

Sep 08, 2200

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

**MISC. APPLICATION NO. 497 OF 2022 (Delay)
ALONG WITH
MISC. APPLICATION NO. 480 OF 2022 (Restoration)
IN
APPEAL NO. AT006000000052163**

Varad Developers

Through its partner

Mr. Sanjay Chandrakant Chavan

R/o. – Plot No.27/K/9 Datta Krupa,

Sar Lashkar Park, Opp. Circuit House,

'E' Ward, Kolhapur.

... Applicant

*versus***Shyam Sundar Korgaonkar**

R/o. Atharv Apartment

'E' Ward, Tarabai Park, Kolhapur.

... Non-applicant

*Mr. K. K. Saswade, Advocate for Applicant.
None for Non-applicant.*

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

DATE : 14th SEPTEMBER 2023

(THROUGH VIDEO CONFERENCE)

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

Captioned applications have been preferred for restoration of the Appeal No. AT006000000052163 by condoning the delay of 481 days in filing of the restoration application for setting aside the order dated



18th December 2020 of this Tribunal, wherein captioned Appeal filed under The Maharashtra Real Estate (Regulation and Development) Act, 2016 (in short, the Act) was dismissed due to *inter alia* its non-appearance and based on the reasons set out therein.

2. Learned counsel for applicant appeared but no one appeared on behalf of the non-applicant at the time of hearing held on 4th September 2023. Heard learned counsel for Applicant *in extenso*.
3. For the purpose of disposal of present applications, it is not necessary to narrate facts of the case in detail. Suffice it to say that Applicant is developer, who is developing a project namely "Clyde Homes", located at Kolhapur. Whereas Non-applicant is a unit purchaser and Complainant before Maharashtra Real Estate Regulatory Authority ('MahaRERA in short').
4. It is not in dispute that on account of delay in execution of the agreement for sale despite payment of requisite amount, above complaint came to be filed before MahaRERA and the complaint came to be disposed of on 23rd December 2019 with direction to applicant to execute agreement for sale in consonance with the draft agreement provided under the Act within 30 days.
5. Aggrieved by the order of MahaRERA, Applicant filed the captioned appeal under the Act, which was listed for hearing on 11th December 2020, wherein none of the parties appeared. Therefore, the appeal proceeding came to be re-listed on 18th December 2020. Even then, none of the parties appeared on 18th December 2020. Accordingly, the captioned appeal came to be dismissed on 18th December 2020 by this Tribunal with the observations as here under; -

"None for the parties."



Appellant despite notices has remained absent on 11th December 2020 and today also without any intimation.

Appeal stands dismissed.

No costs'

6. Applicant has sought condonation of delay in filing of the restoration application for setting aside the dismissal order dated 18th December 2020 by filing the captioned Misc. Application No. 497 of 2022 for condonation of delay of 481 days or whatever delay caused in filing of the restoration application by submitting as follows: -
- a. Technically, there is no delay in filing of the restoration application for setting aside the order dated 18th December 2020. It is because, applicant has not received any notice, intimation or email about the order of dismissal of the captioned appeal.
 - b. Captioned application for restoration of the appeal has been filed, when Applicant came to know about the dismissal order only on 17th May 2022 at the time of virtual hearing of the application moved by non-applicant for execution of the said order passed by MahaRERA.
 - c. Applicant further submits that delay in filing of the application is not deliberate nor intentional. Applicant has very good case on merit and has high possibility of success.
 - d. Advocate Mr. K. K. Saswade, learned counsel for the applicant submits during the hearing held on 4th September 2023 that the emails sent by this tribunal were not received by the applicant, apparently these emails went into spam of the email box of applicant. Thereby, applicant was totally unaware of the proceeding in the appeal. He further submits that the appeal was dismissed on 18th December 2020 and immediately thereafter, COVID-19 pandemic broke out. As a result of that, the



restoration application could not be filed in time and sought condonation of delay of 481 days.

7. Applicant is further seeking restoration of captioned appeal on various grounds mentioned in the Misc. Application No. 480 of 2022 by condoning delay based on the reasons set out in the Misc. Application No. 497 of 2022. In support of the above applications, learned counsel for Applicant made multifarious submissions as follows: -
- a. Applicant has preferred the captioned appeal against order dated 23rd December 2019 passed in the complaint no. CC 005 00000000 22629 and submits that Applicant never received any notice nor any intimation nor email for the hearing in the appeal proceeding. Whereas applicant came to know only on 17th May 2022 at the time of virtual hearing of an application moved by non-applicant for execution of the order passed by MahaRERA. However, applicant has not received any intimation nor any email for hearing in the appeal proceedings scheduled to be held on 11th December 2020 and 18th December 2020. Captioned appeal was dismissed on 18th December 2020 on account of non-appearance of the parties in the appeal proceeding.
 - b. Dismissal order passed by the tribunal is contrary to the provisions of law and has caused grave injustice, loss and injury to applicant and sought to set aside the dismissal order dated 18th December 2020 and urged that the appeal be restored to its original file. Condonation of said delay and restoration of the appeal would not cause any loss or injury to anyone and on the contrary the appeal will be decided on its merit.
 - c. Applicant has very high chance of success in the appeal as it has a very good case on merit.



8. From the submissions as above, a short point that arises for our determination is whether Applicant has explained sufficient cause for condonation of delay in filing of the aforesaid application for restoration of the instant appeal filed for setting aside the order of this tribunal dismissing the captioned appeal and to this, our finding is in the negative for the reasons to follow: -

REASONS

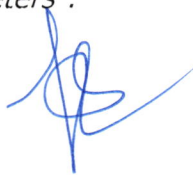
9. Before we advert to the merits of the controversy, let us first consider the settled position of law on condonation of delay.
10. In the case of Collector, Land Acquisition, Anantnag & Anr. Vs. Ms. Katiji and Others [(1987) 2SCC 107]; The Hon'ble Supreme Court in paragraph 3 reiterated the principles 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 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 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 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 spirit and be applied in proper perspective to the facts and situations of a particular case."*

11. 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 a 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".*



12. 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 for condonation of delay.
13. Perusal of the record reveals that the captioned appeal has been dismissed primarily on account of non-appearance of applicant/ appellant on consecutive scheduled hearing dates more specifically on 11th December 2020 and 18th December 2020 purportedly because, emails sent by this tribunal were not received by the applicant. Thereby, applicant was totally unaware of the proceeding in the appeal. Applicant has also filed captioned Misc. Application No. 497 of 2022 for condonation of delay of 481 days in filling the restoration application 480 of 2022 filed for setting aside the dismissal order dated 18th December 2020.
14. However, learned counsel for applicant himself confirms that applicant has received the email dated 3rd August 2023, which has been sent by the tribunal at the email ID "**varaddevelopers40@yahoo.in**" for the hearing to be held on 4th August 2023. Perusal of the cause list further reveals that exactly the same email ID was also mentioned in earlier cause lists for the hearings, which took place on 11th December and 18th December 2020 as well and applicant has been receiving emails now at the very same email ID in the present application proceedings. Even then, Applicant is claiming that he has not received the email sent by this tribunal for the hearings held on 11th and 18th December 2020.
15. Perusal of the record, more particularly the emails dated 11th December 2020 and 17th December 2020, which were sent to all the litigants for the hearings scheduled to be held on 11th December 2020 and 18th December 2020 respectively, also had the very same email ID of applicant, without any change nor had any error of whatsoever nature therein.



- 16.** However, advocate Mr. K. K. Saswade, learned counsel for applicant further submits that even though email ID at which, these emails were sent by the Tribunal to applicant is correct, still applicant has not received these emails, because these emails went in the spam of the applicant and thereby, applicant could not come to know about the hearing dates scheduled and notified to be held on 11th December 2020 and 18th December 2020. It is pertinent to note that keeping the emails functioning more particularly after providing the very same email id in the appeal filed just before that is the responsibility of the applicant. It is also the duty of the applicant, who has filed the appeal to keep the email id in the working condition and the excuse that the emails sent by the Tribunal went to spam, cannot be accepted as cogent ground much less the sufficient ground. It shows that applicant was not vigilant and alert. Hence, the contentions of applicant are not cogent and convincing.
- 17.** Applicant itself has filed the instant appeal therefore, applicant needs to be more vigilant, alert more particularly, when the appeal was filed in January 2020 and such daily orders of the Tribunal are being published on the website of the Tribunal. In addition, these emails are being sent as an additional facility to the litigants to facilitate their appearances before appeal proceedings.
- 18.** Learned counsel, Mr. K. K. Saswade further submits that the delay in filing the restoration application happened on account of the difficulties faced by the applicant due to the then, prevailing Covid-19 pandemics. Perusal of the captioned application filed for condonation of delay reveals that it does not contain even a whisper of this ground. Moreover, all the appeal proceedings in the Tribunal have been taking place online to facilitate all the litigants to appear from their convenient locations. Hence, it appears



to be an afterthought and the last-minute ground, when the applicant confirmed that there is no change in the email id.

- 19.** Applicant has failed to place on record any proof, not even a copy of email print or any other proof showing that the email sent by the Tribunal has gone to spam. It is important to note that if the email has gone to the spam, applicant could have easily taken out the print of the same to place it on record as a proof that emails sent by the Tribunal have gone to his email box of spam.
- 20.** It is pertinent to note that since, applicant itself has instituted the present appeal, it is incumbent upon the applicant to be more alert and vigilant about progress/developments in the appeal proceedings, more particularly about the next date. Prima facie, it appears that applicant is not vigilant about its rights and duties.
- 21.** It happens despite the fact that applicant is not a person of ordinary prudence rather is a company managed by persons of educated functionaries. Therefore, it is hard to believe in the contentions of applicant that he remained unaware about the next dates.
- 22.** The Tribunal has been sending emails to all the litigants and parties consistently about the next schedule dates as an additional measure to facilitate appearances of parties in the appeal proceedings. Therefore, it is not convincing that applicant was not aware of the next date more particularly, when there is no change in the email address. As such, applicant should have visited the tribunal website or enquired with the registry of the tribunal, more particularly because applicant had appeared in some of hearing dates in the past and next dates are always announced openly. These reveal that the applicant / appellant was not serious about its own appeal, *albeit* this litigation in the tribunal is instituted by him.



- 23.** When he has been getting the emails containing web links for the scheduled meetings consistently after filing of the delay condonation and restoration applications on the very same email ID then, it is not convincing to believe in the argument and hypothesis of the applicant that he remained unaware about the next date of the hearing more particularly held on 11th December and 18th December 2020. It is all the more difficult to believe it, when these hearing dates are consistently being uploaded on the website of the tribunal and all these details including the cause list etc., are published by uploading consistently on the website of tribunal. Therefore, this information is available in the public domain.
- 24.** It is also to note that the tribunal has been functioning consistently online virtually even during the COVID-19 pandemic periods except for a few dates due to certain circumstances.
- 25.** It is pertinent to note that Applicant is a promoter of a duly registered project, wherein promoter is expected to maintain website containing all the project details, which are readily visible and available to public at large.
- 26.** We are of the view that promoter is inherently better equipped about the market information and is structurally at advantageous position in as much as of such information is concerned. But Applicant remained sleeping over its rights and was not found vigilant even after filing appeal.
- 27.** Whereas in para 19 of the judgement of the Hon'ble Supreme Court in the case of "Sagufa Ahmed and Others vs. Upper Assam Plywood Products (P) Ltd [(2021) 2 SCC 317]", it has been laid down that,
"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 are vigilant about their rights and not those who sleep over them."



28. Even though the above observations of The Hon'ble Supreme Court is in the context of the availing benefits for extension of limitation period in filing of appeal, the core decision made therein in the above judgment passed by The Hon'ble Supreme Court shows that it is intended to benefit only the vigilant litigants and only those, who are vigilant about their rights will be eligible to avail such benefits and not to those, who sleep over their rights.
29. In the present case, Applicant has failed to produce concrete and tangible supporting evidence on record demonstrating timely action, no step is seen taken by Applicant, which demonstrates that it has pursued even after filing of appeal. All these, indicate that Applicant has *prima facie* not taken any visible, tangible and demonstrable action, which is prerequisite for condonation of delay in filing of the restoration application. Therefore, Applicant was not vigilant enough about its rights and law will not aid such non-vigilant litigants.
30. It is true that acceptability of explanation is important criteria as the 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 justified grounds 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”.

- 31.** In the instant case, Applicant has made only vague and unsubstantiated submissions. Despite providing enough opportunities, Applicant has failed even remotely to demonstrate any meaningful and cogent reason in support of condonation of delay, leave aside the much-needed adequate and enough reasons, which are required.
- 32.** Further, it is also significant to note that Applicant is not a person of ordinary prudence. It is a promoter's company managed by educated functionaries, who know their business activities very well in the real estate market. Keeping in view of the proposition of law laid down by the Hon'ble Supreme Court and having regard to the totality of facts and circumstances of this case as discussed above, Applicant is found to be casual, non-serious and not vigilant in filling the restoration application of the appeal. Therefore, in the absence of cogent reasons and in order to avoid injustice to non-Applicant, we are of considered view that the application for condonation of delay is devoid of merits and does not deserve to be



allowed. Accordingly, the solitary point for determination is answered in the negative and we proceed to pass the following order.

ORDER

- a. Misc. Application No. 497 of 2022 for condonation of delay of 481 days stands rejected.
- b. Consequently, Misc. Application No. 480 of 2022 for restoration of Appeal No.AT006000000052163 filed for setting aside the tribunal's order dated 18th December 2020 also stands rejected.
- c. No order as to costs.
- d. 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.)