

**BEFORE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL MUMBAI
M.A. No. 464/23 (Delay)
In
Appeal No. S-1/2023
Alongwith
M. A. No. 10/2024 (Deletion of Respondent No.5)**

Anita Bharatbhai Zatikia & Anr.

... Applicants

V/s.

Khambati Modh Vanik Samaj & 6 Ors.

... Non-applicants

Adv. Ms. Vinodini Srinivasan for Applicants/ Appellants

Adv. Mr. Shravan Giri for Respondent/ Non-applicant No.6

Adv. Mr. Bishwajeet Mukherjee for Respondent/ Non-applicant No.7

None for Non-applicants/ Respondents Nos. 2 to 5

CORAM : SHRI S. S. SHINDE J., CHAIRPERSON, &

DR. K. SHIVAJI, MEMBER (A)

DATE : 10th January, 2024

Learned counsel for the parties joined the conference.

**MISC.APPLICATION NO.10/2024 (Deletion of Respondent
No.5)**

By this Application, learned counsel for Applicants submits upon instructions that the Applicants/ Appellants intend to amend the Appeal Memo by deleting Non-applicant No.5 i.e. Mr. Vinod Shah from the array of Respondents/ Non-applicants on the grounds mentioned in the Application. Name of Mr. Vinod Shah was added in the array of Non-applicants/ Respondents on the presumption that Mr. Vinod Shah is a trustee, which has been discovered later that he is not a trustee and stated to be a stranger. He was not even a party in the complaint proceedings.



2] Perused.

3] Appeal is still in a pre-admission stage. Accordingly, Misc. Application No. 10/2024 is allowed and the name of Respondent No.5 i.e. Mr. Vinod Shah is allowed to be deleted at the risks and costs of the Appellants/ Applicants.

4] Accordingly, Misc. Application No. 10/2024 stands disposed of.

5] No costs.

6] Appellants/ Applicants to carry out the necessary amendment in the Appeal sets and file and circulate the amended copy of the Appeals within 10 days.

MISC. APPLICATION NO. 464/2023 (Delay)

By this Application, learned counsel for Applicants have sought to condone the delay of 30 days on the grounds *inter alia* that Applicants are senior citizen of 70 years old and the earlier Advocate has been changed. Furthermore, the delay is not intentional nor deliberate. She further submits that the Applicants have good case on merits and if delay is not condoned then grave harm, loss and injury will be suffered by the Applicants and submits that the delay be condoned.

2] Advocate Mr. Bishwajeet Mukherjee for H. Rishabraj Developers i.e. Non-applicant No.7 and Advocate Mr. Shravan Giri for M/s. Bhakti



Enterprises i.e. Non-applicant No.6 upon instructions submit that they have no objection to allow the captioned Misc. Application and condone the delay.

3] Today, none represented ^{for} the Non-applicant No.1 i.e. Khambati Modh Vanik Samaj Trust. However, Non-applicant No.1 has already filed reply controverting the grounds raised by the Applicants for condonation of delay by submitting *inter alia* that the present Applicants have no locus to challenge the impugned Order and abuse the process of law. Applicants have not explained delay in detail by giving cogent reasons.

4] Learned counsel for the Applicants in the rejoinder submits that, under Section 31 of RERA Act, 2016 any aggrieved person has a recourse/ remedy to take steps under the provisions of the said Act. Moreover, in the Complaint proceedings, these Applicants were not the parties and the delay of 30 days is neither intentional nor deliberate. The Applicants have properly explained the delay and hence the delay may be condoned.

5] Perused.

6] Perusal of record reveals that the delay of 30 days has happened mainly on account of Applicants being unaware of Complaint proceedings as they were not made party to the Complaint proceedings before MahaRERA Authority. The Applicants are senior citizens and due to change of the Advocate few days delay in filing the Applications has occurred. Under Section 31 of RERA Act, 2016 the

Applicants are the aggrieved persons. Moreover, the Applicants, *prima facie* appears to have not gained any undue advantage by causing the said delay in filing the captioned Appeal.

7] In view of the peculiar facts and circumstances of the case, we are of the considered view that the delay in filing the Application/ Appeal being bona fide and not intentional, delay in filing the Appeal is condoned.

8] Captioned Misc. Application No. 464/2023 is accordingly allowed and stands disposed of as such.

9] No costs.


(DR. K. SHIVAJI)

MBT/


(S. S. SHINDE, J.)