

Nalawade

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL  
MUMBAI**

**MISC. APPLICATION NO. 495 OF 2023 (Delay)  
WITH  
MISC. APPLICATION NO. 496 OF 2023 (Stay)  
IN  
APPEAL NO. S-2 OF 2023**

Anita Bharatbhai Zatakia & Anr.

... Applicants

-VS-

Khambati Modh Vanik Samaj & 6 Ors.

... Non-applicants

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*Ms. Charmie Gandhi, Advocate for Applicants.*

*None for non-applicant No.1 (i.e. Vanik Samaj)*

*Mr. Bishwajit Mukherjee, for Non-applicant No.2.*

*Mr. Shravan Giri, for M/s. Bhakti Enterprises i.e, Non-applicant No.3.*

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

**DR. K. SHIVAJI, MEMBER (A)**

**DATE : 10<sup>th</sup> JANUARY, 2024**

(THROUGH VIDEO CONFERENCE)

Learned counsel for parties joined the conference.

**MISC. APPLICATION NO. 495 OF 2023**

By this Misc. Application, learned counsel for Applicants is seeking to condone the delay of 110 days in filing the captioned appeal, primarily on the grounds mentioned in the Misc. Application that the delay is not intentional, nor deliberate. Applicants had been pursuing the remedy by filing the Writ Petition before the Hon'ble Bombay High Court.



Accordingly, sought to condone the delay by allowing the captioned Misc. Application.

2] Learned counsel for Non-applicant Nos. 2 and 3 upon instructions submit that they have no objection to allow Misc. Application No.495/2023 and condone the said delay because the appeals filed in Sr. No.13 and 14 (*i.e. S-1 of 2023 and S-2 of 2023*) shown in today's causelist are against the same impugned order passed by MahaRERA.

3] None appeared for Non-applicant No.1 trust (*i.e. Khambati Modh Vanik Samaj*).

4] However, the trust has filed reply controverting the grounds mentioned in the Misc. Application by pleadings that the Applicants have not come with clean hands, appeal is misconceived and frivolous. Moreover, Applicants have not disclosed the cause of action and have not explained each day of delay, which is aggregating to 110 days and submits to reject the captioned Misc. Application.

5] Perused.

6] Perusal of record reveals that the delay has not happened intentionally, nor deliberate and considering that the same impugned order passed by MahaRERA has been challenged in both appeals *i.e.* also in appeal No. S-1 of 2023, wherein, the delay in filing of appeal No. S-1 of 2023 has already been condoned and the Non-applicants/ Respondents





in both the appeals are identical.

7] In view of the peculiar facts and circumstances of the case, Misc. Application No.495/2023 is allowed and stands disposed of on above terms.

8] Delay in filing the captioned appeal is condoned.

9] No costs.

  
(DR. K. SHIVAJI)

  
(S. S. SHINDE, J.)