

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

Misc. Application No. 261/2023 (Delay)

In

Appeal No. AT006000000144334 of 2023

Sankalp Gupta

... Applicant

Versus

Subodh Ahire

... Non-applicant

Adv. Ms. Ritika Agarwal for Applicant

Mr. Subodh Ahire, Non-applicant in person

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

DR. K. SHIVAJI, MEMBER (A)

DATE : 30th October, 2023

(THROUGH VIDEO CONFERENCING)

ORDER

[PER : SHRIRAM R. JAGTAP (J)]

Applicant, who is a Promoter, has moved this Application for condonation of delay of 600 days caused in preferring Appeal on the grounds enumerated in the Application primarily on the ground that Applicant has sufficient cause for not preferring Appeal within time limit prescribed.

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2] Applicant and Non-applicant will hereinafter be referred to as "Promoter" and "Allottee" respectively for the sake of convenience.

3] Promoter claims that Allottee had filed Complaint No.CC006000000196037 seeking relief of refund of entire amount paid by him under the provisions of Section 18 of RERA, 2016. After hearing the parties learned Authority had allowed the Complaint and ordered the Promoter to refund the entire amount with interest. Promoter, instead of preferring Appeal against the said impugned Order dated 06.04.2021, had initially preferred Review/ Misc. Application cum Complaint bearing No.CC006000000196833 of 2021 for rectification of the mistakes apparent on record as the impugned Order contains several errors pertinent to law and facts. After hearing the parties learned Authority vide Order dated 01.07.2022 dismissed the said Misc. Application cum Complaint on improper and incomplete consideration of Regulation 36(a).

4] The Promoter has further claimed that being dissatisfied with the said Order dated 01.07.2022, the Promoter has filed Appeal No.AT006000000134008 of 2022 for setting aside the said Order. During the course of hearing, it came to know that for



proper adjudication of Order dated 01.07.2022 the Promoter needed to file Appeal challenging the initial Order dated 06.04.2021 passed by the learned Authority, as a result thereof instant Appeal is being filed. Due to pendency of Review Application No. CC006000000196833 of 2021 Promoter could not file Appeal as per the provisions of Section 39 of RERA.

5] The Promoter further claimed that delay in filing the instant Appeal is neither deliberate nor intentional but it has been on account of above mentioned circumstances. Since inception Appellant has been pursuing legal remedy, the Promoter has very good case on merits. The Promoter has sanguine hope of success in Appeal and if delay is not condoned serious prejudice will cause to Promoter.

6] It is further contention of the Promoter that it is settled position of law that every day's delay is not required to be explained, but only reasons for the same are to be placed on record. It has been held by the Hon'ble Supreme Court in the case of **Collector Land Acquisition Vs. Mst. Katiji and Others** [(1987) ITR 471 (SC)] that 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

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condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. In **O.P. Kathpaliaa Vs. Lakhmira Singh (dead) & Ors.** [(1984) 4 SCC 66], the Hon'ble Supreme Court has held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. With these contentions Applicant/ Promoter has prayed for condoning the delay.

7] Allottee has remonstrated the Application by filing reply contending therein that there is delay of 699 days in filing the instant Appeal. Promoter instead of filing Appeal against the original Order opted for filing Misc. Application under Regulation 36 for review of the order which came to be dismissed by the learned Authority. Even after passing the Order in Review Application dated 01.07.2022 the Promoter did not file Appeal immediately. The Promoter was supposed to file Appeal within 60 days from the date of the Order and in order to avoid the compliance of proviso to Section 43(5) of RERA Promoter conveniently opted for baseless Misc. Application No. CC0060000000196833 of 2021 and thereby consumed the time. With these contentions Allottee has prayed for dismissal of the Application.



8] We have heard learned Advocate Ms. Ritika Agarwal for Applicant and Non-applicant in person. The submissions and contentions by parties are nothing but reiteration of contents of Application and reply.

9] After considering the divergent pleadings of the parties, submissions advanced by the parties and material on record only point that arises for our consideration is whether Applicant has established that he had sufficient cause for not preferring Appeal within prescribed period of limitation? To this our answer is in negative for the reasons to follow.

REASONS

10] On careful examination of averments made in the Application and material on record reveals that the impugned Order came to be passed on 06.04.2021. The Applicant was supposed to file Appeal within 60 days from the date of Order. Admittedly, Appeal came to be filed on 06.03.2023. After computing the period of limitation it is seen that there is delay of more than 600 days. It is specific case of Applicant that Applicant, instead of preferring Appeal against the impugned Order dated 06.04.2021, had initially preferred Misc. Application No. CC006000000196833 of 2021 for review i.e. for rectification of the mistakes noticed by the Applicant

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as the impugned Order contains several errors pertinent to law and facts. Due to pendency of the said Review Application Promoter could not file Appeal as per provisions of Section 39 of RERA.

11] It is significant to note that it is further case of Applicant that after hearing the parties learned Authority vide Order dated 01.07.2022 dismissed the said Misc. Application filed for review of impugned Order. The Promoter again instead of filing Appeal against the impugned Order dated 06.04.2021 preferred to file appeal against Order dated 01.07.2022 passed by the Authority in Review Application. It is worthy to note that it is not the case of Applicant that because of wrong advice of Advocate he did not file Appeal against the impugned Order dated 06.04.2021 after dismissing the Review Application on 01.07.2022. The only explanation offered by Applicant is that during the course of hearing of Appeal No.AT006000000134008 of 2022 filed for setting aside the Order dated 01.07.2022 passed in Review Application the Applicant came to know that for proper adjudication of Order dated 01.07.2022 the Promoter ought to have file Appeal challenging the initial Order dated 06.04.2021. This conduct of Applicant shows a casual approach of Applicant. It is seen that since inception Applicant has been casual, non-serious and non-vigilant in pursuing

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proper legal remedy i.e. in preferring Appeal against the impugned Order dated 06.04.2021.

12] It is not in dispute that Review Application No.CC006000000196833 came to be dismissed on 01.07.2022, under circumstances it was expected of Applicant to file Appeal immediately against the impugned Order dated 06.04.2021. However, Applicant has failed to offer plausible explanation for not preferring Appeal immediately after dismissal of Review Application. It is significant to note that record reveals that Applicant had applied for certified copy of impugned Order dated 06.04.2021 on 02.08.2022 and got it on 26.08.2022. Admittedly, Appeal came to be filed on 06.03.2023, it is surprising to note that from 26.08.2022 till 06.03.2023 not a single step could be taken by Applicant to demonstrate required seriousness in preferring Appeal. It has been held by the Hon'ble Apex Court in **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Academy and Ors.** [(2013) 12 SCC 649] that –

"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;

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- 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 Paramaters."*
- 13] Over all conduct of Promoter/ Applicant would show that he is found to be negligent, not acted diligently and remained inactive. The Applicant is a Promoter and has all requisite and conceivable resources at his disposal to prescribe the Appeal in time if there is any perceived grievance against the impugned Order. Applicant being Promoter also knows where his interest lies. Applicant did not bother to protect his interest and remained as a silent spectator during the period 26.08.2022 till 06.03.2023.


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14] In the light of above observations, we are unable to accept the contentions of the Applicant and find that sufficient cause has not been made out for inordinate delay in filing the instant Appeal. We are of the considered view that the Applicant has failed to establish his diligence and alacrity in filing Appeal within the time limit prescribed and inordinate delay that has occurred in filing the instant Appeal, therefore, cannot be condoned. Application is devoid of merits and thus deserves to be rejected. Consequently, we proceed to pass the following Order.

ORDER

- 1] Misc. Application No.261/2023 is dismissed.
- 2] In view of dismissal of Delay condonation Application, Appeal does not survive and the same is 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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