

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

Misc. Application No. 28/2023 (Delay)

In

Appeal No. AT006000000134153 of 2022

M/s. Macrotech Developers Ltd. ... Applicant

Versus

Mugatlal Bhagwandas Boda & Co. Pvt. Ltd. ... Non-applicant
Alongwith

Misc. Application No. 29/2023 (Delay)

In

Appeal No. AT006000000134152 of 2022

M/s. Macrotech Developers Ltd. ... Applicant

Versus

Mr. Surekha Jugal Boda & Anr. ... Non-applicants

Adv. Mr. Abir Patel for Applicant

Adv. Mr. Varun Mamniya for Non-applicants

**CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &
DR. K. SHIVAJI, MEMBER (A)**

DATE : 15th January, 2024

(THROUGH VIDEO CONFERENCING)

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COMMON ORDER

[PER : SHRIRAM R. JAGTAP (J)]

These Applications are subject matter of this common Order being passed considering the similarity of facts, circumstances and question of law involved in these Applications.

2] The Applicant, who is a Promoter, has moved these Applications for condonation of delay of 206 days caused in preferring captioned Appeals on the grounds set out in the Applications, primarily on the ground that the Applicant had sufficient cause for not preferring Appeals within the period of limitation. The Applicant claims that the Complaints filed by the Non-applicants were for alleged delay in handing over possession of their residential flats and had prayed for possession of the flats, interest for the delay and compensation in terms of Section 18 of RERA Act, 2016. The learned Authority after hearing both the sides was pleased to pass the interim Order dated 17.02.2022 whereby the learned Authority transferred the Complaints to the Adjudicating Officer for determining the claim of compensation whilst keeping all the contentions of the parties open. The impugned Order came to be passed without conclusive findings determining the rights or obligations of any of the parties therein.

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3] The Applicant further submitted that the Non-applicants have also challenged the impugned Order by filing Appeals. This shows that both the parties are aggrieved and have not accepted the impugned Order. It is a settled position of law that the learned Authority has to adjudicate and decide the claim for refund with interest, or interest or penalty. The impugned Order reveals that no adjudication has taken place. The Applicant had an option to make out its case of wrongful transfer of the Complaints to the Adjudicating Officer by the Authority. Rather than filing the Appeal and causing multiplicity of litigation, the Applicant bonafidely participated in the proceedings before the Adjudicating Officer believing that the learned Adjudicating Officer would hear the objection of the Applicant. However, the learned Adjudicating Officer wanted to mechanically close the case by conducting a mechanical enquiry into the claim of compensation and was reluctant to get into the merits of the case thereby left the Applicant with no option to prefer the captioned Appeals. It is only when no Orders are passed by the learned Adjudicating Officer even after hearing the matter finally on 30.08.2022, the Applicant by way of abundant caution decided to seek exception of the impugned Order dated 17.02.2022.



4] The Applicant further claims that even though from the date of the impugned Order prima facie there appears to be a delay of 206 days from the date on which the Appeals ought to have been preferred, the Applicant as per Section 14 of Limitation Act, 1963 is entitled to exclude the interim period during which the Applicant has been bonafidely prosecuting the Complaints before the learned Adjudicating Officer. As such there is no delay in filing the captioned Appeals.

5] The Applicant further claims that while condoning the delay a liberal approach should be adopted by the courts, the facts and merits of a case should also be gone into if need be. There is no impediment to consider the merits of the case while considering the Application for condonation of delay. The delay can be condoned if the Court finds that the litigant has a good case on merit and cannot be denied to pursue his/ her case due to technicalities like delay in filing the proceedings. It is further contention of Applicant that impugned Order shows that it requires to be interfered with by condoning the delay. The incorrect Order will be upheld and will go un-challenged from the Applicant's side, who is also aggrieved by the same. What is more relevant is whether the impugned Order under challenge is sustainable or not.

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The Applicant has good case on merit and has sanguine hope of success in the captioned Appeals. The delay is unintentional rather circumstantial. If mere technical delay in preferring the captioned Appeals is not condoned the Applicant would suffer gross prejudice to its legal rights. On the other hand, if the Appeals are heard and decided on merits it would only serve the judicial propriety and the interest of the parties. With these contentions the Applicant has prayed to allow these Applications.

6] The Non-applicants remonstrated the Applications by filing their reply contending therein that the only ground put forth for the condonation of delay of a whopping 206 days in filing the captioned Appeals is the provisions of Section 14 of the Limitation Act, 1963, which ground is entirely misconceived in fact, bad in law and accordingly, the Misc. Applications deserve to be dismissed with cost. The Non-applicants have further contended that the contentions raised in the Applications are nothing but a worthless attempt to manufacture false and frivolous grounds for supporting the condonation of delay of as much as 206 days without, providing any legally justifiable reason and/ or documents to support the baseless contentions set out in the Applications. The Applicant has approached this Tribunal with a malafide intention to hoodwink this

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Tribunal into falsely believing that the Applicant was bonafidely prosecuting the Complaints before the learned Adjudicating Officer, when clearly, such proceedings were for purpose of computing compensation alone. Infact, even the learned Adjudicating Officer, on the basis of judgment delivered by the Hon'ble Apex Court in the matter of **M/s. Newtech Promoters and Developers Pvt. Ltd. V/s. State of U.P.**, had orally made it clear during the hearing on 31.05.2022 itself that the learned Adjudicating Officer would restrict the proceedings before it to computation of compensation itself and accordingly direct the Non-applicants herein to file the computation of compensation quantifying the amount of compensation that the Non-applicants herein are claiming for each violation of the RERA, Act and the Rules framed thereunder.

7] The Non-applicants have further contended that there is no plausible reason and/ or document to support as to why such bona fide belief was formed, more so, despite the clear rulings of the Hon'ble Supreme Court of India as well as this Tribunal. Pertinently the learned Authority in the impugned Order clearly held that Applicant/ Appellant has failed to handover possession of the subject flats to the Complainants as per the terms and

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conditions of the Agreement for Sale (AFS) and the Applicant/ Appellant has violated the provision of Section 18 of RERA. As a result thereof, the Non-applicants herein are entitled to seek reliefs under the provision of Section 18 of RERA. The impugned Order is reasoned clearly concluding that the Applicant/ Appellant has failed to handover possession of the subject flats to the Complainants as per the terms and conditions of the agreement for sale.

8] It is further contention of the Non-applicants that "Interest" and "compensation" are two distinct components which the allottee or the person aggrieved is entitled to claim if the promoter has not been able to handover possession, with a nature of enquiry and mechanism provided under the Act. Therefore, the so called 'bona fide belief' of the Applicant/ Appellant is unfounded, illegal and contrary to the settled principles of law. It is a matter of record that proceedings before the Adjudicating Officer were clearly restricted to the computation of compensation, which proceedings are well within the jurisdiction of the learned Adjudicating Officer. Therefore, there is no question of any so called 'bona fide belief' in prosecuting the Complaints before the learned Adjudicating Officer, as alleged or otherwise and such



baseless ground raised in the Application is only an afterthought without any legal base.

9] The Non-applicants have further contended that admittedly, matters before the learned Adjudicating Officer were heard finally and reserved for Orders on 30.08.2022, when no Appeals were filed by the Appellant/ Applicant. Therefore, having participated in the final hearing before the learned Adjudicating Officer, it would be unfounded for the Applicant/ Appellant to now state that "since no orders are passed" by the learned Adjudicating Officer, the Applicant/ Appellant (belatedly) decided to seek exception to the impugned Order. Therefore, the Appellant/ Applicant cannot claim exemption under Section 14 of the Limitation Act, 1963 on the basis of proceedings which are totally with a different aspect/ matter in issue i.e. computation of compensation and for which infact, the learned Adjudicating Officer has exclusive jurisdiction.

10] The Non-applicants have further contended that the element of mistake in filing the proceedings in a wrong court is inherent in the invocation of Section 14 of the Limitation Act, 1963, which is not the element in the instant case. Therefore, Section 14 of the Limitation Act, 1963 will not be applicable to the present



case. The Applicant has filed the captioned Appeals on 24.11.2022 without any explanation. There is a substantial unexplained delay of 206 days in filing the captioned Appeals. The Applicant/Appellant is seeking to take refuge on mere technical ground, which is totally without bona fides, simply because the prosecution before the learned Adjudicating Officer cannot preclude the Appellant/ Applicant in filing the captioned Appeals on the findings of the learned Authority on the aspect of delay in handing over possession of the subject flats to the Non-applicants. The captioned Appeals are hopelessly barred by the law of limitation. With these contentions, the Non-applicants have prayed for dismissal of Applications with costs.

11] We have heard learned Advocate Mr. Abir Patel for Applicant and Advocate Mr. Varu Mamniya for Non-applicants. The submissions advanced by learned counsel appearing for respective parties are nothing but reiteration of contents of the Applications and reply. However, learned Advocate Mr. Abir Patel for Applicant has further added that the Hon'ble Apex Court in Suo Moto Writ Petition took cognizance of the outbreak of Covid-19 pandemic and exempted the period from 15.03.2020 upto 28.02.2022 for filing petition/ applications/ suits/ appeals/ or other quasi-judicial

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proceedings. Thus, the Applicant was supposed to file Appeals immediately after 30.05.2022. However, because of reasons mentioned in the Application, Applicant could not file Appeals within the period of limitation. Therefore, there is delay of 206 days in filing the captioned Appeals. Learned Advocate has placed his reliance on the following citations:

i] **Suo Moto Writ Petition (C) No.3 of 2020 in Re:Cognizance fro extension of limitation** [Order dated 10.01.2022 in Suo Moto Writ Petition (C) No. 3 of 2020]

ii] **Collector, Land Acquisition, Anantnag and Anr. Vs. Ms. Katiji and Ors.** [(1987) 2 Supreme Court Cases 107]

iii] **Mangla International Pvt. Ltd. and Ors. Vs. Next Media Works Ltd.** [2023 SCC Online Bom 1083]

iv] **DDL Excavation Pvt. Ltd. Vs. Union of India** [(2017) SCC Online Bom 1708]

12] After taking into consideration the submissions advanced by learned counsel for respective parties, material on record and pleadings of the parties, only point that arises for our determination is whether Applicant/ Promoter has established that the Applicant had sufficient cause for not preferring the captioned Appeals within

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the prescribed period of limitation? To which our answer is in the negative for the reasons to follow.

REASONS

13] It is not in dispute that the impugned Order came to be passed on 17.02.2022. As per provision of Section 44(2) of RERA, the Applicant was supposed to file Appeals withing the period of 60 days from the date of Order. Admittedly, the captioned Appeals came to be filed on 24.11.2022. It is significant to note that the Hon'ble Apex Court took Suo Moto cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/ suits/ appeals/ all other quasi-judicial proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/ or State) due to outbreak of Covid-19 pandemic. By Order dated 23.03.2020 the Hon'ble Apex Court directed extension of period of limitation in all proceedings before Courts/ Tribunals with effect from 15.03.2020 till further orders. On going through Order dated 10.01.2022 passed in Suo Moto Writ Petition (Civil) No.3 of 2020, it is seen that the Hon'ble Apex Court in continuation of subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021 directed that period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation

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as may be prescribed under general law or special laws in respect of judicial or quasi-judicial proceedings. The Hon'ble Apex Court has further held that-

*"In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. **In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.**"*

14] It is pertinent to note that the impugned Order came to be passed on 17.02.2022. It means in the light of the Order dated 10.01.2022 passed by the Hon'ble Apex Court as stated supra, the Applicant had balance period of limitation of 49 days and the Applicant was entitled to have limitation period of 90 days from 01.03.2022. It means the Applicant was supposed to file captioned Appeals on or before 31.05.2022. Admittedly, the captioned Appeals came to be filed on 24.11.2022. It means there is a delay of 177 days in filing the captioned Appeals.

15] The Applicant/ Promoter in its Applications seeking exclusion of time, has explained circumstances in which the Complaints were transferred and pursued before the Adjudicating Officer and on the same basis applied for exclusion of time. The

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Applicant has specifically asserted that there was due diligence on its part and Applicant was pursuing the Complaints before the Adjudicating Officer. The Applicant had an option to make out its case of wrongful transfer of the Complaints to the Adjudicating Officer by the Authority. Rather than filing the Appeals and causing multiplicity of litigation, the Applicant bonafidely participated in the proceedings before the Adjudicating Officer believing that the learned Adjudicating Officer would hear the objection of the Applicant. However, the learned Adjudicating Officer wanted to mechanically close the matters by conducting mechanical enquiry into the claim of compensation and was reluctant to get into the merits of the case. Because of this conduct of the Adjudicating Officer the Applicant is left with no option to prefer the captioned Appeals. According to Applicant, time in pursuing the Complaints before the Adjudicating Officer requires to be excluded as the Complaints have been prosecuted in good faith and with due diligence.

16] Section 14 of the Limitation Act, 1963 provides for exclusion of time in a proceeding prosecuted bonafide in a Court which for defect or jurisdiction, or other cause of like nature could not effectively adjudicate the subject matter of such proceeding.

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While analyzing the provisions of Section 14 of Limitation Act, 1963 the Hon'ble Bombay High Court in the case of

Mangla International Pvt. Ltd. and Ors. Vs. Next Media Works Ltd. [2023 SCC Online Bom 1083] held that from the phraseology of Section 14 of the Act, the following conditions must be satisfied before the exclusion of period could be claimed.

" 73. (i) the earlier and subsequent proceeding are civil proceeding prosecuted by one and the same party;

(ii) the earlier proceeding had been prosecuted bona fide; with due diligence and in good faith;

(iii) failure of the earlier proceeding was occasioned due to defect of jurisdiction or other cause of like nature;

(iv) earlier proceeding and the subsequent proceeding relate to the same matter in issue; and lastly,

(v) earlier and subsequent proceeding are both in a court".

17] The policy of the Section 14 is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits. It is a well settled proposition of law that while considering the provisions of Section 14 of the Limitation Act, 1963, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings.

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18] In this backdrop of position of law, we have to examine whether the Complaints have been prosecuted bona fide, with due diligence and in good faith by Applicant/ Promoter. It is not in dispute that Non-applicants/ Allottees have filed Complaints for alleged delay in handing over possession of their residential flats and sought relief for possession of flats, interest for the delayed possession and compensation in terms of Section 18 of RERA Act, 2016. After hearing the parties to the Complaints learned Authority was pleased to pass Order dated 17.02.2022 and referred the Complaints to Adjudicating Officer to decide the quantum of compensation/ interest under Section 18 of RERA. It is not in dispute that parties to the Complaints had appeared before the Adjudicating Officer and the Adjudicating Officer heard the matter finally on 30.08.2022 but the Adjudicating Officer has not disposed of the Complaints. In other words, the Adjudicating Officer has not passed Orders in these Complaints till date.

19] Sub Clause 1 of Section 44 of RERA Act, 2016 provides that any person aggrieved by any direction or order or decision of the Authority or the Adjudicating Officer may prefer an appeal to the Appellate Tribunal. It means remedy to file appeal against the order or decision of the Authority is available under Section 44(1)

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of RERA Act, 2016. It is not in dispute that Allottees/ Non-applicants have already filed Appeals. The Applicant/ Promoter has put its appearance in those Appeals. It means the Applicant/ Promoter is aware of remedy available under Section 44(1) of RERA Act, 2016. The Applicant/ Promoter instead of preferring Appeal against the impugned Order remonstrated the Complaints before the learned Adjudicating Officer. Under the circumstances, it is difficult to digest that the Complaints have been prosecuted bona fide, with due diligence and in good faith by the Applicant/ Promoter.

20] On analysis of Section 14 of the Limitation Act, 1963, it reveals that it applies to suit and application. It does not apply to appeal. Apart from this, the party who has instituted the proceeding i.e. suit or application and has been prosecuting with due diligence is entitled to exclusion of time. In the instant case, admittedly Allottees have filed the Complaints against the Applicant/ Promoter. Therefore, it can be said that the Complaints have not been prosecuted bona fide, with due diligence and in good faith by Applicant/ Promoter and infact the Applicant/ Promoter has been remonstrating the Complaints. In other words, he was defending the Complaints before the learned Adjudicating Officer.

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Therefore, we are of the considered view that recourse of Section 14 is impermissible. Under the circumstances, the Applicant/ Promoter is not entitled to get benefit of Section 14 of Limitation Act, 1963.

21] Only explanation offered by Applicant/ Promoter is that the Complaint proceedings have been prosecuted bona fide, with due diligence and in good faith by Applicant/ Promoter and therefore time in prosecuting the Complaints before the Adjudicating Officer requires to be exclude. However, Applicant/ Promoter has miserably failed to demonstrate that the Complaint proceedings have been prosecuted bona fide, with due diligence and in good faith by the Applicant/ Promoter. Therefore, we are of the considered view that the explanation offered by the Applicant/ Promoter for condonation of delay is not satisfactory and appears to be frivolous. Applicant has failed to file the captioned Appeals on time and chose to do so only after 177 days as per its own convenience. The said situation can only be termed as non-seriousness of the Applicant. Thus, the averments made in the Applications qua delay of 177 days cannot be classified as a reasonable delay in any manner.

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22] 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."*

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23] The condonation of delay is an exception which should not be used as per convenience of the Applicant/ Promoter. Overall conduct of the Applicant reveals that the Applicant is found to be negligent, not acted diligently and remained inactive. Applicant did not bother to protect its own interest and remained as a silent spectator without any sufficient cause for almost 177 days. The approach of Applicant is found to be casual, non-serious and non-vigilant in preferring captioned Appeals against the impugned Order.

24] For the foregoing reasons, we have come to the conclusion that Applicant has miserably failed to demonstrate sufficient cause for inordinate delay in filing the captioned Appeals. The Applicant has failed to establish its diligence and alacrity in filing Appeals within the time limit and inordinate delay that has occurred in filing the instant Appeals, therefore cannot be condoned. The Applications are devoid of merits, thus deserve to be rejected. We, therefore, proceed to pass the following Order.

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ORDER

- 1] Misc. Application Nos. 28/2023 and 29/2023 are dismissed.
- 2] In view of dismissal of Delay condonation Applications, Appeals do not survive as a result thereof the same are dismissed.
- 3] Applicant shall pay cost of Rs.5,000/- to each Allottees.
- 4] Copy of this Order be communicated to the Adjudicating Officer and the respective parties as per Section 44(4) of RERA, 2016.


(DR. K SHIVAJI)


(SHRIRAM R. JAGTAP)

MBT/