

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

**Misc. Application No. 01/2023 (Delay)**

**In**

**Appeal No. AT006000000134209 of 2022**

Mr. Manoj Rane & 27 Ors.

... Applicants

Versus

M/s. Fortune Infra Creators  
Pvt. Ltd. & 8 Ors.

... Non-applicants

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*Adv. Mr. Vasim Siddiqui for Applicants*

*Adv. Mr. Mohit Bhansali for Non-applicant No. 1*

*Adv. Ms. Padmashri K. for Non-applicant Nos. 2 and 3*

*Adv. Ms. Uroosa Shaikh for Non-applicant Nos. 4 to 9*

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

**DATE : 26<sup>th</sup> October, 2023**

**(THROUGH VIDEO CONFERENCING)**

**ORDER**

**[PER : SHRIRAM R. JAGTAP (J)]**

The Applicants, who are Complainants, have moved this Application for condonation of delay of 186 days caused in preferring the Appeal on the grounds set out in the Application mainly on the ground that they have sufficient cause for not preferring the Appeal within the period of limitation.



2] According to Applicants the impugned Order came to be passed on 07.03.2022. The Applicants were supposed to file the Appeal within 60 days from the date of Order. The Hon'ble Apex Court took cognisance of surge of Covid-19 pandemic in Suo Moto Writ Petition No.3 of 2020 and extended the period of limitation from time to time and lastly by Order dated 19.01.2022 extended the period of limitation in filing the proceedings by holding that where limitation has expired during the period between 15.03.2020 till 28.02.2022 not withstanding the actual balance period of limitation remaining, all person shall have the limitation period of 90 days from 01.03.2022 till 31.05.2022. Therefore, there is delay of 186 days in filing the Appeal.

3] Applicants further claim that they have applied for certified copy of impugned Order on 23.08.2022 and got it on 07.09.2022 and filed the captioned Appeal on 21.12.2022. On receipt of certified copy of the impugned Order the Applicants had sought legal advice and they were advised to file Appeal against the impugned Order. The Applicants have formed a group, but there was delay in arriving at consensus amongst the Applicants. Besides the Applicants had faced a difficulty in procuring papers from the earlier Advocate. The Applicants had to run from pillar to post to

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find/ search additional documents which were annexed to the Appeal.

4] The Applicants have case on merits and they have sanguine hope of success in the Appeal. There is no intentional delay in filing the instant Appeal. As soon as Applicants were able to complete the formality, the Applicants have filed the present Appeal. If delay is not condoned, grave injustice, harm and prejudice will be caused to Applicants which cannot be compensated in terms of money. With these contentions, the Applicants have prayed to condone the delay of 186 days caused in preferring the instant Appeal.

5] The Non-applicant No. 1, who is a new Developer, remonstrated the Application by filing its reply contending that the Application is misconceived, both in law and facts and there is an inordinate delay in filing the Appeal and the Applicants have failed to provide any sufficient cause for delay in filing the Appeal.

6] The Non-applicant No.1 has further contended that the Applicants in paragraph no.1 of the Application have averred that there is delay of 186 days in filing the Appeal. However, prayer Clause "A" of Application demonstrates that the Applicants want to condone delay of 143 days, the figure 143 days is handwritten.

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The prayer Clause "A" is inconsistent with the pleadings, therefore on this score alone, the Application is liable to be dismissed with costs.

7] It is further contention of Non-applicant No.1 that the present Application is filed by 28 Applicants but the Application is verified by only Non-applicant No.23. The affidavit in support of Application is also filed by only one Applicant. The language employed in Application clarifies that the Application is drafted for individual Applicant. The Application is hit by Regulation No. 10(iii) of Maharashtra Real Estate Appellate Tribunal Regulation, 2019. Since 27 Applicants have not filed affidavits in support of the Application, the Application cannot be construed as complied with the requirement of supporting affidavits and therefore the Application deserves to be dismissed as far as 27 Applicants who choose not to file their affidavits in support of Application.

8] According to Non-applicant No.1, Applicant No.23 Mr. Manish Walawalakar has not produced on record any Power of Attorney empowering him to verify the contents of Application on behalf of other 27 Applicants. Therefore, Application in this present form is not maintainable and deserves to be dismissed with costs.

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9] Non-applicant No.1 has further contended that the Applicants have not mentioned the name of Advocate, who did not co-operate the Applicants, in the Application nor the said Advocate is made party to the Application. The Applicants have made baseless allegations against the Advocate without any specification and details.

10] According to Non-applicant No.1 the Applicants cannot produce new documents for the first time in Appeal without permission of the Court as contemplated under Order 41 Rule 27 of Code of Civil Procedure. The Hon'ble Supreme Court in i] **Kirpa Ram (Deceased) through Legal Representatives & Ors. Vs. Surendra Deo Gaur & Ors. vide judgment dated 16.11.2020** and ii] **Jagdish Prasad Patel (Dead) through Legal Representatives & Anr. Vs. Shivnath & Ors. vide judgment dated 09.04.2019** held that additional documents cannot be permitted to be produced if they are not relevant to the plea raised by the applicant. The Non-applicant No.1 has further contended that the Applicants have not disputed the fact that they have physical copies of entire proceedings with them, under the circumstance the Applicants ought to have file Appeal with those documents. The approach of Applicants appears to be very casual,

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and no sufficient cause to condone the delay has been explained by the Applicants. It is well settled law that the delay needs to be sufficiently and properly explained on day-to-day basis. No such explanation is offered by the Applicants. It has been held by the Hon'ble Supreme Court in the matter of **Ajay Dabra V/s. Pyare Ram vide its Judgment dated 31.01.2023** that the reasons assigned for delay in filing the Appeal cannot be valid for condoning of the delay, since the applicant could have filed the Appeal deficient in court fee under the provisions of law.

11] The Non-applicant No.1 has further contended that the Applicants have wrongly computed the delay as 143 days. The Applicants are not entitled to get benefit of Order passed by the Hon'ble Apex Court in Suo Moto Writ Petition No.3 of 2020 because the impugned Order came to be passed on 07.03.2022. The Applicants ought to have file the Appeal on or before 05.05.2022, but the same is filed on 21.12.2022. Therefore, there is delay of 230 days in filing the Appeal and the delay is intentional. With these contentions the Non-applicant No.1 has prayed to dismiss the Application with exemplary costs.

12] Learned counsel for Non-applicant Nos.2 to 9 have no objection for allowing the Application.

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13] We have heard learned Advocate Mr. Vasim Siddiqui for Applicants, Advocate Mr. Mohit Bhansali for Non-applicant No. 1, Advocate Ms. Padmashri K. for Non-applicant Nos.2 and 3 and Advocate Ms. Uroosa Shaikh for Non-applicant Nos. 4 to 9.

14] The submissions advanced by Advocate Mr. Vasim Siddiqui for Applicants is nothing but reiteration of contents of Application and in addition to that the learned Advocate has further submitted that at the relevant time some of the Applicants had gone abroad which caused maleficent in arriving at consensus amongst the Applicants. So also, the submissions advanced by Advocate Mr. Mohit Bhansali for Non-applicant No.1 is nothing but reiteration of contents of reply. Learned Advocate has poignantly submitted that all the relevant papers are available on the website of Maharashtra Real Estate Regulatory Authority. The Applicants have nowhere whispered in their Application as to which office they had applied for the documents and obtained the same. In fact, the Applicants have simply been negligent and slept over their rights and therefore had no plausible excuse for delay. There is a delay of more than 186 days and reasons stated in the Application for condonation of delay cannot be accepted to condone the delay as

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it would unnecessarily drag the Non-applicant No.1 into baseless and bogus litigation.

15] From the pleadings of the parties, submissions advanced by the learned Advocates and material placed on record, only point that arises for our consideration is whether the Applicants have established that they had sufficient cause for not preferring Appeal within the period of limitation? To which our answer is in the negative for the reasons to follow.

### **REASONS**

16] It is not in dispute that impugned Order came to be passed on 07.03.2022. The Applicants are supposed to file Appeal within 60 days from the date of impugned Order. It is specific contention of Applicants that the Hon'ble Apex Court took suo moto cognisance 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/ Tribunal with effect from 15.03.2020 till further orders. By Order dated

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10.01.2022 passed in Suo Moto Writ Petition the Hon'ble Apex Court extended the period of limitation in filing proceedings by holding that where limitation has expired during the period between 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining, all person shall have the limitation period of 90 days from 01.03.2022 till 30.05.2022. Thus, the present Applicants are also entitled to have the limitation period of 90 days from 01.03.2022 till 30.05.2022. We do not find substance in the said contention of the Applicants.

17. A perusal of 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 28.03.2022 shall stand excluded for the purposes of limitation 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 even the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply"***



It is significant to note that the impugned Order came to be passed on 07.03.2022. Under such circumstances we are of the view that Applicants are not entitled to get benefit or recourse of Order dated 10.01.2022 passed by the Hon'ble Supreme Court in Suo Moto Writ Petition (Civil) No.3 of 2020. The period of limitation to file Appeal has expired on 05.05.2022. Admittedly, the Appeal came to be filed on 21.12.2022. It means there is a delay of 231 days in filing the Appeal.

18] Before examination of grounds set out in the Application for consideration it would be apt to consider certain legal proposition relating to law on condonation of delay. So far as liberal approach is concerned, in **Collector Land Acquisition, Anantnag and another Vs. Mst. Katiji and Others** [(1987) 2 Supreme Court Cases 107] the Hon'ble Supreme Court has held that -

*"3 The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose for the existence of the institution of Courts. It is common knowledge*

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*that this Court has been making a justifiable liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principles as it is realized that –*

- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being through out at the very threshold and cause justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- 3. "Every day's delay must be explained" does not mean that a pandemic 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.*
- 4. 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.*
- 5. There is no presumption that the 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.*
- 6. 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. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal."*

19] However, on consideration of averments made in the Application we are of the view that the Applicants are not only

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negligent in filing the Appeal but they have also not offered plausible explanation. If the explanation offered by Applicants is concocted or the grounds urged in the application are fanciful, then it can be said that sufficient cause is missing in the Application. The 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 necessary to be referred here. The principles are as follows:

- "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 Parameters."*

20] The condonation of delay beyond period of limitation is contemplated only in a case where an aggrieved party intended to file the Appeal but intervening compelling reasons made it impossible for such party to prefer Appeal adhering to the statutory timeline. A careful examination of Application would show that it is not the case of Applicants that they were unaware of date of the impugned Order. The Applicants were aware of the passing of the impugned Order on 07.03.2022, despite this they applied for certified copy of impugned Order on 23.08.2022. They have not offered plausible explanation for not filing the Application for certified copy of impugned Order immediately soon after passing of the impugned Order. According to Applicants after receipt of certified copy of the impugned Order they had sought legal advice and they were advised to file Appeal against the impugned Order. It is further case of the Applicants that they had faced difficulty in procuring the papers from the earlier Advocate. It is pertinent to note that the Applicants have not given the details of the papers

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allegedly procured from the earlier Advocate on the contrary, all the relevant papers are available on the website of MahaRERA. It is further case of the Applicants that the Applicants had to run from pillar to post to find/ search the additional documents which are annexed to the Appeal. The Applicants have not given detailed account of searching of the additional documents, such as, from whom they have obtained the additional documents, whether they had to apply to a particular office for obtaining the documents etc.

21] It is worthy to note that the Applicants claimed that they have received the certified copy of the impugned Order on 07.09.2022, the Applicants have not offered satisfactory explanation for not preferring Appeal from 07.09.2022 till 21.12.2022. Considering the facts and circumstances of the present matter in the light of principles laid down as above, delay that has already occurred can be construed as deliberate and intentional act as the Applicants have failed to file Appeal immediately with documents which they procured from the earlier Advocate, when they were advised to file Appeal. It is significant to note that the Applicants have nowhere mentioned in the application when they procured documents from the earlier Advocate. Apart from this the Applicants, instead of filing Appeal

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immediately as soon as they procured the documents from the earlier Advocate, chose to search the additional documents for which they have not offered explanation.

22] Keeping in view the proposition of law laid down by the Hon'ble Supreme Court in catena of judgments relating to condonation of delay and having regard to the totality of facts and circumstances of the instant matter, we are of the considered view that Applicants are found to be casual, non-serious, and non-vigilant in preferring the Appeal against the impugned Order. Over all conduct of Applicants would show that they are found negligent, not acted diligently and remained inactive for no bonafide reasons. The Applicants have failed to establish their diligence and alacrity in filing the Appeal within the period of limitation.

23] In the light of above observations, we are not inclined to accept the contentions of the Applicants and found that no sufficient cause is made out for inordinate delay in filing the Appeal. We are of the considered view that the inordinate delay that has occurred in filing the Appeal cannot be condoned. Accordingly, we proceed to pass the following Order.



**ORDER**

- 1] Misc. Application No.01/2023 stands rejected.
- 2] In the event of dismissal of Misc. Application for condonation of delay, Appeal does not survive and accordingly stands disposed of.
- 3] Parties shall bear their own costs.
- 4] Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of RERA, 2016.

  
(**DR. K SHIVAJI**)

  
(**SHRIRAM R. JAGTAP**)

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