

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

MISC. APPLICATION NO. 418 OF 2023 (Delay)

WITH

MISC. APPLICATION NO. 417 OF 2023 (Stay)

IN

APPEAL NO. AT0060000000 154556

Skystar Buildcon Private Limited

5th floor, Sunteck Centre, 37-40,
Subhash Road, Ville Parle (East),
Mumbai – 400 057.

versus

Mr. Prashant Puthran

Residing at 712 Bergen, St. Harrison,
New Jersey – 07029.

Mr. Abhishek Kothari, Advocate for Applicant.

Mr. Tanuj Lodha, Advocate for Non-Applicant.

... *Applicant*

... *Non-Applicant*

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

DATE : 21ST SEPTEMBER 2023

(THROUGH VIDEO CONFERENCE)

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

By this application, Applicant has sought to condone delay of 381 days beyond the permissible period, in filing of the captioned appeal on 4th July 2023 under Section 44 of The Real Estate (Regulation and Development) Act of 2016 (hereinafter referred to as, "the Act"), seeking various reliefs including to set aside and quash the impugned order dated 20th April 2022,



passed by learned Member, Maharashtra Real Estate Regulatory Authority (MahaRERA) in Complaint No. CC006000000 194774, wherein, Applicant was directed *inter alia* to refund the paid amount together with interest at prescribed rate failing which penalty of ₹5000 per day and the penalty will be doubling every month of the default.

2. Heard learned counsel for parties *in extenso*. Perused record.
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 Applicant is Promoter, who is developing a project namely "Sunteck City Avenue 2" located at Goregaon, Mumbai. Non-Applicant is flat purchaser, who has filed the said complaint before MahaRERA seeking *inter alia* refund of the paid amounts together with interest by withdrawing from the project on account of failure to execute agreement for sale and also due to failure to handover possession by Applicant in time.
4. Captioned appeal has been filed beyond the statutory permissible period of 60 days. Thereby, Applicant is seeking the aforesaid condonation of delay on various grounds as set out in the instant application and learned counsel for Applicant made manifold submissions as follows; -
 - a. Delay in filing of the captioned appeal has occurred due to reasons beyond the control of the applicant.
 - b. Impugned order dated 20th April 2022 was passed, when the applicant's offices were still in transition period to resume physical functionality fully from online mode. Therefore, several papers/documents pertaining to the captioned appeal were misplaced and/ or difficult to access.
 - c. The concerned employee of the applicant, who was dealing with the Appeal papers, resigned from her service. Consequently, all the records handled by the erstwhile employee were lost in the transition. It is only recently that applicant has managed to depute another employee to handle all such



matters. Therefore, due to bonafide oversight and/ or errors, applicant was unable to file the captioned appeal within the prescribed period of limitation.

- d. Applicant has strong case on merits and due to bonafide oversight and/ or errors., applicants should not suffer. If application is not allowed then, applicant will suffer grave harm, irreparable losses, and extreme prejudices. Moreover, implication of the impugned order has devastating and overarching impacts on applicant and also to the real estate industry as a whole. Whereas, to the contrary, in the event if, present application is allowed then, non-applicant will suffer no harm nor prejudice besides, the balance of convenience is in favour of the applicant.
 - e. Applicant further undertakes to pay such sum by way of damages/ costs as the Tribunal may award as compensation in the event any party suffers from any prejudice or loss by an order that may be made in the present application.
5. Per Contra, Non-Applicant by filing reply to the Misc. Application, pleaded to dismiss the captioned application for condonation of delay with heavy costs by submitting as hereunder: -
- a. Captioned appeal has been filed after an inordinate delay without explaining 'sufficient cause' and grounds mentioned therein are completely frivolous and baseless. It is also not correct to say that reasons for not filing the appeal in time has occurred due to reasons beyond the applicant's control. Therefore, the application ought to be dismissed *in limine* because the delay has not been explained at all.
 - b. Contention of the applicant that impugned order has been passed during the Covid pandemic time, is not correct. Because, the impugned order has



been passed on 20th April 2022, by that time, COVID-19 Pandemic was already over.

- c. Moreover, during covid period and onward, soft copies of documents were being exchanged digitally and served to the other side via email etc., making these relevant documents easily accessible from anywhere and anytime. Accordingly, the claims of the applicant that documents pertaining to the captioned appeal were misplaced/ difficult to access, are incorrect and completely erroneous.
- d. Contentions of the applicant that the concerned employee of the company has resigned, is also false. It is because, the application does not contain any specific information with regard to the name/ designation etc., of the deputed / concerned employee stated to have resigned, absolutely no evidence has been placed on record with regard to details of the date of resignation, copy of stated resignation letter etc, or any other details that she was the person, who has been handling this matter and how/when, these documents were claimed to have been misplaced during the transition etc,. Moreover, no affidavit nor any other documentary evidence supporting these contentions have been placed on record. Additionally, applicant has further failed to place the relieving letter on the record. In addition, every office follows standard practice and has culture of handing over the office documents to the Human Resource Department of the office before exiting. The applicant ought to have been responsible enough to take possession of all the documents relating to the captioned appeal from the stated employee before her stated exit. No evidence nor any other specific details to this effect has been produced by the applicant.
- e. Applicant was fully aware of the fact that impugned order dated 20th April 2022 was passed by MahaRERA and this order is easily available on the



MahaRERA website, from where, applicant could have easily downloaded the said order.

- f. Applicant has not shown the required sufficient cause for the inordinate delay in filing of the appeal and has also not placed on record, any relevant correspondence/s, which have taken place between applicant and erstwhile employee etc,. As such, no ground for the delay has been explained at all.
- g. It is the settled principle of law that delay of each day has to be explained in the application for condonation of delay and in the instant case, unexplained and inordinate delay of 381 days has occurred due to negligence and sheer carelessness of the applicant.
- h. In support of the above contentions, non-applicant has referred and relied upon the judgment of The Hon'ble Supreme Court of India in the case of *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others wherein*, it was observed that, "
15(ix) The conduct, behaviour and attitude of a part relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach."
"15(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation."
"16(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system."
- i. Submissions of the learned counsel of applicant submits during the oral hearing that a group of employees had resigned, is also not mentioned in

the captioned application. Therefore, all the grounds mentioned in the captioned application are fanciful and concocted.

- j. Applicant being the promoter, developing the said duly registered project, is bound to maintain records on the MahaRERA website, keeping track of all such matters.
 - k. Applicant wants to defeat the execution application filed by non-applicant and therefore, applicant waited for the execution application to be filed by non-applicant. Accordingly, applicant has filed the instant appeal after the executing authority has reserved it for order.
 - l. Balance of convenience lies in favour of non-applicant. Therefore, it is denied that if the present application is not allowed then, applicant will suffer grave harm, irreparable loss and extreme prejudice. Hence, delay ought not to be condoned and the captioned application be dismissed with heavy cost.
6. From the rival submissions, a short point that arises for our determination is whether Applicant has explained sufficient cause for condonation of delay in filing instant appeal and to this our finding is in the negative for the reasons to follow: -

REASONS

7. Before we advert to the merits of the controversy let us consider the settled position of law on condonation of delay.
8. In case of Collector, Land Acquisition, Anantnag & Anr. Vs. Ms. Katiji and Others [(1987) 2SCC 107]; The Hon'ble Supreme Court in paragraph 3 reiterated 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 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 and pragmatic manner.*
 - d) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred and 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 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 spirit and be applied in proper perspective to the facts and situations of a particular case."*
- 9.** In this connection, principles culled down by the Hon'ble Supreme Court in *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Ors.* [(2013) 12 SCC 649] are as hereunder;
- a. Lack of bona fide imputable to a party seeking condonation of delay is significant and relevant fact; -*
 - b. The concept of liberal approach has to encapsulate the concept of reasonableness and totally unfettered free play is not allowed; -*



- c. *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.*
- d. *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; -*
- e. *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; -*
- f. *An application 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 merits is seminal to justice dispensation system; -*
- g. *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, within legal Parameters".*

10. In the above background, we have to now examine, whether grounds put forth by Applicant amount to sufficient cause within the provisions of Section 44 of the Act.

11. It is not in dispute that order in the complaint was passed by learned Member, MahaRERA on 20th April 2022. Whereas every appeal under Section 44 (1) of the Act is statutorily required to be filed within a period of 60 days from the date on which, a copy of the order is received by the aggrieved person. However, during the oral hearing, learned counsel for applicant Mr. Kothari submits that application for the certified copy of the order dated 20th April 2022, was filed before MahaRERA on 07th July 2023 and the captioned appeal has been filed with delay of 381 days, beyond




the prescribed statutory limitation period of 60 days under the Act. Therefore, Applicant has sought condonation of 381 days of delay.

- 12.** However, perusal of record shows that submissions of Applicant are not supported by credible and cogent evidence on account of the followings; -
- a. Applicant is seeking condonation of delay on the grounds that (i) applicant was transitioning from online to offline office functioning in post covid situation and the concerned employee, who was handling the captioned appeal in his office, has resigned. This has resulted in misplacement of the relevant documents. However, perusal of record depicts that applicant has not produced any evidence whatsoever, in support of these contentions and has not even mentioned the name of the stated employee, who purportedly resigned, no information about the stated date of resignation and other related information etc. There is no evidence at all to show that this stated employee was claimed to have been handling the papers of captioned appeal etc. There is only a simple and a mere bald statement that 'an employee', who was deputed to handle these papers, subsequently resigned from her services. Applicant has not produced any supporting evidence nor documents in support of these contentions. Moreover, at the time of the oral submissions despite giving him enough opportunity to collect the name/s of the employee, learned counsel for applicant failed to specify the name of the concerned employee/s, who claimed to have resigned. As such, learned counsel for applicant further submits during his argument that a group of employees had resigned during that period without mentioning even a single name, designation of any of such employees etc., whether dealing with the papers of the captioned appeal or otherwise etc.



- b. The contention of the applicant that group of employees had resigned, is not seen mentioned in the captioned miscellaneous application. Therefore, it appears that it is an afterthought of the applicant.
- c. Learned counsel for applicant further submits that the said delay has happened on account of the transition, which has taken place in his office functioning at the time of passing of the impugned order dated 20th April 2022. It is well known that there were hardly any Covid-19 pandemic related difficulties in April 2022 onwards. In view of above, it is hard to believe in the contentions of the applicant.
- d. In the present case, the impugned order is dated 20th April 2022, Applicant has failed to produce even a single concrete and tangible supporting evidence on record demonstrating timely action, no step is seen taken by Applicant for filing the appeal within time after passing of the order. All these, indicate that Applicant has *prima facie* not taken any visible, tangible and demonstrable action. Therefore, Applicant was not vigilant enough about its rights and law will not benefit such non-vigilant litigants for delay.
- 13.** It is true that length of delay is not important, but acceptability of explanation is important criteria as primary function of Tribunal is to adjudicate dispute between the parties and to advance substantial justice. The Hon'ble Supreme Court summarized the law on the issue in Basawaraj and Anr vs. Special Land Acquisition Officer [(2013) 14 SSC 81]. In para 15 the Hon'ble Supreme Court held thus -
- "15. The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the Applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona*



fide on his part in the facts and circumstances of the case or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature”.

- 14.** In the instant case, Applicant has made only vague and unsubstantiated submissions. Whereas Non-applicant has demonstrated and effectively controverted all the contentions raised by Applicant. Despite providing enough opportunities, Applicant has failed even remotely to show any meaningful and cogent reason in support of the condonation of delay, leave aside the much-needed sufficient cause, which is required for condonation of delay.
- 15.** Further, it is also significant to note that Applicant is not a person of ordinary prudence. It is a Promoter company, managed by educated functionaries, who know their business activities very well in the real estate markets. Keeping in view of the proposition of law laid down by the Hon'ble Supreme Court relating to condonation of delay as above and having regard to the totality of facts and circumstances of this case as discussed above, Applicant is found to be casual and non-serious in preferring the appeal against the impugned order. Therefore, in the absence of cogent reasons to condone enormous delay of 381 days in filing of the captioned appeal and in order to avoid injustice to non-Applicant, we are of



considered view that the application for condonation of delay for 381 days is devoid of merits and does not deserve to be allowed. Accordingly, solitary point for determination is answered in the negative and we proceed to pass the following order: -

O R D E R

- (a) Misc. Application No. 418 of 2023 for condonation of delay is rejected.
- (b) In view of dismissal of Misc. Application for condonation of delay, pending captioned Appeal No. AT- 154556 would not survive, consequently stands disposed of.
- (c) In view of disposal of appeal no. 154556 as above, other pending Misc. Application will not survive. Hence, stands disposed of.
- (d) Applicant to pay cost of Rs. 5000/- towards legal expenses of non-applicant, directly to his account within three weeks from the date of uploading of this order.
- (e) In view of the provisions of Section 44(4) of the Act of 2016, copies of the order shall be sent to the parties and to MahaRERA.


(DR. K. SHIVAJI)


(SHRIRAM R. JAGTAP, J.)