

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

Misc. Application No. 43/2023 (Delay)

In

Appeal No. AT006000000144217/2023

D. N. Nagar Samrat Co-op Hsg. Ltd. ... Applicant

V/s.

Mr. Ashesh Garg &

Manu Garg & 5 Ors.

... Non-applicants

ALONGWITH

Misc. Application No. 44/2023 (Delay)

In

Appeal No. AT006000000144219/2023

D. N. Nagar Samrat Co-op Hsg. Ltd. ... Applicant

V/s.

Mr. Mukesh Sethia & 5 Ors.

... Non-applicants

ALONGWITH

Misc. Application No. 45/2023 (Delay)

In

Appeal No. AT006000000144221/2023

D. N. Nagar Samrat Co-op Hsg. Ltd. ... Applicant

V/s.

Mrs. Parveen Shivananda & 5 Ors.

... Non-applicants

ALONGWITH

Misc. Application No. 46/2023 (Delay)

In

Appeal No. AT006000000144222/2023

D. N. Nagar Samrat Co-op Hsg. Ltd. ... Applicant

V/s.

Ms. Manju Sood & 5 Ors.

... Non-applicants

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ALONGWITH
Misc. Application No. 47/2023 (Delay)
In
Appeal No. AT006000000144224/2023
D. N. Nagar Samrat Co-op Hsg. Ltd. ... Applicant

V/s.

Mrs. Ranjana V. Agarwal &
Mr. Vivek G. Agarwal & 5 Ors. ... Non-applicants

ALONGWITH
Misc. Application No. 48/2023 (Delay)
In
Appeal No. AT006000000144225/2023
D. N. Nagar Samrat Co-op Hsg. Ltd. ... Applicant

V/s.

M/s. Radical Developers Pvt. Ltd. & 5 Ors. ... Non-applicants

ALONGWITH
Misc. Application No. 49/2023 (Delay)
In
Appeal No. AT006000000144226/2023
D. N. Nagar Samrat Co-op Hsg. Ltd. ... Applicant

V/s.

Mr. Navin Jain & 5 Ors. ... Non-applicants

ALONGWITH
Misc. Application No. 50/2023 (Delay)
In
Appeal No. AT006000000144227/2023
D. N. Nagar Samrat Co-op Hsg. Ltd. ... Applicant

V/s.

M/s. Flyrise Trading Pvt. Ltd. & 5 Ors. ... Non-applicants

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ALONGWITH

Misc. Application No. 51/2023 (Delay)

In

Appeal No. AT006000000144228/2023

D. N. Nagar Samrat Co-op Hsg. Ltd. ... Applicant

V/s.

Mrs. Sanghamitra R. Kalapathy &

Mr. Kalapathy S. Ramakrishnan & 5 Ors. ... Non-applicants

ALONGWITH

Misc. Application No. 52/2023 (Delay)

In

Appeal No. AT006000000144230/2023

D. N. Nagar Samrat Co-op Hsg. Ltd. ... Applicant

V/s.

Mr. Mohomed Morani & 5 Ors.

... Non-applicants

ALONGWITH

Misc. Application No. 53/2023 (Delay)

In

Appeal No. AT006000000144231/2023

D. N. Nagar Samrat Co-op Hsg. Ltd. ... Applicant

V/s.

M/s. Cineyug Word Wide & 5 Ors.

... Non-applicants

Adv. Mr. Manoj Mhatre for Applicant

Adv. Mr. Diwakar Gond for Non-applicant No.1

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

DR. K. SHIVAJI, MEMBER (A)

DATE : 7th November, 2023

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(THROUGH VIDEO CONFERENCING)

COMMON ORDER

[PER : SHRIRAM R. JAGTAP, MEMBER (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 Co-operative Housing Society, has moved these Applications for condonation of delay of 659 days caused in preferring instant Appeals on the grounds set out in the Applications, primarily on the ground that Applicant had sufficient cause for not preferring Appeals within the period of limitation.

3] The Applicant claims that impugned common Order came to be passed on 23.10.2018 by the learned Authority, in Complaints filed by the members of Applicant Society. The Applicant was supposed to file Appeals within 60 days from the date of the Order. However, the Appeals came to be filed on 28.12.2022, 29.12.2022 and 30.12.2022, thus, there is delay of 659 days in filing Appeals.

4] The Applicant has further contended that all the members of the Applicant Society have been dislocated and live in different

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localities, as a result thereof, it took time for all of them to meet at a mutually convenient time and place to hold a Special General Body Meeting to discuss the issues and/ or pass a resolution. There are only two/ three members of the Applicant Society who were/ are involved in the co-ordination and arrangement of the procedure to be followed by Applicant Society to enable the Applicant to be represented in the Court of law or Tribunals. Apart from this, all the members of the Applicant Society are from lower/ middle income group people and are barely surviving due to the act of commissions and/ or omission of Non-applicant No.2.

5] The Applicant Society has further contended that most of the members of Applicant Society are senior citizens, wherein few of such members have already expired waiting for their homes and the rest are finding it difficult to manage their day-to-day affairs. Accordingly, it is difficult for Applicant Society to arrange for the monies required for the purpose of filing the instant Appeals. The Applicant Society was in the process of arranging funds for the same etc. due to which the instant Appeals could not be filed within the period of limitation.

6] The Applicant Society further claims that the Chairman of the Applicant Society is a senior citizen, therefore, it is difficult for

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her to always remain present and/ or be available for such meetings. All such meetings have to be arranged taking into consideration the availability of the committee members. During the course of time, Mr. Dattatray Mhatre, the Secretary of Applicant Society died on 17.08.2020. The members of the Applicant Society were finding it difficult to bare their expenses.

7] It is further contended that the Applicant Society has already filed 27 Appeals in the first set of Complaints with great difficulty. The period of limitation for filing the instant Appeals has expired on 22.12.2018. After computing the period of limitation there is a delay of 659 days in filing the instant Appeals. When the members of the Applicant Society were finally capable of arranging the funds and after a lot of co-ordination, the Applicant Society finally decided to file the instant Appeals. The Applicant has meritorious case and sanguine hope of success in Appeals. However, due to compelling circumstances such as members of the Society have been dislocated, they are living in different localities and had issue of survival first, the Applicant Society could not file Appeals within limitation. The members of the Applicant Society have to survive on their own by finding their own temporary residential accommodation and were required to change the same

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after a period of 11 months. These are the just, sufficient and reasonable causes to condone the delay in filing the instant Appeals. If delay is condoned no prejudice will cause to the Non-applicants. However, if delay is not condoned the members of the Applicant Society will suffer grave and irreparable harm, damages, loss and injury which cannot be compensated in the terms of money. With these contentions the Applicant has prayed for condonation of delay.

8] Only Non-applicant No.1 has appeared in all the matters except Misc. Application No.46 of 2023 in Appeal No.AT0060000000144222 of 2023 and Misc. Application No.47 of 2023 in Appeal No.AT0060000000144224 of 2023 and remonstrated the Applications by filing reply contending therein that the Applications filed by Applicant Society suffer from lacunas, latches and infirmities. The Applicant Society has not passed resolution authorizing its Chairperson Mrs. Meenakshi More to sign the Delay condonation Applications and/ or the Appeals. Mrs. Meenakshi More, being the Chairperson of the Applicant Society is fully aware of the procedure to be followed by the Applicant Society to initiate legal proceedings under law. Besides this, she was also aware of the gravity and seriousness of the present matter and she

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has been signing and executing documents, affidavits, writings, pleadings on behalf of the Society for past several years that too since 2017 when the Society had invoked arbitration against the Non-applicant No.2, the developer, before the Hon'ble Bombay High Court.

9] The Non-applicant No.1 has further contented that there is an inordinate delay of four years in filing the instant Appeals. The Complaints filed by the members of the Society have been disposed of by a common Order by the learned Authority and issued certain directions to Respondents (including Applicant Society) to comply with directions mentioned in para-2(a) & (b) of the impugned Order. The Chairman of the Applicant Society (Mrs. Meenakshi More) who, in February, 2019, had filed 27 Appeals (first batch of Appeals) and challenged Order dated 28.09.2018 passed by the MahaRERA in batch of 27 identical Complaints of home buyers and the impugned Order came to be passed after 25 days of passing of the Order in earlier first batch of Complaints.

10] The Non-applicant No.1 has further contended that since the Applications are filed by the Chairperson of Applicant Society without any authorization the Applications are liable to be rejected with exemplary costs. The members of the Applicant Society have

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been meeting for negotiations of various terms, commercial terms with various builders, advocates, architects and other professionals with intent to derive added benefits to satiate their greed under the garb of delayed redevelopment. The Applicant Society is now trying to play the victim card in order to gain undue sympathies to influence and prejudice the mind of this Tribunal with a view to get desirable Order from this Tribunal for condonation of delay in filing the Appeals. During the period of Covid-19 pandemic as citizens of country were familiar with video conferencing, the Courts of law including Tribunals had started functioning and restoring normalcy in life through video conferencing. The entire proceedings in the first batch of Appeals were conducted through video conferencing. In view thereof, there is no reason to believe the frivolous reasons, grounds offered by Applicant Society for condonation of delay. The members of the Applicant Society have been fighting litigations in various Courts during the period of Covid-19 pandemic and despite this the Applicant Society and its members did not challenge the impugned Order within the period of limitation or at any point of time. The Applicant Society has wrongly calculated the period of limitation and after computing the period of limitation there is an aggregate delay of 1453 days in filing the instant Appeals. The

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Applicant Society cannot take shelter of the Covid-19 pandemic.

The Applicant Society has not produced material on record to strengthen its case for condonation of delay. The Applicant Society has not demonstrated any hardship or compelling circumstance that led to a delay of 1453 days in filing the instant Appeals. The Applicant Society has not offered plausible explanation for condonation of delay of 1453 days in filing the present Appeals. With these contentions the Non-applicant No.1 has prayed for rejection of Applications with exemplary costs.

11] Non-applicant No.1 has filed reply in Misc. Application No.48 of 2023 in Appeal No.AT0060000000144225 of 2023 and by filing purshis in rest of the matters has adopted the said reply in rest of the matters.

12] Record reveals that in the matters despite service of Notices/ summons the rest of the Non-applicants did not appear in the matters therefore delay condonation Applications came to be proceeded ex-parte against the said Non-applicants.

13] We have heard learned Advocate Mr. Manoj Mhatre for Applicant Society and Advocate Mr. Diwakar Gond for Non-applicant No.1. The submissions advanced by the Advocates for

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respective parties are nothing but reiteration of contents of Applications and reply. However, Advocate Mr. Manoj Mhatre has poignantly submitted that due to lockdown imposed by the government on account of outbreak of Covid-19 pandemic and taking cognizance thereof in Suo Moto Writ Petition (Civil) No.3 of 2020 the Hon'ble Supreme Court extended the period of limitation for filing writ petitions/ applications/ appeals/ suits and other proceedings, within the period of limitation prescribed under the general law of limitation, thus the large period of delay has been covered by Covid-19 pandemic and in the light of the aforesaid pronouncement of the Hon'ble Supreme Court the said period is liable to be excluded while computing the period of limitation.

14] After taking into consideration the pleadings of the parties, submissions advanced by the learned Advocate Mr. Manoj Mhatre for Applicant and Advocate Mr. Diwakar Gond for Non-applicant No.1 and material on record only point that arises for our consideration is whether the Applicant Society has established that it had sufficient cause for not preferring the captioned Appeals within the period of limitation? To which our answer is in the negative for the reasons to follow.

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REASONS

15] A careful examination of Applications and material on record reveals that the impugned Order came to be passed on 23.10.2018. Admittedly, the Appeals came to be filed on 28.12.2022, 29.12.2022 and 30.12.2022. The Applicant Society was supposed to file the Appeals within the period of 60 days from the date of the impugned Order. Applicant Society claims that there is delay of 659 days in filing Appeals. However, after computing the period of limitation in filing the instant Appeals it is seen that there is an aggregate delay of 1460 days in filing Appeals. Under the circumstance it is difficult to digest that there is a delay of 659 days in filing Appeals as alleged by Applicant.

16] Learned Advocate Mr. Manoj Mhatre for Applicant Society has sorely submitted that due to lockdown imposed by the Government on account of outbreak of Covid-19 pandemic and taking cognizance thereof in Suo Moto Writ Petition (Civil) No.3 of 2020 the Hon'ble Supreme Court has extended the period of limitation for filing writ petitions/ applications/ appeals/ suits and other proceedings, within the period of limitation prescribed under the general law of limitation and therefore large period of delay has been covered by Covid-19 pandemic and in the light of the

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pronouncement of the Hon'ble Supreme Court the said period of delay is liable to be excluded while computing the period of limitation. We do not find substance in the said submissions of the learned Advocate for Applicant.

17] The Hon'ble Supreme Court in **Sagufa Ahmad Vs. Upper Assam Plywood Products (P) Ltd.** [(2021) 2 SCC 317] has held that Judgment dated 23rd March, 2020 in cognizance for extension of limitation (in Suo Moto Writ Petition Civil No.3 of 2020) is extending only period of limitation and it did not extend period upto which delay can be condoned in the exercise of discretion conferred by the statute. The Hon'ble Supreme Court has observed that-

18. To get over their failure to file an appeal on or before 18.03.2020, the appellants rely upon the order of this Court dated 23.03.2020 in Suo Moto Writ Petition (Civil) No.3 of 2020. It read as follows:

"This Court has taken Suo Moto cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/ applications/ suits/ appeals/ all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central or State).

To obviate such difficulties and to ensure that lawyers/ litigants do not have to come physically to file such proceedings in respective Courts/ Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

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We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is binding order within the meaning of Article 141 on all Courts/ Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/ Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks."

19. But we do not think that the appellants can take refuge under the above order. What was extended by the above order of this Court was only "the period of limitation" and not the period upto which delay can be condoned in exercise of discretion conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two latin maxims, one of which is Vigilantibus Non Dormientibus Jura Subveniunt which means that the law will assist only those who sleep over them."

18] It is significant to note that lockdown was only imposed on 24.03.2020. There was no impediment for the Applicant to file Appeals before 24.03.2020. The Applicant Society has failed even to remotely show sufficient cause for not filing Appeals before 24.03.2020. It means the period of limitation for filing Appeals against impugned Order had already expired on 22.12.2018 i.e. before imposing the lockdown by the Government due to outbreak of Covid-19 pandemic. Therefore, in view of the observations of the Hon'ble Supreme Court in **Sagufa Ahmad Vs. Upper Assam**

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Plywood Products (P) Ltd. [(2021) 2 SCC 317] (supra) we are of the view that Applicant Society cannot take refuge under the orders of the Hon'ble Supreme Court passed in Suo Moto Writ Petition (Civil) No.3 of 2020.

19] The condonation of delay beyond the period of limitation is contemplated only in a case where an aggrieved party intended to file appeal, but intervening compelling reasons made it impossible for such a party to prefer appeal adhering to the statutory timeline. In the instant case that is not the case. In

Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Academy and Ors. [(2013) 12 SCC 649] the Hon'ble Supreme Court has laid down the 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;*

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- 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."*

20] A careful examination of Applications would show that the Applicant Society has miserably failed to offer plausible explanation for condonation of delay. The explanation offered by the Applicant Society is that the members of the Applicant Society have been dislocated and live in different localities, as a result thereto it took time for all of them to meet at mutually convenient time and place to hold a Special General Body Meeting to discuss the issues and/or pass a resolution. Besides, all the members of the Applicant Society are from low strata of the society and because of financial constraints the members of Applicant Society could not file Appeal within the time limit prescribed. The members of the Applicant Society were in the process of arranging funds and Mr. Dattatray Mhatre, the then Secretary of Society died on 17.08.2020. The members of the Applicant Society were finding it difficult to bare their expenses. However, we are of the view that the averments made in the Applications are sufficiently evident that the grounds

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put forth by the Applicant Society for condonation of delay are baseless, frivolous, and not trustworthy. The Applicant Society has specifically averred in the Applications that the Applicant Society has already filed 27 Appeals in the first set of Complaints. This assertion of Applicant Society has falsified the contentions of the Applicant Society that the members of the Applicant Society were facing financial crises, and it was difficult for them to arrange funds for filing instant Appeals.

21] The next contention of Applicant Society is that the Chairman of the Applicant Society is a senior citizen, therefore, it is difficult for her to always remain present and/ or be available for meetings. All such meetings have to be arranged taking into consideration the availability of the committee members. It is pertinent to note that it is the specific contention of the Applicant Society that the Applicant Society has already filed 27 Appeals in the first set of Complaints with great difficulty. It is not the case of Applicant Society that Applicant Society has filed these Appeals after the period of limitation. It means those Appeals have been filed within the period of limitation. Under the circumstances it is difficult to digest that the Chairman of the Applicant Society being senior citizen was unable to remain present for meetings.



22] It is specific contention of the Applicant Society that the members of the Applicant Society have arranged the funds for filing instant Appeals. However, the Applicant Society has failed to give the detailed account of arrangement of the funds by members of the Applicant Society. It is not the case of Applicant Society that members of the Applicant Society have borrowed loan from their relatives or friends for raising funds. There is no material on record to show that later on the members of the Applicant Society have sufficient source of income and raised fund for filing Appeal. In the absence of cogent material to strengthen the contentions of the Applicant Society for making arrangements of the funds for filing the instant Appeals when it is specific contention of Applicant Society that most of the members of the Applicant Society are from lower strata of society, it is difficult to digest that the members of the Applicant Society succeeded in arranging funds for filing Appeals. Therefore, we are of the considered view that the explanation offered by the Applicant Society for condonation of delay is not satisfactory and appears to be frivolous. Applicant Society failed to file Appeals on time and chose to do so only after four years and as per its own convenience. The said situation can only be termed as non-seriousness of the Applicant Society and the

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other party cannot be left suffering and desolated. Thus, the averments made in the Applications qua delay of 1460 days cannot be classified as a reasonable delay in any manner.

23] The condonation of delay is an exception which should not be used as per convenience of the Applicant Society. Overall conduct of the members of the Applicant Society reveals that they are found to be negligent, not acted diligently and remained inactive. They did not bother to protect their own interest and remained as a silent spectator without any sufficient cause for almost 1460 days. The approach of members of the Applicant Society are found to be casual, non-serious and non-vigilant in preferring Appeals against the impugned Order.

24] In the light of above observations, we are unable to accept the contentions of the Applicant Society and find that sufficient cause is not made out for inordinate delay in filing instant Appeals. We are of the considered view that the members of the Applicant Society have failed to establish their diligence and alacrity in filing Appeals within the time limit and an inordinate delay that has occurred in filing instant Appeals, therefore cannot be condoned. Applications are devoid of merit and thus deserve to be rejected. We, therefore, proceed to pass following Order.



ORDER

- 1] Misc. Application Nos. 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53 of 2023 are dismissed.
- 2] In view of dismissal of delay condonation Applications, Appeals will not survive and the same are accordingly dismissed.
- 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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