

Feb 29,

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

**MISC. APPLICATION NO. 386 OF 2023 (Delay)**  
**IN**  
**APPEAL NO. AT0060000000154532**

<b>1. Sailesh Kantilal Shah</b>	]	
<b>2. Harsha Kantilal Shah</b>	]	
504, Girnar Building, 5 <sup>th</sup> floor, 69,	]	
Tardeo Main Road, Opp. Film Centre,	]	
Mumbai – 400034.	]	... <b>Applicants</b>

*versus*

<b>Sri Harsh Developers</b>	]	
Dhavalgiri, 1 <sup>st</sup> floor,	]	
Papanaswadi, Off A. K. Marg,	]	
Nana Chowk, Mumbai – 400036.	]	... <b>Non-Applicant</b>

**ALONG WITH**

**MISC. APPLICATION NO. 364 OF 2023 (Delay)**  
**IN**  
**APPEAL NO. AT0060000000154509**

<b>Minakshi Nitin Shah</b>	]	
31/32, Giriraj Apartments, 201	]	
Walkeshwar Road, Teenbatti,	]	
8 <sup>th</sup> floor, Mumbai – 400006.	]	... <b>Applicant</b>

*versus*

<b>Sri Harsh Developers</b>	]	
Dhavalgiri, 1 <sup>st</sup> floor,	]	
Papanaswadi, Off A. K. Marg,	]	
Nana Chowk, Mumbai – 400036.	]	... <b>Non-Applicant</b>

**ALONG WITH**

**MISC. APPLICATION NO. 387 OF 2023 (Delay)  
IN  
APPEAL NO. AT0060000000154531**

- 1. Sailesh Kantilal Shah** ]  
504, Girnar Building, 5<sup>th</sup> floor, 69, ]  
Tardeo Main Road, Opp. Film Centre, ]  
Mumbai – 400034. ]
- 2. Bhavna Jaisukh Mehta** ]  
Flat No. 18, Raghavji Road, ]  
Govalia Tank, Mumbai – 400036. ]
- 3. Haresh Kantilal Shah** ]  
Flat No. 404, V.T. Apartment, 4<sup>th</sup> floor, ]  
Kalanala, Opp. Dadasaheb Jain Temple, ]  
Bhavnagar – 364001 ]
- 4. Kamlesh Kantilal Shah** ]  
Flat No. 702, Shantivan Apartment, ]  
7<sup>th</sup> floor, Near Rupani Circle, ]  
Rupani – 364002. ]

... **Applicants**

*versus*

**Sri Harsh Developers** ]  
Dhavalgiri, 1<sup>st</sup> floor, ]  
Papanaswadi, Off A. K. Marg, ]  
Nana Chowk, Mumbai – 400036. ]

... **Non-Applicant**

**ALONG WITH**



**MISC. APPLICATION NO. 385 OF 2023 (Delay)**

**IN**

**APPEAL NO. AT0060000000154533**

**Zeni Shailesh Shah**

504, Girnar Building, 5<sup>th</sup> floor, 69,  
Tardeo Main Road, Opp. Film Centre,  
Mumbai – 400034.

... ***Applicant***

*versus*

**Sri Harsh Developers**

Dhavalgiri, 1<sup>st</sup> floor,  
Papanaswadi, Off A. K. Marg,  
Nana Chowk, Mumbai – 400036.

... ***Non-Applicant***

**ALONG WITH**

**MISC. APPLICATION NO. 395 OF 2023 (Delay)**

**IN**

**APPEAL NO. AT0060000000154475**

**1. Ramesh Kantibhai Patani**

**2. Kiran Ramesh Patani**

84/14, Haresh Ketan, V. A. Oza Road,  
Matunga, Mumbai – 400019.

... ***Applicants***

*versus*

**Sri Harsh Developers**

Dhavalgiri, 1<sup>st</sup> floor,  
Papanaswadi, Off A. K. Marg,  
Nana Chowk, Mumbai – 400036.

... ***Non-Applicant***



**ALONG WITH**

**MISC. APPLICATION NO. 363 OF 2023 (Delay)  
IN  
APPEAL NO. AT0060000000154508**

**Pinakin Laxmichand Shah** ]  
212, Shreeji Chambers, 2<sup>nd</sup> floor, ]  
Opera House, Mumbai – 400004. ] ... **Applicants**

*versus*

**Sri Harsh Developers** ]  
Dhavalgiri, 1<sup>st</sup> floor, ]  
Papanaswadi, Off A. K. Marg, ]  
Nana Chowk, Mumbai – 400036. ] ... **Non-Applicant**

**ALONG WITH**

**MISC. APPLICATION NO. 608 OF 2023 (Delay)  
IN  
APPEAL NO. AT0060000000174702**

**Ankur J. Shah HUF,** ]  
through his Karta, Ankur Jitendra Shah, ]  
401, Parshva Kunj CHS, ]  
Babulnath 2<sup>nd</sup> Cross Road, ]  
Opp. Babulnath Temple, Grant Road, ]  
Mumbai – 400007. ] ... **Applicant**

*versus*

**Sri Harsh Developers** ]  
Dhavalgiri, 1<sup>st</sup> floor, ]  
Papanaswadi, Off A. K. Marg, ]  
Nana Chowk, Mumbai – 400036. ] ... **Non-Applicant**

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*Mr. Vikramjeet Garewal, Advocate for Applicants.  
Mr. Aditi Bhargava, Advocate for Non-Applicant.*

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**CORAM : SHRI SHRIRAM R. JAGTAP, MEMBER (A)**

**& DR. K. SHIVAJI, MEMBER (A)**

**DATE : 29<sup>th</sup> FEBRUARY 2024**

*(THROUGH VIDEO CONFERENCE)*

**O R D E R**

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

Heard learned counsel for parties *in extenso*.

2. By these applications, Applicants are seeking condonation of delay in filing of captioned separate appeals under The Real Estate (Regulation and Development) Act of 2016 (hereinafter referred to as, "the Act") wherein, Applicants have sought *inter alia* direction to non-applicant to execute agreement for sales with applicants and further direction to non-applicant to handover possessions of the booked respective real estate units after obtaining occupancy certificate by setting aside the common impugned order dated 3<sup>rd</sup> March 2023 passed by learned Chairperson, Maharashtra Real Estate Regulatory Authority (hereinafter referred to as "MahaRERA" in short) in Complaint Nos. CC 006000000 197069, CC 006000000 198362, CC 006000000 197082, CC 006000000 197085, CC 006000000 197084, CC 006000000 197070 and CC 006000000 197072 respectively in above Appeals.
3. Captioned applications arise out of similar facts and are raising identical questions of law. Accordingly, captioned 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 purchasers of real estate units and are Complainants before MahaRERA. The non-applicant is Promoter, who is developing a duly registered project namely "Le PALAZZO" located at August Kranti Marg, Nana Chowk, Mumbai-400036.



5. For the purpose of disposal of present applications, it is not necessary to narrate facts in detail. Suffice it to say that Applicants have filed separate individual complaints before MahaRERA on account of failure on the part of the non-applicant to execute agreements for sale even after full payments and sought various reliefs including to direct non-applicant to execute agreement for sales and to handover possessions of the respective real estate units besides compensations to complainants.
6. Appeal /complaint number wise details as set out in the applications about the dates of filing of these appeals *inter alia* (date of payment of court fees) and also filing of the physical copies of the appeal sets along with number of days of delay in filing these appeals beyond the prescribed permissible time period of 60 days are being set out in the chart / table here under.

Appeal Nos.	Complainant's Name	Complaint no's.	Application dates for Certified copies	Dates of Receipt of copies	Court Fees payment dates	Physical Filing Date	No. of days of delay
1 AT-154532	Sailesh Kantilal Shah & Anr.	197069	09.03.2023	06.04.2023	07.06.2023	21.06.2023	44 days
2 AT-154509	Meenakshi Nitin Shah	198362	09.03.2023	06.04.2023	07.06.2023	13.06.2023	35 days
3 AT-154531	Sailesh Kantilal Shah & Anr.	197082	09.03.2023	06.04.2023	16.06.2023	21.06.2023	44 days
4 AT-154533	Zeni Shailesh Shah	197085	09.03.2023	06.04.2023	16.06.2023	21.06.2023	44 days
5 AT-154475	Ramesh Kantibhai Patani & Anr.	197084	09.03.2023	06.04.2023	08.05.2023	12.05.2023	2 days
6 AT-154508	Pinakin Laxmichaand Shah	197070	09.03.2023	06.04.2023	07.06.2023	13.06.2023	35 days
7 AT-174702	Ankur J Shah HUF	197072	09.03.2023	06.04.2023	26.09.2023	29.09.2023	146 days



7. Non-applicant promoter resisted complaints by submitting before MahaRERA *inter alia* that the complainants are investors. Upon hearing the parties, learned Chairperson, MahaRERA passed the common impugned order dated 3<sup>rd</sup> March 2023 and dismissed all the complaints.

8. Aggrieved Applicants challenged the common impugned order by filing the present separate appeals after the expiry of the prescribed limitation period of 60 days, as delineated in the table here in above are seeking various reliefs, as have been elaborated here in above. Therefore, Applicants have sought condonation of delay for each appeal of the number of days as set out in the above table by filing above applications on various grounds in above applications and learned counsel for Applicants made manifold submissions as follows; -

a) Applicants have filed the application on 09<sup>th</sup> March 2023 before MahaRERA for the certified copy of the common impugned order dated 03<sup>rd</sup> March 2023 in all the cases, which was ready on 13<sup>th</sup> March 2023 for handing over to Applicants. However, there was an indefinite strike of the employees of Maharashtra Government and also in the office of MahaRERA since 14<sup>th</sup> March 2023 onward demanding restoration of the old pension scheme. Therefore, Applicants could be able to collect the certified copies of the common impugned order on 06<sup>th</sup> April 2023. Accordingly, the time period taken by MahaRERA in preparing the certified copy of the impugned order and the delay in getting the certified copy due to then ongoing strike of the employees of MahaRERA be excluded for the calculation of the limitation period as per the provisions of Section 12 of the Limitation Act, 1963 for filing these appeals under the provisions of the Act. Therefore, the period from 09<sup>th</sup> March 2023 till 06<sup>th</sup> April 2023 including both days are eligible to be excluded for the purpose of calculation of the limitation period under Section



44 of the Act. Accordingly, there is only 18 days of delay in filing the captioned appeal no.154532. A copy of the newspaper article of Economic Times dated 20<sup>th</sup> March 2023, marked as at Exhibit A and also an order of the Hon'ble Bombay High Court dated 23<sup>rd</sup> March 2023 in the PIL No. 150 of 2014 marked as Exhibit B in the reply filed by non-applicant clearly highlight the veracity of the then ongoing strikes by the Government of Maharashtra employees.

- b) Delays in filing of the captioned appeals have also happened because Applicants were attempting to settle the disputes amicably with the non-applicant. However, they could not succeed even after several attempts.
  - c) Applicants further submit and undertake to pay such sum by way of damage or costs as this Tribunal may award as compensation in the event, Tribunal comes to the conclusion that any party has been prejudiced by these Misc. Applications.
  - d) In view of above, learned counsel for Applicants urged to condone these delays by allowing the captioned miscellaneous applications as there was no deliberate intention to delay on their parts and the said delay happened because of the factors beyond their control. Applicants further submit that they have a very good case on merits and no hardship, nor any injury would be caused to the other side, if the applications are allowed and appeals are permitted to be taken on record.
9. Per Contra, learned counsel for non-applicant strongly resisted these applications and sought to reject these prayers/applications by submitting as hereunder; -
- a. Applicants have failed to disclose and mention the number of days for which the applications have been preferred for condonation of delay.
  - b. The certified copy of the common impugned order dated 03<sup>rd</sup> March 2023 was ready on 13 March 2023 itself. Therefore, it was the duty of the





Applicants to collect the same, but the applicants have failed to collect these purportedly, due to alleged strike by the employees of the MahaRERA. This is nothing but an attempt by applicants to cover their lackadaisical approach and applicants could have easily filed an authenticated copy of the order instead for waiting for certified copies. Applicants have also not submitted any further details of the alleged strike of the employees.

- c. Other grounds stated by the applicants for condonation of the said inexcusable delays are based on alleged attempt for amicable settlement of the disputes. This ground is false and frivolous because there was no such meeting for amicable settlement.
- d. Applicants have failed to demonstrate sufficient cause, which is must for condonation of delay. This clearly amounts to negligence, inaction, and lack of bonafide on the part of applicants.
- e. Exclusion of the number of days of delay due to then, alleged ongoing strike of the employees under Section 12(2) of the Limitation Act, will be limited from 09<sup>th</sup> March to 13<sup>th</sup> March 2023 and not up to 09<sup>th</sup> March till 06<sup>th</sup> April 2023. Moreover, it is settled principles of law that strikes are illegal and therefore, this period cannot be allowed to be excluded more particularly when the certified copy was ready on 13<sup>th</sup> March 2023 itself. It is also because applicants have not made any attempt to collect the certified copies of the impugned order due to alleged strike and therefore, applicants are attempting to take shield of alleged strike to cover their negligence and irresponsible attitudes.
- f. Learned counsel for the promoter further submits that the aforesaid facts and conducts of the Applicants squarely point about their malafide intentions and their afterthoughts. Applicants have not offered cogent reasons for

delays and have failed to demonstrate sufficient reasons for delays in collecting the certified copies of impugned orders. Therefore, they are not entitled for condonation of delay.

- g. Applicants have further not disclosed any further details about the dates and period of strikes and have made only vague averments in all the Misc. Applications. This clearly shows that the Misc. Applications are vague. Moreover, the strike of the employees started on 14<sup>th</sup> March 2023 and was called-off on 21<sup>st</sup> March 2023 itself. In support thereof, non-applicant has placed on record the copy of the newspaper cuttings and also an order dated 23<sup>rd</sup> March 2023 of The Hon'ble Hon'ble Bombay High Court. Therefore, it is clear that the alleged strike did not last for entire duration the period of delay. Moreover, the courts are required to weigh the scale of balance of justice in respect of both the parties. Accordingly, it is evident that applicants have failed to provide any justifiable sufficient cause for delay in filing these appeals and as such applicants had lackadaisical approach as well as negligent behaviour. Therefore, urged that the captioned Misc. Applications for condonation of delay be dismissed with heavy cost.
- h. In support of the above contentions, learned counsel for non-applicant has referred and relied upon the following citations: -
- i. Basawaraj & Anr. -vs- Special Land Acquisition Officer [(2013) 14 SCC 81] dated 22<sup>nd</sup> August 2013.
  - ii. Majji Sannemma -vs- Reddy Sridevi & Ors. [(2021) 9 SCR 476] dated 16<sup>th</sup> December 2021.
  - iii. N. Balakrishnan -vs- M. Krishnamurthy [(1998) 7 SCC 123] dated 03<sup>rd</sup> September 1998.
  - iv. State of Rajasthan -vs- Nav Bharat Construction Co. [(2005) 11 SCC 197] dated 28<sup>th</sup> March 2005.



10. From the rival submissions and upon perusal of pleadings, a short point that arises for our determination is whether Applicants have explained sufficient cause/s with cogent reasons for condonation of delay in filing instant Appeals and to this our finding is in the affirmative for the reasons to follow: -

### **REASONS**

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

12. 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 the 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.*

13. 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".*

14. In the above backgrounds, we have to now examine, whether causes put forth by Applicants amount to sufficient cause within the meaning of Section 44 of the Act. It is not in dispute that impugned order is passed on 03<sup>rd</sup> March 2023, whereas Appeals are filed with delay ranging from 2-146 days.
15. Learned counsel for the promoter contended that the aforesaid facts and conduct of the Applicants squarely point about their malafide intentions and their afterthoughts and Applicants have not offered cogent reasons for delays as well as have failed to demonstrate sufficient reasons for delays in collecting the certified copies of impugned orders, therefore are not entitled for condonation of delay.
16. But perusal of the office stamp for issuing certified copies clearly reveals that certified copies were ready on 13<sup>th</sup> March 2023 after the receipt of the application on 09<sup>th</sup> March 2023 and have been issued on 06<sup>th</sup> April 2023 itself. Learned counsel for Applicants herein submits that delay in collecting the certified copies was due to then ongoing strike of MahaRERA/government of Maharashtra employees. Perusal of the copy of the order of the Bombay High Court clearly confirms that there was a strike of the employees. Therefore, *prima facie* it appears that there was genuine difficulty in collecting the certified copy from RERA due to strike. Therefore, the delays on account of then prevailing strike is eligible to be excluded in the light of the provisions under Section 12(2) of the Limitation Act, 1963.



17. Considering the material on record, pleadings and submissions made by learned counsel for the parties, it appears that the said delays are purely unintentional, and Applicants have been making *bona fide* efforts. Facts of the case on hand as mentioned herein above also reflect that Applicants have not gained any undue advantage by the said delays in filing of the Appeals.
18. It is also 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 thereby, cause of justice being defeated. As against this, when delay is condoned, then the highest that can happen is that a cause would be decided on merits after hearing the parties.
19. Moreover, the Hon'ble Supreme Court in its judgement dated 7<sup>th</sup> AUGUST 2023 in the case of MUNICIPAL CORPORATION OF GREATER MUMBAI Vs. MAHENDRA BUILDERS & OTHERS in CIVIL APPEAL NO. 4936 OF 2023 has held that "*Considering the aforesaid and after having heard learned counsel for the parties, in our view, lack of bona fides can be mitigated by imposing a cost against the appellant-corporation. We feel that on terms, the delay can be condoned, and appeal filed by the appellant-corporation can be entertained to be heard and decided on merits analogously along with Appeal No. 347 of 2019 filed by the Welfare Association.*"
20. In the light of the settled positions 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 considerations to Applicants. In this background, particularly, when the aforesaid delay does not appear to be intentional and is not deliberate, Applicants have *ex facie*, not gained any undue advantage on account of delays in filing of these Appeals





21. and have made *bona fide* efforts in filing of captioned Appeals, we are inclined to allow the applications and to condone delays, subject to imposition of costs. Accordingly, we answer the solitary point in the affirmative and proceed to pass the following order.

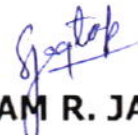
**ORDER**

- (a) Captioned Misc. Application Nos. 363, 364, 385, 386, 387, 395 and 608 of 2023 in Appeal Nos. 154508, 154509, 154533, 154532, 154531, 154475 and 174702 respectively are allowed.
- (b) Delays in filing the above Appeals are condoned subject to following costs for the captioned appeals as shown below; -

	1 .	2	3.	4.	5.	6.	7.
Appeal Nos.	AT- 154532	AT- 154509	AT- 154531	AT- 154533	AT- 154475	AT- 154508	AT- 174702
No. of days of delay	44 days	35 days	44 days	44 days	2 days	35 days	146 days
Costs in Rs.	1000/-	1000/-	1000/-	1000/-	Nil	1000/-	2000/-

- (c) Applicants except in appeal no. AT-154475 shall deposit the above costs in the Tribunal on or before the next date failing which, these appeals will stand dismissed automatically without further reference.
- (d) Payment of the above costs are condition precedent.
- (e) Captioned Misc. Applications are disposed of on the above terms.
- (f) Stand over to 27<sup>th</sup> March 2024 for compliance/further consideration.

  
(DR. K. SHIVAJI)

  
(SHRIRAM R. JAGTAP, J.)