

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

MISC. APPLICATION NO. 572 OF 2023 (Delay)

ALONGWITH

MISC. APPLICATION NO. 573 OF 2023 (Stay)

IN

APPEAL NO. G-16 OF 2023

Viresh Kamalnath Nadkarni

C/o. K. V. Nadkarni & Associates }
L- 45/46, 4th Floor, Alfran Plaza, }
M.G. Road, Panaji, Goa – 403 001. }
-versus- }
}

... Applicant

Sugandha Praavinkumar Shiroadkar

H.No. 1038/3 Ground Floor at }
Zosswado, Succorro, Bardez, }
Goa – 403 501. }

... Non-Applicant

Mr. Tanmay Vispute, Advocate for Applicant.

Mr. Ativ Patel, Advocate for Non-Applicant.

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

& DR. K. SHIVAJI, MEMBER (A)

DATE : 26th FEBRUARY 2024

(THROUGH VIDEO CONFERENCE)

ORDER

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

By this application, Applicant has sought to condone delay of 90 days beyond the permissible period, in filing of the captioned appeal on 21st August 2023 under Section 44 of The Real Estate (Regulation and Development) Act

of 2016 (hereinafter referred to as, "the Act") seeking various reliefs including to set aside and quash the impugned order dated 24th April 2023, passed by learned Member, Goa Real Estate Regulatory Authority (GoaRERA) after examining the legality, propriety and correctness of the impugned order dated 24th April 2023 wherein, Applicant was directed *inter alia* to handover possession of the subject booked apartment to non-applicant within two months from the date of the order upon taking balance amount of ₹ 9,95,800 from non-applicant and Applicant was further directed to pay interest for the delay in delivery of possession on the paid amounts of ₹ 37,10,320 from 26th December 2019 till the date of delivery of possession to non-applicant in Complaint No. (276)/2021/ 127 filed by non-applicant allottee.

2. Heard counsel for parties *in extenso*. Perused record.
3. For the purpose of disposal of present application, it is not necessary to narrate facts of the case in detail. Suffice it to say that the Applicant is Promoter, who is developing a project namely "Ferreira Manor" located at Mapusa, Bardez, Goa. Non-Applicant is flat purchaser (say Complainant for convenience), who has filed the said complaint before GoaRERA on account of delay in delivery of possession of the subject flat, which was purchased by executing and registering agreement for sale dated 29th August 2018 in respect of the booked apartment no. 104 of this said project being developed by promoter. Complainant had prayed initially *inter alia* for refund of the paid amounts together with interests. However, after amendment, complainant has sought *inter alia* for possession of the subject apartment along with interest and compensation.
4. Captioned appeal has been filed on 21st August 2023 with delay of 90 days beyond the statutory permissible period of 60 days. Therefore, Applicant is seeking condonation of the aforesaid delay on various grounds as set out in



the instant application and learned counsel for Applicant made manifold submissions as follows; -

- a. Applicant could not file the captioned appeal within the stipulated time because applicant was not keeping well for reasonable period on account of his diabetes mellitus and thus, he could not communicate with his advocate and instruct him to challenge the impugned order dated 24th April 2023 by preferring the instant appeal.
- b. Applicant could contact his advocate only in the first week of July to enquire about the filing of the appeal. However, most of the advocates in Goa expressed difficulty/ inability to appear in Mumbai for the purpose of filing the captioned appeal in the tribunal. In the process, the filing of the captioned appeal got further delayed. However, after coming to know that the appeal needs to be filed in this Tribunal at Mumbai, he had to look for a lawyer in Maharashtra not locally in Goa.
- c. After further search, he contacted the present advocate only in the third week of July and forwarded the required papers for filing of the captioned appeal. Accordingly, for this, further 10 days got consumed in preparation of appeal and also for sending these documents back to Goa for affirmation and re-sending it to advocate on 29th July 2023, which were received by the advocate on 01st August 2023.
- d. Learned counsel further submits that the delay is neither intentional nor willful rather the said delay is bonafide for the reasons of inadvertence as set out in the application.
- e. Learned counsel urged to condone the delay by further submitting that the aforesaid relief if not granted then, applicant will suffer irreparable harm, loss and injury. Whereas no harm and injury will be caused to the non-applicant if, the delay is condoned. He has placed reliance on the following judgments/ citations in support of his above contention: -



- i. *Judgment of The Hon'ble Supreme Court in case of Collector, Land Acquisition, Anantnag & Anr. Vs. Ms. Katiji and Others [(1987) 2SCC 107];*
- ii. *Judgment of The Hon'ble Bombay High Court in the case of Brihan Mumbai Electric Supply and Transport thr. its General Manager vs. BEST Jagrut Kamgar Sanghatana through Parivartan and Ors. [Writ Petition No. 8045 of 2023 dated 25.09.2023]*

5. Per Contra, Non-Applicant pleaded to dismiss the captioned application for condonation of delay by filing reply to the Misc. Application and learned counsel further submits as hereunder: -

- a. Grounds raised by the applicant in the captioned application are completely bogus, misconceived and without any documentary evidence. Applicant has failed to bring on record any explanation for condonation of delay in filing the present appeal. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that litigants should approach the Court for their rights without unreasonable delay. Courts are empowered to condone delay provided sufficient cause is shown for not filing the same within the prescribed period of limitation. In the instant case, applicant had failed and neglected to show any sufficient cause for not filing the present appeal within the prescribed period of limitation.
- b. Applicant has failed to bring on record any supporting document to buttress its contentions apart from making only bald statements without any supporting documentary evidence.
- c. Learned counsel further brought to our attentions that applicant, by its own admission has submitted in the captioned application form itself, that he has contacted his advocate only in July 2023, which is only after the expiry of the limitation period of 60 days.



- d. Applicant is the partnership firm and therefore, even if the applicant is suffering from alleged diabetes etc., then also, other partners or any of the staff working under the applicant company could have taken steps and could have easily filed the captioned appeal within the time. However, due to sheer inaction and with the deliberate ill intention Filing of the caption appeal has been unduly delayed. Besides, no concrete action has been taken in filing the said appeal within the time.
 - e. He further denies that the said delay in filing the appeal is neither intentional nor wilful and therefore, urged that the captioned application be dismissed with exemplary costs.
6. From the rival submissions, a short point that arises for our determination is whether Applicant has explained sufficient cause for condonation of delay in filing instant appeal and to this our finding is in the negative for the reasons to follow: -

REASONS

7. Before we advert to the merits of the controversy let us consider the settled position of law on condonation of delay.
8. In case of Collector, Land Acquisition, Anantnag & Anr. Vs. Ms. Katiji and Others [(1987) 2SCC 107]; 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 and pragmatic manner.

- d) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred and 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 spirit and be applied in proper perspective to the facts and situations of a particular case."*
- 9.** In this connection, principles culled down by the Hon'ble Supreme Court in *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Ors.* [(2013) 12 SCC 649] are as hereunder;
- a. Lack of bona fide imputable to a party seeking condonation of delay is significant and relevant fact; -*
 - 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. *An application 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 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, within legal Parameters".*
- 10.** In the above background, we have to now examine, whether grounds put forth by Applicant, amount to sufficient cause within the provisions of Section 44 of the Act.
- 11.** It is not in dispute that the impugned order in the complaint was passed by learned Member, GoaRERA on 24th April 2023. Whereas every appeal under Section 44 (1) of the Act is statutorily required to be filed within a period of 60 days from the date on which, a copy of the order is received by the aggrieved person. However, the captioned appeal has been filed on 21st August 2023 with delay of 90 days, beyond the prescribed statutory limitation period of 60 days under the Act. Therefore, Applicant has sought condonation of this delay of 90 days primarily on the grounds that applicant is suffering from diabetes, and he is located in Goa, whereas the captioned appeal is required to be filed in Mumbai. Thereby, he could not locate any advocate locally in Goa, who was willing to undertake and file the appeal in Mumbai. Therefore, he was able to contact the present advocate only in July 2023.
- 12.** However, the submissions of Applicant are not supported by credible and cogent evidence on account of the followings; -

- a. Perusal of the stamp (as on page no.46) of the office of the GoaRERA for providing the certified copy of the impugned order dated 24th April 2023, clearly reveals that applicant has applied for the certified copy on 02nd May 2023, and applicant was intimated that the certified copy will be ready to deliver the same on 03rd May 2023. Accordingly, the certified copy was as such, ready and available for delivery on 03rd May 2023 itself. Even then, it is clear from the stamp of GoaRERA that he has collected the certified copy only on 23rd May 2023 after a further delay of 20 days despite being clearly intimated this in advance that it will be available on 03rd May 2023 itself. This also makes it evident that despite the applicant was suffering from diabetes, he had filed the application for certified copy in the first week of May 2023 itself, but he has failed to collect the same on 3rd May 2023 instead he has waited and delayed for collecting the same. As such, he has collected the same only on 23rd May 2023.
- b. Moreover, applicant has not produced any documentary evidence to support his contention of stated alleged medical reason.
- c. Learned counsel for the applicant, advocate Mr. Vispute further submits that applicant company is a partnership firm with four partners together with his father as one of the partners, who is 86 years old. This makes it evident that there are other partners or other staff, who could have easily taken steps for filing the appeal in time, which has not happened.
- d. Further, it is also significant to note that Applicant is not a person of ordinary prudence. It is a Promoter company, managed by educated functionaries, who is expected to know their business activities very well in the real estate markets. Despite being promoter, having certain number of staff working in the applicant's firm, any of the staff could have easily taken steps for filing the appeal in time. This has also not happened.



- e. Perusal of the application further reveals that applicant has contacted his advocate only in first week of July 2023, as such only after the limitation period was already over. All these signify that the applicant was not alert, not vigilant and has not taken any concrete steps for filing the appeal in time.
- f. In the present case, the impugned order is dated 24th April 2023, Applicant has failed to produce even a single concrete and tangible cogent, convincing and supporting evidence on record demonstrating timely action. No step is seen taken by Applicant for filing the appeal within time after passing of the order. All these, indicate that Applicant has *prima facie* not taken any visible, tangible and demonstrable action. Therefore, Applicant was not vigilant enough about its rights and law will not help to such non-vigilant litigants for delay. 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 that "*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.*"
- 13.** 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 dispute between the parties and to advance substantial justice. The Hon'ble Supreme Court summarized the law on the 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”.

- 14.** In the instant case, Applicant has made only vague and unsubstantiated submissions without even a single supporting documentary evidence except mere bald statements. Whereas non-applicant has demonstrated and effectively controverted all the contentions raised by Applicant. Despite providing enough opportunities, Applicant has failed even remotely to show any meaningful and cogent reason in support of the condonation of delay, leave aside the much-needed sufficient cause, which is required for condonation of delay.
- 15.** Further, it is also significant to note that Applicant is not a person of ordinary prudence. It is a Promoter company, managed by educated functionaries, who is expected to know their business activities very well in the real estate markets. Keeping in view of the proposition of law laid down by the Hon'ble Supreme Court relating to condonation of delay as above and having regard to the totality of facts and circumstances of this case as discussed above, Applicant is found to be casual and non-serious in preferring the appeal



against the impugned order. Therefore, in the absence of cogent reasons to condone enormous delay of 90 days in filing of the captioned appeal and in order to avoid injustice to non-Applicant, we are of the considered view that the captioned application for condonation of delay for 90 days is devoid of merits and does not deserve to be allowed. Accordingly, solitary point for determination is answered in the negative and we proceed to pass the following order: -

ORDER

- (a) Misc. Application No. 572 of 2023 for condonation of delay is rejected.
- (b) In view of dismissal of Misc. Application for condonation of delay, pending captioned Appeal No. G-16 of 2023 would not survive, consequently stands disposed of.
- (c) In view of disposal of appeal no. G-16 of 2023 as above, other pending Misc. Application will not survive. Hence, stands disposed of.
- (d) Applicant to pay cost of Rs. 1000/- towards legal expenses of non-applicant, directly to his account within three weeks from the date of uploading of this order in addition will bear its own costs..
- (e) 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 GoaRERA.



(DR. K. SHIVAJI)



(SHRIRAM R. JAGTAP, J.)