAL NO. AT0060000000154520 OF 2023

1. Mrs. Milee Suchit Shetty

1201/C, Lokhandwala Residency,
Tower sCHS, Ltd. Manjrekar Lane,
Behind Toyota Showroom, Worli, Mumbai – 18.

2. Mrs. Meeta Mayank Nigam

1003/B, Lokhandwala Residency,
Towers CHS, Ltd. Manjrekar Lane,
Behind Toyota Showroom, Worli, Mumbai – 18.

... Applicants

~ versus ~

1. MIG (Bandra) Realtors & Builders Private Limited

Thr. Its Directors Faizan Pasha and Jessie Kuruvila
DB House, General A. K. Vaidya Marg,
Goregaon (East), Block, Mumbai, Maharashtra – 63.

2. Radius Estates & Developers Pvt. Ltd.

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Mr. Jayesh Sangharika having his office,
at 405-407, Hind Rajasthan Building,

D.S. Phalke Road, Dadar (East), Mumbai –14.

... Non-applicants

Adv. Mr. Harsh Behany for Applicants.

Adv. Ms. Vaishnavi More i/b. Mr. Sushant Chavan for Non-applicant No.1.

Adv. Mr. Abir Patel for Non-applicant No.2.

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

DR. K. SHIVAJI, MEMBER (A)

DATE : 04th MARCH 2024

(THROUGH VIDEO CONFERENCE)

ORDER

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

Heard learned counsel for parties *in extenso*.

2. By these applications, Applicants are seeking condonation of 187 days of delay in filing of captioned each of the Appeals on 12th June 2023 beyond the permissible limitations period by challenging the common impugned order dated 30th September 2022, passed by the learned Member, Maharashtra Real Estate Regulatory Authority (hereinafter to be referred as "MahaRERA" in short) in Complaint Nos. CC 0060000000 110869 and CC 0060000000 110882 lodged before MahaRERA under The Real Estate (Regulation and Development) Act of 2016 (herein after to be referred as "the Act") wherein, Applicants have prayed to direct non-applicants *inter alia* to execute and register agreement for sale and also to pay compensation under provisions of the Act in respect of the booking of their flats nos. 2302 in wing 9 and flat number 1901 in wing 15 respectively in a duly registered project known as "Ten BKC" located at Bandra (East), Mumbai (said project).
3. Captioned applications arise out of similar backgrounds and are giving rise to identical questions of law, therefore, by consent of parties, these 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 the said duly registered project known as "Ten BKC". For



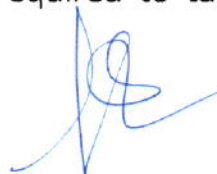
convenience, Applicants and non-applicants will be addressed hereinafter as Complainants and Promoters respectively in their original status before MahaRERA.

5. For the purpose of disposal of the present applications, it is not necessary to narrate background in detail, suffice it to say that Applicants have booked their respective flats as above, vide allotment letters dated 15th December 2016 and 2nd May 2019 respectively issued by promoters On account of *inter alia* delay in execution of the agreements for sale and also due to non-responsive and non-communicative stance of the non-applicants despite payment of substantial amounts far above the threshold of the statutory limits of 10% under the Act and 20% under MOFA, applicants were constrained to file their two separate captioned complaints before MahaRERA seeking various reliefs *inter alia* for direction to non-applicants to execute agreements for sale alleging violations of Section 13 of the Act by non-applicants.
6. However, during course of the hearing before MahaRERA parties have already executed agreements for sale. But applicants have alleged that in clause 41 of the said agreements for sale for the respective flats, promoters have illegally mentioned that the payments of stamp duty and registration charges be paid by complainants instead of payments to be made by promoters themselves in complete deviation from its earlier stipulation in the respective allotment letters issued by non-applicants themselves. Accordingly, applicants have pressed for refund of the stamp duty and registration charges, already paid by them for execution/registration of the respective agreements for sale.
7. After hearing the parties, MahaRERA passed a common impugned order dated 30th September 2022 by observing that main relief sought by applicants in



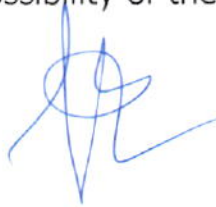
their respective complaints were for the execution of the agreement of sale, which has already been executed and therefore, it does not survive. The prayers made by applicants for refunds of the stamp duties and registration charges, were rejected *inter alia* because these prayers are afterthoughts.

8. Aggrieved Applicants have challenged this common impugned order by filing the present Appeals on 12th June 2023, after the expiry of the prescribed limitation period of 60 days, seeking various reliefs as elaborated above and as mentioned in the appeals *inter alia* for direction to non-applicants to pay/refund the stamp duties and registration charges already paid by applicants on behalf of the non-applicants for the execution/registration of the agreements for sale as well as for consequent direction to the non-applicants promoters to amend the respective agreements for sale to clarify the same.
9. Applicants have sought the said condonation of delays of 187 days on various grounds *inter alia* as set out in the above applications and learned counsel for Applicants made manifold submissions as follows: -
 - a) After applying for the certified copy of the common impugned order dated 30th September 2022 on 30th May 2023 and after getting the same on 8th June 2023, the captioned appeals have been filed on 12th June 2023.
 - b) Father of the applicant no. 1 of the appeal no. 154520 and her daughter also were unwell. Therefore, she was required for constant care of both of the ailing persons since late 2022. This has kept her away from attending the legal matters for filing the said appeal. Similarly, the co-owner of the booked flat and her cousin, applicant no. 2 in the appeal no. 154520, also could not get an opportunity to file appeal in time because her parents and child were also unwell, and she was also required to take care of ailing



family members. Therefore, their illness and also of the illness of their close family members did not permit her to file appeal within the prescribed time limit, which has caused the said delay of 187 days in filing the captioned appeals. In support of these, applicants have attached doctor certificates for the sickness.

- c) Applicants further submits that the delay is by no means deliberate, not intentional and has happened due to factors and reasons beyond the control of the applicants. Grave harm, loss and prejudice will be caused to applicants, if the present applications are not allowed and said delays are not condoned. On the contrary, no loss, harm and prejudice will be caused to the other sides, if the reliefs prayed for in these applications are granted.
- d) In support of the applications, applicants have referred and relied upon the judgement dated 10th August 2020 passed by this Tribunal in appeal no. AT 006000000021136 in the matter of M/s. Soham Estate vs. Chirag Darji, wherein, the delay in filing of the appeal was allowed by adopting liberal approach, so as to advance substantial justice.
- e) Learned counsel for the applicants further placed reliance on the judgement dated 21st December 2020 passed by this Tribunal in M.A. no. 35 of 2019 of appeal no. AT 006000000010859 in the matter between Mr. Kaushik pandya vs. Mr Rakesh Suri wherein, the delay was condoned based on the settled law on the point of condonation of delay in the judgement of the Hon'ble Supreme Court in the matter of collector land Acquisition vs. MST Kaliji, in the matter of N. Balakrishnan vs. M. Krishnamurthy, wherein the delay had happened by exploring the possibility of the amicable settlement among the parties.



- f) Learned counsel for the applicants further submits that applicants have very strong *prima facie* case in their favour, have excellent case on merits in the present appeals, the common impugned order has been passed without considering the submissions made by applicants and have been passed without any application of mind as well as in contravention of the said Act. Therefore, if the delay is not condoned then, it will result in failure of justice.
- g) Accordingly, the said delays in filing of the captioned appeals were not deliberate and were due to the unforeseen circumstances as mentioned above, the said delays being *bona fide*, learned counsel for the applicants urged that the said delays in filing these appeals be condoned.
10. Per Contra, learned counsel for non-applicant no. 1 strongly resisted these applications and sought to reject these prayers mentioned therein by submitting as hereunder; -
- a. Non applicant no. 1 is just a formal party to the present appeals and no relief can be granted against non-applicant no. 1. Learned counsel further supports the contentions of the reply filed by non-applicant no. 2.
- b. Perusal of captioned Misc. Applications for condonation of delays clearly reveal that Applicants have been negligent and deliberately delayed in filing of these appeals. Moreover, they had no compelling reasons at all, which have prevented them from filing the appeals within the time.
- c. Applicants are not entitled for any relief as prayed for. Therefore, captioned applications for condonation of delay are not maintainable in law and there is no case on merits or law and therefore these applications for delay condonation be dismissed with costs.



11. Learned Counsel appearing for non-applicant no. 2 also vehemently opposed the captioned misc. applications by submitting as follows:
- a. All but one of the medical certificates produced by applicants are of the same date i.e. dated 8th June 2023. Whereas the purported illness are that of 2023 except in one of these certificates, which are related to 2022. Therefore, these medical certificates appear to be not genuine at all.
 - b. He further submits that the process of filing appeal is online. 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. Moreover, Applicants have produced absolutely no tangible convincing evidence to show that any attempt was made by them to file these appeals in time. Therefore, Applicants have been negligent and as such, there is deliberate delay in filing of these captioned appeals. During the 60 days of permitted limitation period, applicant took no steps at all to file appeal even when nothing prevented them from doing so.
 - c. Even if these certificates are to be taken into consideration, Applicants were unwell only for a period of one-to two months. But the delays in filing of these appeals are of several months even after the limitation period was over. As such, the limitation period for filing the captioned appeals ended on 28th November 2022. But perusal of medical certificates will show that they all are pertaining to only after the expiry of the limitation period for filing of both the appeals. Whereas applicants are required to show how they were prevented from filing the appeal within the allowed time within the period of 60 days, for which, applicants have miserably failed to produce any evidence at all.



- d. Their excuse for not filing the appeals within the permitted time period of 60 days are on account of purported illness of their respective relatives and have merely made bald statements of their illness. It is also important to note that the reasons for delays mentioned in all the applications are on similar grounds despite being different persons and having different background circumstances/details. All these clearly reveal that these grounds are not genuine, nor bonafide and the said delays are deliberate as well as intentional. Therefore, their entire case is a fabricated story to somehow coverup their negligence.
- e. Applicants were represented by advocate before MahaRERA and the very same advocate has filed these appeals and therefore, they had all the relevant documents. Therefore, these appeals are belated after thought and the certificates are strategically obtained only after those dates and limitation period are over. Accordingly, it is crystal clear that applicants are simply making stories to cover up their deficiencies that they slept over their rights. It also to be noted that delays due negligence cannot be condoned based on the maxim "*Vigilantius Non Dormientibus Jura Subveniunt*"; which is squarely applicable to the present case. Courts only protect those, who are vigilant and not those, who are sleeping over their rights.
- f. These citations referred to and relied upon by applicants are also of no relevance in facts of the present case sand the facts are entirely different.
- g. Captioned application lacks bona fide and have failed to show cogent reasons to demonstrate that they faced any genuine difficulties in filing these appeals within the permitted limitation time period. Therefore, these applications be dismissed with costs.



h. 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 to be condoned more specifically because, the said delays are not small rather are of 187 days in both the appeals and have not produced on the record any cogent evidence in support. 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.

i. In the light of above, captioned misc. applications ought not be entertained and 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 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

13. Before we advert to the merits of the controversy let us consider the settled positions of law on condonation of delay.

14. 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.*

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:



- 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".*

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 captioned complaints were disposed of by MahaRERA by its common order dated 30th September 2022, which has been challenged by Applicants by filing the captioned Appeals on 12th June 2023 beyond the prescribed permissible limitation period of 60 days.



18. Learned Counsel for the Applicants submits that Applicants applied for the certified copies of the impugned order only on 30th May 2023 and received the copies on 8th June 2023. 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.
19. It is also important to note that all the applicants have claimed for condonation of delay on the basis of the similar grounds by submitting that they were prevented from filing appeals in time due to the illness of their close relatives and for their own. Perusal of these medical certificates clearly reveals that all but one medical certificates are of the same date. This has naturally raised certain veracity and genuineness of the medical certificates. It is also not convincing that how, all the Applicants have the very similar grounds for all of them for their condonation of delay in all the applications. This also raises doubts about the ground raised by applicants about their genuineness.
- a. Moreover, all these medical certificates clearly demonstrate that their close relatives were not well within the limitation period and were ill only after the expiry of the permitted limitation period of 60 days. As such, some of the applicant's relatives fell ill only after the expiry of more than 8 months of the expiry of the impugned order. Therefore, there was absolutely no reasons/any ground whatsoever for not filing the appeals in time. Applicants have not put forth in these delay condonation applications any cogent reason for not filing appeals within the limitation period. Learned counsel for applicants while making submissions have also not put forth about the any reasons for not filing these appeals within the limitation period of 60 days. As such, even if these medical

certificates are taken into account, even then, it is more than evident that, there was no difficulty at all for filing these appeals within the permitted time period of 60 days. Applicants have failed to demonstrate any tangible concrete steps taken by them for filing these appeals within the permitted time period of 60 days. As such, no medical certificate pertains to the period within the limitation period at all. It means none of the applicants nor their family relatives were having any medical issues at all during the limitation period. Even then, applicants have failed to file these appeals within the time.

20. Moreover, the relevant legal/case documents required for filing appeals online, were already available with their advocates. This shows that complainants were casual, careless and not vigilant about their rights.

21. Therefore, it is least expected by Applicants to be more vigilant and ought not be sleeping over their rights. However, prima facie, it appears that applicants were not vigilant and were casual-in filing these appeals in the time. Whereas applicants are expected to advance sufficient convincing reasons if any, 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;*"

22. Perusal of these applications further reveals that applicants have made only bare bald statements about the reasons for delay. Moreover, the reasons set out in all the applications are very similar despite having certain different



backgrounds. Accordingly, we are of the considered view that applicants have been very casual, careless and non serious, not alert about their own rights.

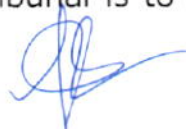
23. Furthermore, it is pertinent to note that The Hon'ble Supreme Court in para 19 of its judgement in the case of "Sagufa Ahmed and Others vs. Upper Assam Plywood Products (P) Ltd [(2021) 2 SCC 317]", has laid down as follows; -

"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."

24. The above observations of The Hon'ble Supreme Court are in the context of the availing benefits for extension of limitation period in filing of appeal, and 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.

25. However, in the present case, the impugned order is dated 30th September 2022, applicants have failed to produce even a single concrete evidence on record demonstrating tangible action rather, no step is seen taken by applicants 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 aforesaid grounds mentioned in their applications and seek benefits of condonation of delay on these counts.

26. 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".*

27. In the instant case, applicants have made only vague and unsubstantiated submissions for delay after the limitation period, 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.

28. Applicants slept over for a long time without any cogent and convincing justification. Keeping in view of the propositions 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 these cases 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 the enormous delay of 187 days in filing respective appeals and in order to avoid injustice to non-applicants, 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. 458 of 2023 and 457 of 2023 for condonation of delay stand rejected.
- b. In view of dismissal of Misc. Applications for condonation of delays, pending captioned Appeal Nos. AT-0060000000 154518 and AT – 0060000000 154520 along with pending Misc. Applications 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.)