

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

MISC. APPLICATION NO. 439/2023 (Restoration)

MISC. APPLICATION NO. 440/2023 (stay)

IN

APPEAL NO. AT006000000134089 OF 2022

Glider Buildcon Pvt. Ltd

... Applicant

-VS-

Sanjeev Mahajan & Anr.

... Non-Applicants

Adv. Mr. Nimay Dave, Advocate for Applicant.

Adv. Varun Navin Mamniya, Advocate for Non-Applicant No.1.

None for Non-Applicant No.2.

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

DR. K. SHIVAJI, MEMBER (A)

DATE : 27th JULY, 2023

(THROUGH VIDEO CONFERENCE)

Learned counsel for parties joined the conference.

2] Learned counsel for the Applicant confirms that the Non-Applicant No.2 has been duly served and intimated from about today's date of hearing.



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MISC. APPLICATION NO. 439/2023 (Restoration)

1] Learned counsel appearing for the Applicant submits that by this Application, Applicant is seeking to set aside order dated 10 April 2023 passed by learned Registrar, whereby, the captioned Appeal No.134089 was dismissed for want of non-rectification of the office objections, more particularly for the rectification of the non-submission of the Misc. Application for condonation of delay despite giving intimation and sufficient opportunities to Applicant.

3] Learned counsel for Applicant further submits that the office objection itself was not sustainable in the eyes of law and in view of the calculation of delay in filing captioned Appeal. In light of the fact that the impugned order is dated 7 June, 2022, which was received only on 1st August, 2022 and as per the Section 44 of the Act, 2016, the limitation period will be over on 30th September, 2022. Whereas the captioned appeal has been filed on 29th September 2022 itself. As such, it has been filed one day prior to the expiry of the limitation period.

4] Learned counsel for Applicant further submits that by inadvertent the notice dated 27 March 2023 sent by the registry was not received. It happened, perhaps, on account of certain errors in the e-mail Id. Be it as its may, the Appeal has been filed before the expiry of the limitation period. Additionally, he further drawn our attentions to this



Tribunal's Regulations, 2019 more particularly Rule No.11 (ii), (c) and (iii), wherein, it is clearly stipulated that before dismissal of appeal by the registry on account of any objection or non-compliance, a suitable memorandum needs to be placed before the appropriate Bench for orders. However, in the instant case, the appeal has been dismissed prima facie without referring to the concerned Bench by learned Registrar which is contrary to the regulation referred (supra).

5] In view of above, this application has been filed for restoration of the captioned appeal because the applicant has very good case on the merit and the appeal was dismissed not in compliance with its own regulations and due to error in the calculation of the number days of the delay by the office of the Registrar.

6] Adv. Varun Mamniya, for the non-applicant no.1 vehemently opposed the application by submitting that even if, the applicant has case in terms of merit, as per the views of the applicant with regard to the filing of the appeal within the limitation period, still, the chronology of the events clearly reflect that the applicant was not vigilant and not attentive despite instituting the appeal by itself.



7] Accordingly, Learned Registrar has correctly dismissed the appeal for want of prosecution. It is also pertinent to note that sufficient opportunities have been given by communicating the applicant by e-mail,



by notification and by other means. The applicant having itself instituted the appeal, it was expected of him to be more vigilant, follow and promptly clarify whatever be the in-adverted errors or otherwise, which were pointed out by the registry. In view of the sufficient opportunity have already given by the registry before the dismissal of the appeal, Application filed by the applicant for restoration of the appeal is devoid of merits and deserves to be rejected.

8] Perused the records and Regulations 2019 of the Tribunal.

9] It appears that applicant was given sufficient opportunities to rectify or to point out by submitting their say to the registry. However, the perusal of the regulation more particularly the regulation no.11 (iii) clearly reveals that in case of the non-compliance, a suitable memorandum needs to be placed before the Bench for taking appropriate decision. However, in the instant case, learned registrar has rejected without any reference to the

 Bench ^{at} of his own level, which is contrary to the provisions of the Regulation of the Tribunal and the captioned dismissal ^{order} and passed by the learned  Registrar is due to lack of inherent jurisdiction for passing such orders.

10] Accordingly, the dismissal order is legally non-sustainable.

11] Considering the submissions of both the sides, we are of the view that the application need to be allowed, appeal be restored to the file and we proceed to order as follows:

ORDER

1] Misc. Application 439/2023 in Appeal No. AT006000000134089 of 2022 is allowed and Appeal stands restored to the file.

2] No costs.

In Appeal No. AT006000000134089

1] Same appearance.

2] Perusal of the record clearly reveals that appeal has been filed within time and there is no delay.

3] Appellant herein is the promoter. Appellant being promoter, compliance of the proviso to the Section 43 (5) of RERA is a statutory and mandatory requirement and without compliance of the proviso, appeal cannot be entertained.

4] Perused the impugned order passed by learned Member, MahaRERA dated 7th June 2022.

5] Accordingly, Appellant to pre-deposit the entire amount as per the impugned order dated 7th June 2022 towards the compliance to the proviso to this Section 43 (5) Act of 2016.

6] Learned counsel for Appellant submits that the entire amount as per the impugned order will be deposited today during the course of the day and urged that the impugned order passed by MahaRERA be stayed in



view of the application no.440/2023 already filed and served to other side.

7] Learned counsel for Respondent No.1 vehemently opposed.

8] Upon hearing the parties and upon perusal of the record, after receipt of the confirmation of the compliance of proviso to Section 43 (5) of RERA for pre-deposit of the entire amount as per the impugned order as above, we are of the view that there will be no impediment to stay the impugned order passed by the MahaRERA.

9] Accordingly, we proceed to pass the Order as follows.

ORDER

- 1] Appellant to deposit the entire amount as per the impugned order dated 07.06.2022 passed by MahaRERA towards compliance of proviso to Section 43 (5) of RERA within the course of the day, in any case within one week from today.
- 2] Appellant to file and circulate the compliance report of the proviso within one week from today.
- 3] Respondents to file and circulate their replies on the compliance report within one week from the date of receipt of the compliance report from Appellant.
- 4] Misc. Application No.440/23 is allowed subject to pre-deposit



and confirmation of the compliance of the proviso of Section 43 (5) from Respondents.

- 5] Condition for the compliance of the proviso from Respondent is condition precedent.
- 6] Stand over to 4th September 2023 for compliance, reply of the Respondent No.1 and affidavit of service and appearance of Respondent NO.2.


(DR. K. SHIVAJI)


(SHRIRAM. R. JAGTAP, J.)

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