

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

MISC. APPLICATION NO.956 OF 2022 (Delay)

IN

APPEAL NO. U-10 OF 2022

- 1. Mr. Gobind Mohandas Harjani**]
- 2. Mrs. Komal Gobind Harjani**]
Air View Apartment, Flat No.22,]
5th floor, Vakola bridge, Nehru Road,]
Santacruz (East), Mumbai – 400 055.]

-VS-

... Applicants

- 1. Hitendra Dhamm Sabha Co-operative Housing Society Limited**]
Building No. C-3, New Shastri Nagar,]
Road No.1, Goregaon (West),]
Mumbai – 400 104.]
- 2. M/s. Sai Shraddha Constructions**]
35/C, Beach Resort, Juhu Koliwada,]
Santacruz (West), Mumbai – 400 049.]
- 3. Crystal Constructioni Co.**]
701, A-2, Shubha Centre Chakala,]
Cardinal Gracious Road, Andheri (East),]
Mumbai – 400 099.]

- 4. Crystal Infraventeures Pvt. Ltd.**]
C-802, Building -3, Pearl Horizon,]
Bandivli Hill Road, Behind F.D.C. Company,]
Jogeshwari (West), Mumbai – 400 102.]

... Non-applicants

- 5. Jayesh Naroliwala (Broker)**]
Building No.15, Shop No.1,]
MAHADA Complex, Oshiwara,]
Andheri (West), Mumbai – 400 053.]

ALONG WITH



MISC. APPLICATION NO.957 OF 2022 (Delay)
IN
APPEAL NO. U-11 OF 2022

- | | | |
|---|---|--------------------|
| Atul Kapoor |] | |
| B/202, Ballerina, 3 rd Cross Lane, |] | |
| Lokhandwala Complex, Andheri (West), |] | ... Applicant |
| Mumbai – 400 053. |] | |
| |] | |
| -VS- |] | |
| |] | |
| 1. Hitendra Dhamm Sabha Co-operative |] | |
| Housing Society Limited |] | |
| Building No. C-3, New Shastri Nagar, |] | |
| Road No.1, Goregaon (West), |] | |
| Mumbai – 400 104. |] | |
| 2. M/s. Sai Shraddha Constructions |] | |
| 35/C, Beach Resort, Juhu Koliwada, |] | |
| Santacruz (West), Mumbai – 400 049. |] | |
| 3. Crystal Constructioni Co. |] | |
| 701, A-2, Shubha Centre Chakala, |] | |
| Cardinal Gracious Road, Andheri (East), |] | |
| Mumbai – 400 099. |] | |
| 4. Crystal Infraventeures Pvt. Ltd. |] | |
| C-802, Building -3, Pearl Horizon, |] | |
| Bandivli Hill Road, Behind F.D.C. Company, |] | ... Non-applicants |
| Jogeshwari (West), Mumbai – 400 102. |] | |
| 5. Jayesh Naroliwala (Broker) |] | |
| Building No.15, Shop No.1, |] | |
| MAHADA Complex, Oshiwara, |] | |
| Andheri (West), Mumbai – 400 053. |] | |

ALONG WITH



MISC. APPLICATION NO.958 OF 2022 (Delay)

IN

APPEAL NO. U-12 OF 2022

Sharda A. Kumar
Cray Place, Parklea,
NSW – 2768, Australia.

... *Applicant*

-VS-

**1. Hitendra Dhamm Sabha Co-operative
Housing Society Limited**

Building No. C-3, New Shastri Nagar,
Road No.1, Goregaon (West),
Mumbai – 400 104.

2. M/s. Sai Shraddha Constructions

35/C, Beach Resort, Juhu Koliwada,
Santacruz (West), Mumbai – 400 049.

3. Crystal Constructioni Co.

701, A-2, Shubha Centre Chakala,
Cardinal Gracious Road, Andheri (East),
Mumbai – 400 099.

4. Crystal Infraventeures Pvt. Ltd.

C-802, Building -3, Pearl Horizon,
Bandivli Hill Road, Behind F.D.C. Company,
Jogeshwari (West), Mumbai – 400 102.

... *Non-applicants*

5. Jayesh Naroliwala (Broker)

Building No.15, Shop No.1,
MAHADA Complex, Oshiwara,
Andheri (West), Mumbai – 400 053.

ALONG WITH



MISC. APPLICATION NO.959 OF 2022 (Delay)

IN

APPEAL NO. U-13 OF 2022

Mrs. Sonia Raju Anandani
Flat No. 302, Shrenathji Bldg,
16th Cross Road, Plot-655,
Khar (West), Mumbai – 400 052.

... *Applicant*

-VS-

**1. Hitendra Dhamm Sabha Co-operative
Housing Society Limited**

Building No. C-3, New Shastri Nagar,
Road No.1, Goregaon (West),
Mumbai – 400 104.

2. M/s. Sai Shraddha Constructions

35/C, Beach Resort, Juhu Koliwada,
Santacruz (West), Mumbai – 400 049.

3. Crystal Constructioni Co.

701, A-2, Shubha Centre Chakala,
Cardinal Gracious Road, Andheri (East),
Mumbai – 400 099.

4. Crystal Infraventeures Pvt. Ltd.

C-802, Building -3, Pearl Horizon,
Bandivli Hill Road, Behind F.D.C. Company,
Jogeshwari (West), Mumbai – 400 102.

... *Non-applicants*

5. Jayesh Naroliwala (Broker)

Building No.15, Shop No.1,
MAHADA Complex, Oshiwara,
Andheri (West), Mumbai – 400 053.

ALONG WITH



MISC. APPLICATION NO.960 OF 2022 (Delay)

IN

APPEAL NO. U-14 OF 2022

Sara Akbar Sindkhedwala

144, Abdul Rehman Street,
4th floor, Room no. 13, Mumbai – 400 003.

... *Applicant*

-VS-

**1. Hitendra Dhamm Sabha Co-operative
Housing Society Limited**

Building No. C-3, New Shastri Nagar,
Road No.1, Goregaon (West),
Mumbai – 400 104.

2. M/s. Sai Shraddha Constructions

35/C, Beach Resort, Juhu Koliwada,
Santacruz (West), Mumbai – 400 049.

3. Crystal Constructioni Co.

701, A-2, Shubha Centre Chakala,
Cardinal Gracious Road, Andheri (East),
Mumbai – 400 099.

4. Crystal Infraventeures Pvt. Ltd.

C-802, Building -3, Pearl Horizon,
Bandivli Hill Road, Behind F.D.C. Company,
Jogeshwari (West), Mumbai – 400 102.

... *Non-applicants*

5. Jayesh Naroliwala (Broker)

Building No.15, Shop No.1,
MAHADA Complex, Oshiwara,
Andheri (West), Mumbai – 400 053.

ALONG WITH

MISC. APPLICATION NO.961 OF 2022 (Delay)

IN

APPEAL NO. U-15 OF 2022

- 1. Shakeel Azhar Ginwala**
2. Asma Azhar Ginwala
Flat No.503, Siddhi A-Wing,
Kalyan Complex, Yari Road,
Versova, Mumbai – 400 061.

... *Applicant*

-vs-

- 1. Hitendra Dhamm Sabha Co-operative Housing Society Limited**
Building No. C-3, New Shastri Nagar,
Road No.1, Goregaon (West),
Mumbai – 400 104.
- 2. M/s. Sai Shraddha Constructions**
35/C, Beach Resort, Juhu Koliwada,
Santacruz (West), Mumbai – 400 049.
- 3. Crystal Constructioni Co.**
701, A-2, Shubha Centre Chakala,
Cardinal Gracious Road, Andheri (East),
Mumbai – 400 099.
- 4. Crystal Infraventeures Pvt. Ltd.**
C-802, Building -3, Pearl Horizon,
Bandivli Hill Road, Behind F.D.C. Company,
Jogeshwari (West), Mumbai – 400 102.
- 5. Jayesh Naroliwala (Broker)**
Building No.15, Shop No.1,
MAHADA Complex, Oshiwara,
Andheri (West), Mumbai – 400 053.

... *Non-applicants*

ALONG WITH



MISC. APPLICATION NO.962 OF 2022 (Delay)

IN

APPEAL NO. U-16 OF 2022

Huzefa A. Dehgamwala

Flat No. 18, Best View, Raghavji Road,
Gowalia Tank, Mumbai – 400 036.

... *Applicant*

-VS-

**1. Hitendra Dhamm Sabha Co-operative
Housing Society Limited**

Building No. C-3, New Shastri Nagar,
Road No.1, Goregaon (West),
Mumbai – 400 104.

2. M/s. Sai Shraddha Constructions

35/C, Beach Resort, Juhu Koliwada,
Santacruz (West), Mumbai – 400 049.

3. Crystal Construction Co.

701, A-2, Shubha Centre Chakala,
Cardinal Gracious Road, Andheri (East),
Mumbai – 400 099.

4. Crystal Infraventeures Pvt. Ltd.

C-802, Building -3, Pearl Horizon,
Bandivli Hill Road, Behind F.D.C. Company,
Jogeshwari (West), Mumbai – 400 102.

... *Non-applicants*

5. Jayesh Naroliwala (Broker)

Building No.15, Shop No.1,
MAHADA Complex, Oshiwara,
Andheri (West), Mumbai – 400 053.

ALONG WITH



MISC. APPLICATION NO.963 OF 2022 (Delay)

IN

APPEAL NO. U-17 OF 2022

1. Mr. Bomi Hormusji Hansotia

2. Mr. Viraf Bomi Hansotia

T-11, Cusrow Baug, Electric House,
Colaba, S. Bhagat Singh Road,
Mumbau – 400 039.

... *Applicant*

-VS-

**1. Hitendra Dhamm Sabha Co-operative
Housing Society Limited**

Building No. C-3, New Shastri Nagar,
Road No.1, Goregaon (West),
Mumbai – 400 104.

2. M/s. Sai Shraddha Constructions

35/C, Beach Resort, Juhu Koliwada,
Santacruz (West), Mumbai – 400 049.

3. Crystal Constructioni Co.

701, A-2, Shubha Centre Chakala,
Cardinal Gracious Road, Andheri (East),
Mumbai – 400 099.

4. Crystal Infraventeures Pvt. Ltd.

C-802, Building -3, Pearl Horizon,
Bandivli Hill Road, Behind F.D.C. Company,
Jogeshwari (West), Mumbai – 400 102.

... *Non-applicants*

5. Jayesh Naroliwala (Broker)

Building No.15, Shop No.1,
MAHADA Complex, Oshiwara,
Andheri (West), Mumbai – 400 053.

Mrs. Priti Tare, Advocate for Applicants.

Mr. Rohit Yadav, Advocate for Non-applicant No.1.

Mr. Ritesh Singh, Advocate for Non-applicant Nos. 3 and 4.

None for Non-applicant Nos. 2 and 5.



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

DR. K. SHIVAJI, MEMBER (A)

DATE : 06th SEPTEMBER 2023

(THROUGH VIDEO CONFERENCE)

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

By these applications, Applicants are seeking condonation of delay in preferring the captioned appeals under The Maharashtra Real Estate (Regulation and Development) Act of 2016 (hereinafter referred to as, "the Act") filed on 17th October 2022 wherein, Applicants have sought *inter alia* to direct non-applicant no. 1 to execute and register agreements for sale in respect of the booking of their respective flats in "Hitendra Dhamma Sabha Co-operative Housing Society" in building no. C-3, located at Shastri Nagar, Goregaon (West), Mumbai 400004 (in short "said Project") as well as for registration of the project under the Act and to handover possessions of these flats besides seeking appropriate compensations towards mental agony and harassment by setting aside order dated 11th July 2022 passed by learned Chairperson, MahaRERA in Source Complaint Nos. SC10002390, SC10002391, SC10002401, SC10002392, SC10002389, SC10002396, SC10002402 and SC10002394 lodged before MahaRERA.

2. Despite service, non-applicant nos. 2 and 5 failed to appear before the appeal proceeding and therefore, delay condonation applications have proceeded *ex-parte* against non-applicant nos. 2 and 5.
3. Heard learned counsel for Applicants, Non-applicant nos.1, 3 and 4 in *extenso*.



4. Captioned applications /appeals arise out of common facts and are raising identical questions of law and instant appeals have been filed challenging the common order dated 11th July 2022. Accordingly, all the above applications are heard together and are being disposed of by this common order as hereunder.
5. Applicants claim to be allottees of the said project and are complainants before MahaRERA, non-applicant no. 1 is the Co-operative Housing Society, who had appointed non-applicant no. 2 as the erstwhile developer to redevelop the said project and non-applicant no. 3 is the new developer appointed by the non-applicant no. 1 upon termination of the redevelopment agreement entered between the non-applicant no. 1 and non-applicant no.2. Non-applicant no.5 is the broker / real estate agent through whom, these bookings were stated to have been made by Applicants.
6. For the purpose of disposal of present applications, it is not necessary to narrate facts of these cases in detail. Suffice it to say that Applicants filed the separate individual complaints before MahaRERA seeking above reliefs. Brief details of Applicants along with details of filing of appeals are delineated in the table mentioned below;

	Appeal Nos.	Complaint nos.	Date of impugned order	Date of filing appeal	Date of intimation of impugned order	Date of application for filing certified copy	Date of receipt of Certified copy	No. of days of delay
1.	U-10 of 2022	SC10002390	11.07.2022	17.10.2022	21.07.2022	03.08.2022	18.08.2022	25 days
2.	U-11 of 2022	SC10002391	11.07.2022	17.10.2022	21.07.2022	04.10.2022	Nil	25 days
3.	U-12 of 2022	SC10002401	11.07.2022	17.10.2022	21.07.2022 (04.10.2022	Nil	25 days

4.	U-13 of 2022	SC100023 92	11.07.2022	17.10. 2022	21.07. 2022	04.10. 2022	Nil	25 days
5.	U-14 of 2022	SC100023 89	11.07.2022	17.10. 2022	21.07. 2022 (04.10. 2022	Nil	25 days
6.	U-15 of 2022	SC100023 96	11.07.2022	17.10. 2022	21.07. 2022	04.10. 2022	Nil	25 days
7.	U-16 of 2022	SC100024 02	11.07.2022	17.10. 2022	21.07. 2022 (04.10. 2022	Nil	25 days
8.	U-17 of 2022	SC100023 94	11.07.2022	17.10. 2022	21.07. 2022	04.10. 2022	Nil	25 days

7. Non-applicant Nos. 2 and 5 remained absent during the complaint proceedings and did not file any reply nor any submissions. Non-applicant nos. 1, 3 and 4 resisted complaints filed by applicants before the MahaRERA.
8. Upon hearing the parties, Chairperson, MahaRERA passed common order dated 11th July 2022 and disposed of these complaints with finding *inter alia* that these are not maintainable and by observing that all the applicants may seek appropriate recourse under the civil laws for breach of their respective allotments/bookings and mandating non-applicant nos. 1 and 3 to seek the said project registration under the Act as and when the requisite approvals of the said project are obtained.
9. Aggrieved Applicants challenged this common order by filing the present separate individual appeals on 17th October 2022, after the expiry of the permissible limitation period of 60 days, seeking various reliefs as delineated above *inter alia* to set aside the impugned order dated 11th July 2022 and to execute and register agreement for sale of their respective flats in the said project.
10. Therefore, Applicants have sought condonation of delay on various grounds *inter alia* as set out in above applications and learned counsel for Applicants made manifold submissions as follows; -

- a) Delay in filing of the above appeals was of 25 days and the said delay was unintentional and delay has happened in arranging court fees. Delay in filing of the appeals was neither deliberate nor intentional but has occurred due to factors beyond the control of applicants. Therefore, the delay of 25 days in filing the captioned appeal be condoned and the appeals be heard on merits.
- b) Learned counsel for Applicants submits that these appeals have very good case to succeed on merits and thus grave irreparable loss, harm and prejudice will be caused to Applicants, if captioned delay is not condoned. Accordingly, Applicants urged to condone the delay in filing of above appeals.

11. Per Contra, learned counsel for Non-applicant No. 1 resisted these applications and sought to reject these by submitting as hereunder; -

- a. Captioned appeals are expected to be filed within 60 days from the date on which a copy of direction/order is received by Applicants. Whereas the impugned order was passed by MahaRERA on 11th July 2022. But applicant choose not to take any step and only after 84 days, made applications before the MahaRERA for certified copies of the impugned order, which shows their casual approach of applicants. Hence, on this sole ground itself, applications are liable to dismissed with costs.
- b. Applications are drafted in casual manner and applicants have not indicated clearly the date from which, the delay of 25 days have been calculated without explaining the delay, day by day and has not mentioned any cogent reason and therefore the applications are liable to dismissed with costs.
- c. No reasonable cause nor any bonafide reasons have been explained in these applications and are without any documents to support their stated



contentions. Further opposed the contentions of Applicants that they took more than 25 days of delay in arranging the court fees. Accordingly, learned counsel for non-applicant no.1 vehemently opposed the miscellaneous applications and urged for the dismissal of the same.

- 12.** Advocate Mr. Ritesh Singh learned counsel for Non-applicant Nos.3 and 4 also opposed the captioned applications by submitting broadly these similar grounds as mentioned herein supra by non-applicant no. 1 and pressed for dismissal of these applications with costs.
- 13.** From the rival submissions and upon perusal of pleadings, a short point that arises for our determination is whether Applicants have explained sufficient cause 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

- 14.** Before we advert to the merits of the controversy, let us consider the settled position of law on condonation of delay.
- 15.** 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 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.

16. 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:

- Lack of bona fide imputable to a party seeking condonation of delay are significant and relevant facts.
- The concept of liberal approach has to encapsulate the concept of reasonableness and totally unfettered free play is not allowed.
- 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;
- 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.
- 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.
- 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 /is on merits is seminal to justice dispensation system.

- 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".

- 17.** In the above backgrounds, we have to now examine, whether causes/ grounds put forth by Applicants amount to sufficient cause within the provisions of Section 44 of the Act. It is not in dispute that common order in captioned complaints was passed by the learned Chairperson, MahaRERA on 11th July 2022, whereas appeals have been filed on 17th October 2022. However, the stamp of MahaRERA put on the certified copy of the impugned order as on page no. 211 in appeal no. U-10 of 2022 shows that the application for the certified copy was filed on 03rd August 2022, the certified copy was ready on 18th August 2022 and the same is seen issued on the same day. However, in the miscellaneous application, it is mentioned that application for certified copy was made on 04th October 2022, and the certified copy was received on 18th August 2022. This clearly shows that the date of 04th October 2022 is written incorrectly. Miscellaneous applications further show that there are delays of 25 days in filing the captioned appeals.
- 18.** Learned counsel for applicants has sought condonation of delay in filing of the present appeals by submitting that the said delay is of only 25 days. Perusal of the stamp of MahaRERA put on the certified copies of impugned order as on page no. 211, while issuing the same to applicants, reveals that application for certified copy was filed on 03rd August 2022 well within the permissible 60 days and the certified copy is seen issued on 18th August 2022. Captioned appeals are filed on 17th October 2022. In view of the above, after excluding the 15 days of time taken by MahaRERA in issuing the certified copy (from 3 -18 August) under Section 12 of the Law of Limitation Act, 1963,



the actual delay in filing of present appeals beyond the limitation period of 60 days, works out to be of 22 days.

19. According to learned counsel for applicants, the delay in filing of the appeals have happened in arranging for court fees and other associated works, entirely beyond the control of applicants and has occurred unintentionally and was not deliberate nor intentional. Whereas, learned counsel for non-applicants has strongly resisted by submitting that every day of delay has not been explained with cogent reasons. However, miscellaneous applications are accompanied by affidavits, wherein it has been urged to allow applications and to condone delay.
20. It is more than evident from the above that the delay in filing these appeals is not intentional, nor deliberate and we are of the view that applicants have not gained any undue benefits by delay in filing of the appeals and have made bonafide efforts. It is also a settled principle of law for condonation of delay that ordinarily litigant does not stand to benefit by lodging an appeal late. Refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice may be defeated. As against this, when delay is condoned, then the highest that can be happened is that a cause would be decided on merits after hearing the parties.
21. In view of above, we are of the considered view that applicants have *prima facie* made bonafide efforts in filing of the captioned appeals and the delay happened despite their bonafide efforts. Moreover, applicants do not appear to have gained any undue benefits on account of captioned delay and there is no smack of malafide in filing the appeals.
22. In the light of the settled position 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 consideration to



Applicants. In this background, particularly, when the aforesaid delay does not appear to be intentional, nor deliberate and in the interest of justice, we are inclined to allow the applications and to condone delay. Accordingly, we answer the solitary point in the affirmative and proceed to pass the following order.

ORDER

- (a) All the captioned Misc. Application Nos. 956/ 2022, 957/2022, 958/2022, 959/2022, 960/2022, 961/2022, 962/2022 and 963/2022 are allowed.
- (b) Delays in filing the above appeals are condoned.
- (c) No Costs.
- (d) In view of the provisions of Section 44(4) of the Act, copy of order be sent to parties and MahaRERA.


(DR. K. SHIVAJI)


(SHRIRAM R. JAGTAP, J.)