

Nalawade

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL  
MUMBAI**

**MISC. APPLICATION NO. 1124 OF 2022 (Delay)  
IN  
APPEAL NO. AT006000000144218 OF 2022**

- 1. Mr. Surajkumar Rajendra Rai**
- 2. Mrs. Rachana N. Singh (Rachana S. Rai)**

Room No. 18, Prembaug Chawl,  
Pipe Line Road, Jawahar Nagar,  
Khar (East), Mumbai – 400 051.

... *Applicants*

*versus*

**Ekta Housing Private Limited**

401, Hallmark Business Plaza,  
Off. Western Express Highway,  
Kala Nagar, Bandra (East),  
Mumbai – 400 051.

... *Non-Applicant*

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*Mr. Vikash K. Singh, Advocate for Applicants.*

*Mr. Abir Patel i/b. Wadia Ghandy & Co., Advocate for Non-applicant.*

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

**DATE : 20<sup>th</sup> OCTOBER 2023**

*(THROUGH VIDEO CONFERENCE)*

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

By this application, applicants are seeking condonation of delay of 221 days in filing of the captioned appeal on 28<sup>th</sup> December 2022 beyond the permissible period of 60 days under Section 44 of The Maharashtra Real Estate (Regulation and Development) Act, 2016 (in short, the Act), challenging the order dated 30<sup>th</sup> July 2021 passed by learned Chairperson,



MahaRERA in Complaint Nos. CC 006000000 171927 lodged before Maharashtra Real Estate Regulatory Authority (in short, MahaRERA).

1. Heard learned counsel for parties *in extenso*.
2. Applicants herein are husband and wife in relation, who have booked a flat in building named Brooklyn Park – Phase IV, C wing of a duly registered project, called "Brooklyn Park" of the complex "Ekta ParksVille", located at Vasai - Virar (West), Thane – 401303 (in short, said project), which is being constructed by non-applicant/ respondent. For convenience, applicants and non-applicant will be addressed as Complainants and Promoter respectively.
3. For the purpose of disposal of present application, it is not necessary to narrate facts of the case in detail. Suffice it to say that complainants filed the above complaint before MahaRERA *inter alia* owing to delay in delivery of possession of the booked flat beyond the agreed timeline and sought various reliefs including direction to non-applicant to refund the paid amounts together with interest for the delay in delivery of possession, besides compensation and cost.
4. Non-applicant resisted the captioned complaint by submitting before MahaRERA that the subject flat has been mortgaged with the Bank/Financing Institution and in the event, the refund is agreed upon then, the said transaction shall also involve the housing loan company so that the apartment can be freed from mortgage.
5. Upon hearing the parties, learned Chairperson passed the impugned order dated 30<sup>th</sup> July 2021 and directed non-applicant *inter alia* to refund the entire amount paid by applicants along with interest from 01<sup>st</sup> January 2019 at prescribed rate and also directed applicants to obtain necessary N.O.C from the bank where the subject flat is mortgaged and for release of the said flat from the aforesaid mortgage. Further, in view of the mitigating circumstances beyond the control of the non-applicant as well as to ensure

that the said project is not jeopardised due to outflow of finances and is completed in the interest of other buyers of the said project at large, directed that amount of refund and interest thereon shall be paid after obtaining the occupancy certificate.

6. Aggrieved Applicants have challenged the said order dated 30<sup>th</sup> July 2021, seeking *inter alia* to set aside the impugned order, to direct non-applicant to refund the entire paid amount together with interest besides compensation, costs and reimbursement of all the pre-EMI's paid by applicants to IIFL/ IIHFL from 01<sup>st</sup> January 2018 or from the date of filing of the captioned complaint.
7. Applicants have filed the captioned appeal on 28<sup>th</sup> December 2022 beyond the prescribed time limit of 60 days seeking condonation of delay of 221 days on various grounds as set out in the application and learned counsel for Applicants made following submissions for condonation of aforesaid delay: -
  - a) Applicants could not file the captioned appeal within the prescribed period of time of 60 days due to various difficulties on account of the then, prevailing Covid-19 pandemics. The Hon'ble Supreme Court of India by its order dated 10<sup>th</sup> January 2022, has held that the period from 15<sup>th</sup> March 2020 till 28<sup>th</sup> February 2022 shall stand excluded from the period of limitation for filing of the said appeal. Thereby, the delay in filing of the appeal is of 221 days.
  - b) Apart from the difficulties due to Covid-19 pandemic and associated lockdowns, delay happened on account of other health issues which applicants and family members were suffering from.
  - c) Due to stress and mental trauma, health of applicant no.1 further deteriorated and doctor has certified that applicant no.1 is suffering from bronchitis, sinusitis with severe migraine headache and he is also



getting arthritis and backache. In support of these contentions, applicants have placed on record, copies of medical records/ certificates of applicant no.1.

- d) Due to non-availability of the said flat, applicants are compelled to stay in chawl, wherein their son is not able to play, faces basic sanitation/ health issues and even the health of applicant no.1 got further deteriorated.
- e) Applicant's only son is suffering from ASD (autism spectrum disorder) and has disability of 60 percent. Applicants have to regularly accompany their son for follow-up and therapy of their son. Applicants' son has to be continuously taken for therapy and to doctors for regular medical check-ups and treatments. Applicants have placed copies of the medical papers of applicant's son marked as "Exhibit – C".
- f) Applicant no.1's mother also had eyesight and cataract ailment because of which, applicants have to accompany her even today and applicant no.1 is yet to get cataract operated in one of her eyes. In support of these, applicants have annexed copies of medical certificates of applicant no.1's mother, which are marked as "Exhibit – D".
- g) Applicant no.1's uncle (applicant's father's real brother), Mr. Chandradev D. Singh, aged around 75 years was also staying with applicants and was totally dependent upon applicants for his daily needs and medications. His wife has expired in 2020 and has no children from his marriage. From July 2021, he was experiencing severe pain in his neck, throat as well as back/spine and he could not even walk. He was suffering from spondylosis. Eventually, he expired in April 2022 in Mumbai. In support of this, applicants have placed on record, copies of the medical papers of applicant no.1's uncle, marked as "Exhibit – E".



- h) In the above circumstances, applicants had to regularly accompany him for various medical checkups and treatments and there was no one else to look after except applicants' family. In view of above, applicants could not approach their advocate to take appropriate steps for filing of the appeal.
- i) Applicants could not instruct their advocate for filing of their appeal also due to lack of knowledge and awareness about the legal proceeding including the gravity of the matter, which have caused the said delay of 221 days. This delay was neither intentional nor deliberate, rather due to the circumstances beyond the control of applicants.
- j) Non-applicant has deliberately held meetings with applicants in order to negotiate and settle the dispute amicably.
- k) The said delay in filing of appeal has been caused due to health-related issues and has happened due to genuine and bonafide reasons beyond the control. Therefore, urged that the delay be condoned in the interest of justice.
- l) Refusal to condone delay could result in foreclosing applicants from putting forth their cause. Delay is neither malafide, nor deliberate as a dilatory tactics and the delay be condoned by following liberal approach and it will not cause prejudice to other side if the delay is condoned.
- m) Delay in filing of the captioned appeal is due to bonafide reasons and Applicant will suffer irreparable loss, if the present application is not allowed, and no prejudice will be caused if the delays are condoned by allowing the application. Therefore, the delays in filing the above appeal be condoned in the interest of justice.

**8.** Per Contra, learned counsel for non-applicant strongly resisted the application and sought to reject its prayers by submitting as hereunder; -



- a. Captioned application has been filed for condonation of delay of only 221 days. However, on computation, the actual delay in filing of appeal is of 434 days.
- b. Applicants have admitted that they were unaware and ignorant of the provisions of the limitation and its consequences of not filing the said appeal in time. However, ignorance of law is not an excuse, particularly when, applicants admit having slept-over their rights and being negligent. All the reasons of medical situations are merely a cover-up of their negligence. Real reason for the delay is due to lack of vigilance and seriousness.
- c. Applicants could have very well managed to apply for certified copy of the impugned order and admittedly collected the certified copy on 08<sup>th</sup> September 2021, when all the above issues and difficulties were still prevailing. Accordingly, it is hard to believe in the reasons cited by applicants which have purportedly prevented them from filing the appeal, which is otherwise an online process.
- d. Onus to place cogent and sufficient reasons for preventing them from filing appeal from March 2022 up to December 2022 lies on applicants. No event that occurred prior to passing of the impugned order can be considered and no event that transpired from March 2020 up to February 2022 can be considered as that period is already excluded by the order of the Hon'ble Supreme Court of India.
- e. Medical papers connected to the applicant's son reveal that their son has been undergoing treatment and therapy etc., since 2018, which was almost three years before passing of the impugned order.
- f. While applicants were facing certain medical issues, applicants filed original complaint and also pursued the same, even the impugned order was passed during this period. So, if they could file and pursue their

complaint, then, it is surprising that how could they not file current appeal in time. It is because of their sheer negligence and ignorance. Moreover, events transpired prior to the filing of the complaint and impugned order cannot be considered.

- g. Applicant no.1's own claim for undergoing medical treatment will not come to their any assistance because the doctor's certificate produced is dated 22<sup>nd</sup> November 2022, which is fifteen months after the passing of the impugned order.
  - h. All other medical records are just prescriptions for medicines and appears to be largely dermatological or are routine test reports, which in no way have prevented for filing of the appeal in time.
  - i. Applicants' mother's treatment started in March 2021, which was way before the impugned order even after the unfortunate demise of applicant no.1's uncle in April 2022. Whereas, the appeal was not filed even 8 months thereafter.
  - j. None of the documents produced nor any reasons stated therein prove that applicants were in fact unable to file appeal within limitation period nor even show that applicants made bonafide efforts. Moreover, nothing prevented applicants/ their advocate to file appeal online. All these shows that applicants want to misuse beneficial legislation of RERA to only enhance their gains and profits.
  - k. The delay is deliberate, intentional and medical emergencies are being used as excuses to cover these. Applicants have failed to show any cogent reasons that prevented them from filing the appeal within time.
9. From the rival submissions and upon perusal of pleadings, a short point that arises for our determination is whether Applicants have explained sufficient cause/s with cogent reasons for condonation of delay in filing instant appeal and to this our finding is in the affirmative for the reasons to follow: -



## REASONS

- 10.** Before we advert to the merits of the controversy let us consider the settled position of law on condonation of delay.
- 11.** In the case of *Collector, Land Acquisition, Anantnag & Anr. -vs- Ms. Katiji and Others [1987 AIR 1353]*; The Hon'ble Supreme Court in paragraph 3 has laid down 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 the 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.

**12.** 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".

**13.** In the above background, we have to now examine whether causes put forth by Applicants amount to sufficient cause within the provision of Section 44 of the Act. It is not in dispute that the order in complaint was

passed by MahaRERA on 30<sup>th</sup> July 2021, whereas appeal is filed on 28<sup>th</sup> December 2022 after getting the certified copy of the impugned order on 8<sup>th</sup> September 2021. Whereas application for the certified copy was submitted on 6<sup>th</sup> August 2021 before MahaRERA.

- 14.** According to learned counsel for Applicants, COVID-19 pandemic hits the country with advent of various waves/variants. It was further contended that during this time period, a series of partial and full lockdowns with various restrictions were imposed, due to which, Applicants could not file appeal within the prescribed limitation period.
- 15.** Learned counsel for Applicants further submits that by taking cognizance of Pandemic, The Hon'ble Supreme Court has passed order dated 10<sup>th</sup> January 2022, whereby period starting from 15<sup>th</sup> March 2020 till 28<sup>th</sup> February 2022, has been excluded for the purpose of limitation under any general or a special law including for appeals under the Act of 2016. This exclusion of limitation period has been ordered as unconditional as well as without any qualification.
- 16.** It is apposite to reproduce para 5.3 of the order of The Hon'ble Supreme Court of India in Suo Motu writ petition (C) no. 3 of 2020 in para 5 of its order dated 10<sup>th</sup> January 2022 as follows.
  - i. *"The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
  - ii. *Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
  - iii. *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 event the*





*actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply."*

- 17.** Accordingly, after exclusion of the eligible period of 60 days besides extension of limitation period in accordance with the order of Hon'ble Supreme Court including the permissible period of 90 days after 28<sup>th</sup> and February 2022, appeal was permitted to be filed by 29<sup>th</sup> May 2022. Against this, appeal has been filed on 28<sup>th</sup> December 2022.
- 18.** Learned counsel for the applicants further submits that applicant no. 1 himself and applicant's only son, applicant no. 1's mother and his uncle Mr Chandradev D. Singh, aged 75 years are also suffering from ailments over a long time. In support of these contentions, applicants have also placed on record relevant medical reports and supporting doctor's certificates/ medical reports and prescriptions. Learned counsel for applicants further submits that applicants have to regularly accompany his aged uncle and his son for their regular medical checkups and treatments because, there was no one else in the family to look after except the applicant's family. Applicants have given details of the ailments along with supporting documents, which shows that their son, applicants no. 1's mother and applicant no. 1 are suffering from different diseases.
- 19.** Careful perusal of these medical certificates and documents reveal that these medical documents are relating to different diseases and are relating to a long time period running even up to the end of the year 2022. However, learned counsel for the non-applicant strongly resisted the application by submitting that the delay is actually of 434 days. Whereas some of these ailments are even prior to the passing of impugned order and these medical documents are largely dermatological or are routine test reports, which in no way prevented applicants from filing of the appeal in time. Even the death of applicant no. 1's uncle is in April 2022 itself. Even

then, the appeal was not filed for 8 months thereafter. Learned counsel for applicants further submits that applicants no. 1 uncle (applicants father real brother) Mr. Chandradev D Singh aged 75 years, was staying with the applicants and was totally dependent upon the applicants for his daily needs and medication. He had no children of his own marriage. Eventually he expired in April 2022 in Mumbai itself. Perusal of these documents placed on records demonstrate that these medical reports are pertaining to the relevant time period of delay, for instance, document placed on page no. 517 is dated 7<sup>th</sup> September 2022 and on page no. 518 is dated 15<sup>th</sup> June 2022, which reveal that these are pertaining to time period from 29<sup>th</sup> May 2022 and 28<sup>th</sup> December 2022, the date on which the captioned appeal has been filed.

- 20.** Learned counsel for the applicants further submits that on 8<sup>th</sup> November 2022, applicants had to file a complaint before the police at Nirmal Nagar police station on account of breaking and damaging and destroying lock and iron gates installed at their house with an attempt to commit theft in dwelling/ Robbery/dacoity, house breaking, wrongful restraints etc, and requested for taking appropriate action against the concern persons involved. In support of this, applicants have placed on record a copy of the complaint file before the police.
- 21.** However, learned counsel for the non-applicant strongly resisted the application by submitting that the delay is actually of 434 days and some of these ailments are even prior to the passing of impugned order and these documents are largely dermatological or are routine test reports, which in no way prevented applicants from filing of the appeal in time. Even the death of applicant no.1's uncle in April 2022, appeal was not filed for 8 months thereafter. However, learned counsel for the applicants strongly controverted these contentions of non-applicant by submitting that



applicants no. 1 uncle (applicants father real brother) Mr. Chandradev D Singh aged 75 years, was staying with the applicants and was totally dependent upon the applicants for his daily needs and medication. He had no children of his own marriage. Eventually he expired in April 2022 in Mumbai itself.

22. Upon meticulous perusal of these documents placed on records and upon consideration of the rival contentions of the parties, we are of the view that the delay in filing of the captioned appeal has also happened due to medical reasons in the family of applicants and these factors are beyond control of Applicants. Therefore, the delay occurred is unintentional and without any negligence on the part of Applicants. It is further evident that the delay in filing of the above appeal has happened on account of bona fide and genuine reasons beyond the control of the applicants.
23. It is 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 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 the highest that can happen, is that matter would be decided on merits after hearing the parties.
24. Facts of the case on hand as discussed/ observed herein above, reflect that Applicants do not appear to have gained any undue benefits by delay in filing of the appeal, have been making *bona fide* efforts, the delay is unintentional and not deliberate etc. 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 being not intentional, nor deliberate, Applicants *prima facie* have made *bona fide* efforts in filing appeal despite



difficulties faced by Applicants due to then prevailing pandemic/ medical problems in the family. Therefore, in the interest of justice, we are inclined to allow the application. Accordingly, the solitary point is answered in the affirmative and we proceed to pass the following order.

**ORDER**

- (a) Delay in filing the above appeal is condoned.
- (b) No order as to costs
- (c) Captioned Misc. Application No. 1124 of 2022, is allowed and disposed of on the above terms.
- (d) In view of the provisions of Section 44(4) of the Act, a copy of the order be sent to parties and MahaRERA.

  
(DR. K. SHIVAJI)

  
(SHRIRAM R. JAGTAP, J.)