

NALAWADE

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO. 03 OF 2023 (Delay)
IN
APPEAL NO. U-20 of 2022
IN
SOURCE COMPLAINT NO. SC10002397**

Mrs. Simran M. Vasandani

Residing at – 1903-04, Blue Mountain Tower,
Shastrinagar, Andheri (West),
Mumbai – 400 053.

... *Applicant*

~ *versus* ~

**1. Hitendra Dhamm Sabha Co-operative
Housing Society Limited**

Registered office at Building No.C-3,
New Shastri Nagar, Road No.1, Goregaon (West),
Mumbai – 400 104.

2. M/s. Sai Shraddha Constructions

Through its proprietor, Mr. M. F. Zamindar,
Registered office at 35/C, Beach Resort,
Juhu Koliwada, Santacruz (West),
Mumbai -400 049.

... *Non-applicants*

3. Crystal Construction Co.

701, A-2, Shubham Centre Chakala,
Cardinal Gracious Road, Andheri East,
Mumbai – 400 099.

4. Crystal Infraventures Pvt. Ltd.

C-802, Building – 3, Pearl Horizon,
Bandivli Hill Road, Behind F.D.C. Company,
Jogeshwari West, Mumbai – 400 102.

5. Jayesh Naroliwala (Broker)

101, Amir Building, 1st Floor,
JVPD Scheme, N.S. Road No.9,
Opp. Gundecha Bunglow,
Juhu, Mumbai – 400 049.



Ms. Priti Tare, Advocate for Applicant.
Mr. Rohit Yadav, Advocate for Non-applicant No.1.
Mr. Ritesh A. Singh, Advocate for Non-applicant Nos.3 and 4.
None for Non-applicant Nos.2 and 5.

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

& DR. K. SHIVAJI, MEMBER (A)

DATE : 03rd NOVEMBER 2023

(THROUGH VIDEO CONFERENCE)

ORDER

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

By this captioned Misc. Application No. 03 of 2023, Applicant is seeking condonation of delay of 95 days under Section 44(2) of The Maharashtra Real Estate (Regulation and Development) Act, 2016 (in short, the Act) , in filing of the captioned appeal on 23rd December 2022 beyond the prescribed/ permissible limitation period of 60 days by challenging the order dated 11th July 2022 passed by learned Chairperson, MahaRERA in Complaint No. SC 10002397.

2. Heard learned counsel for parties.
3. Applicant is the buyer and complainant before MahaRERA. Non-applicant No.1 is Co-operative Housing Society, who had appointed Non-applicant no.2 as the erstwhile Developer to re-develop the project namely "Hitendra Dhamma Sabha Co-operative Housing Society" ('said project') situated at building no. C-3, Shastri Nagar, Road no.1, Goregaon (West), Mumbai – 400 104. Non-applicant Nos.3 and 4 are the new Developer appointed by Non-applicant no.1 upon termination of the re-development agreement entered between Non-applicant no.1 and Non-applicant no.2. Non-applicant no.5 is a broker/ real estate agent through whom,



the stated booking of the flat was made by Applicant.

4. Applicant booked the stated flat in the said re-development project by paying the earnest money with the erstwhile developer Non-applicant no.2 and Applicant has sought to execute agreement for sale with Non-applicant no.2. However, based on the order of the Hon'ble Bombay High Court, Non-applicant no.2 was restrained from acting upon the re-development agreement and the same was terminated by Non-applicant no.1. Non-applicant no.1 thereafter, has appointed Non-applicant no.3 to carry out construction of the said project. Upon hearing the parties, MahaRERA disposed of the captioned complaint with *inter alia* observations/ directions that captioned complaint is not maintainable and the Applicant may seek appropriate recourse under civil laws for breach of allotment/ booking besides mandating Non-applicant no.1 and 3 to seek project registration as and when the requisite approvals for the said project are obtained.
5. Aggrieved by this order, Applicant has filed the captioned appeal, beyond the permissible time limits of 60 days. Therefore, has sought condonation of delay of 95 days in filing captioned appeal on various grounds as set-out in the application and learned counsel for Applicant made further manifold submissions as follows: -
 - a. Applicant came to know about the passing of the impugned order dated 11th July 2022 on 21st July 2022. Accordingly, Applicant applied for the certified copy of the impugned order on 04th October 2022 and received the certified copy on 11th October 2022. The delay in filing of the captioned appeal is unintentional.
 - b. Applicant was in personal difficulty as the Applicant was out of station for urgent work and therefore, she could not give instructions to the advocate to file appeal. Whereas Applicant gave instruction after contacting the advocate on 21st December 2022. Accordingly, the appeal was filed on 21st December 2022 (23rd December 2022). Therefore, the delay in filing the

appeal is neither deliberate nor intentional and has occurred inevitably beyond the control of the Applicant. The delay caused in filing the appeal is bonafide. Therefore, the delay of 95 days in filing the appeal be condoned in the interest of justice.

c. There was no deliberate delay nor any negligence on the part of the Applicant in filing the captioned appeal and Applicants have very good case on merits. If the delay is not condoned, grave harm and irreparable loss, injury and prejudice will be caused to Applicants.

d. Accordingly, Applicant has prayed to accept captioned appeal on the file of the Tribunal by condoning the delay in filing the appeal.

6. Per contra, learned counsel for Non-applicant No.1 strongly opposed the application and sought to reject the prayers by submitting that captioned application has no merits on account as follows: -

a. The applicant has not approached the Tribunal with clean hands and suppressed the material facts on the vital aspects of the matter and has made deliberate misrepresentations and therefore application is liable to be dismissed with costs.

b. Members of Non-applicant no.1 society are without any shelter and roof, are awaiting re-development of the project for more than 14 years. Non-applicant no.1 is not privy nor party to any of the purported transactions as have been allegedly issued by Non-applicant no.2 in favor of the Applicant.

c. Captioned appeal is based on false, frivolous, vexatious and vague allegations, which are based on conjectures, surmises and fertile imagination of Applicant. Therefore, is not entitled for any reliefs.

d. Application is nothing but misuse and abuse of the process of the Authority and therefore the same is liable to be dismissed with costs.

e. Application is not maintainable under the law because the appeal has not

been filed within the permissible time period of 60 days from the date on which, the copy of the direction or order or decision made by the Authority is received by the Applicant. The impugned order was passed on 11th July 2022. However, the Applicant chose not to take any steps and only after 84 days from the date of passing of the impugned order Applicant applied for the certified copy, which reflects the casual conduct of the Applicant.

- f. Para 2 of the application, Applicant has stated that the copy of the application for the certified copy is attached and marked as Exhibit- A. However, no such exhibit has been attached to the application.
 - g. Perusal of the application reflects that the application has been drafted with casual manner and Applicant has not even stated from which date, the Applicant is calculating the period of delay and how the Applicant has come to the conclusion that the delay is only of 95 days in filing of the appeal. As such, Applicant should have also explained the delay of day to day. However, nothing is mentioned by the Applicant and only for the sake of filing, Applicant has taken out the present application.
 - h. There is no reasonable cause nor even a single bonafide reason is explained in the application and no documents to support these alleged contentions have been placed on record.
 - i. Applicant has not explained and not placed any documents to show that Applicant went abroad and could not give instructions to the advocate as alleged in the application. Moreover, the delay is actually 102 days and not only for 95 days as mentioned in the application.
 - j. Accordingly, the Misc. Application and the appeal preferred by Applicant is false and with malafide intentions, thereby, both the application and appeal are liable to be dismissed with costs.
7. Advocate Ritesh Singh learned counsel for Non-applicant nos. 3 and 4 also vehemently opposed the application and adopted the pleadings and

submissions made by Non-applicant no.1.

8. 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

9. Before we advert to the merits of the controversy let us 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 the stated grounds put forth by Applicant, whether amounts to sufficient cause within the provisions of Section 44 of the Act.
- 13.** It is not in dispute that the order in the complaint was passed by learned Member, MahaRERA on 11th July 2022. Whereas every appeal under the Act is statutorily required to be filed within a period of 60 days. However, in the instant case, captioned appeal has been filed only on 23rd December 2022. Thereby, Applicant is seeking condonation of delay of 95 days in filing the captioned appeal primarily, on the ground that "*Applicant was in personal difficulty as the Applicant was out of station for urgent work and therefore she could not give instructions to the advocate to file appeal and the Applicant could contact and given instructions to the advocate to file appeal only on 21st December 2022 and therefore the delay is not deliberate and nor intentional*".
- 14.** However, learned counsel for Non-applicant no.1 vehemently opposed it by submitting that the delay is not of 95 days rather it is of 102 days. Moreover, every day of delay in filing the appeal is not seen explained, even though captioned application shows that exhibit A is attached in the application but there is no such attachment therein. Claim made in the application by Applicant that certified copy of the impugned order has not been received, but it is factually incorrect in view of the stamp of MahaRERA, on page no. 203 of the record. Moreover, there is no specific information, nor any documents placed in support of these grounds claimed by Applicant for condonation of delay. In view of these, the said delay has not been sufficiently explained as required under the law and therefore the captioned application is devoid of merits and substance. Accordingly, the delay condonation application deserves to be rejected.
- 15.** Learned counsel for Non-applicant nos. 3 and 4 adopted the arguments made



by Non-applicant no.1 and submits that the application lacks substance. Accordingly, ought to be rejected.

- 16.** On careful perusal of the application and the rival submissions made by the parties and on perusal of record reveal that submissions of Applicant are not supported by credible and cogent evidence on account of the followings; -
- a. Careful perusal of the application and the rival submissions made by the parties reveals that Applicant came to know of the passing of the impugned order dated 11th July 2022 on 21st July 2022. Even then, she took more than 60 days in filing the application for the certified copy, which was filed only on 04th October 2022. Not only that, even after the receipt of the certified copy on 11th October 2022 from MahaRERA, appeal is seen filed only on 23rd December 2022, which reflects a further delay of more than 60 days even after the receipt of the certified copy.
 - b. Applicant is seeking the condonation of said delay primarily on the ground that Applicant could not give instructions to advocate to file appeal earlier than on 21st December 2022 because of her personal difficulties, as she was out of station for urgent work. This contention does not demonstrate any particular information about the specifics of any such personal difficulty, which is being claimed for. Applicant has also not specified any details about the "stated claim of out of station for urgent work" without elaborating that out of station means, where and which exactly the place? Whether this station is within the district/state or outside the country. No supporting documents or credible evidence have been placed on record. Even after repeatedly asking from the learned counsel for Applicant at the time of argument to provide further specific details, learned counsel for Applicant could not provide any further supporting specific information except kept submitting that the delay is beyond the control of the Applicant and was not deliberate nor intentional. Moreover, in the modern age of



advanced digital technologies, communications in general from anywhere to anywhere in the world has become considerably effective, easy and convenient.

- c. Careful perusal of the application also reveals that certain facts are contrary to the facts on record. More particularly, the assertions of the Applicant that the certified copy of the impugned order has not been received. This claim of Applicant is *prima facie* incorrect in view of the fact that certified copy of the impugned order is already placed on record along with the stamp of MahaRERA affixed on page no. 203 of the record. On repeated query at the time of argument, the only justification given by learned counsel for Applicant during the argument was that this is typo-error. This is *prima facie* an afterthought. Moreover, all these reflect that Applicant has been very casual, non-serious and not diligent.
- d. The claim of the learned counsel for Applicant that Applicant could not give instructions to advocate before 21st December 2022 also appears to be not credible one because of the fact that the application for the certified copy is seen filed on 04th October 2022 itself, much before the date being claimed by applicant of giving instruction to her advocate.
- e. The reason for delay claimed by Applicant lacks not only specific credible details but are also seen not backed by any supporting documents e.g., place of out-station as claimed herein, where the Applicant went during the relevant period, the date and the period for which Applicant was away along with supporting documents, specific details about the purported personal difficulties etc. In the absence of these specific details and without any supporting documents, the claim made by Applicant for sufficient explanation for delay condonation is *ex facie* not sustainable in the eyes of law.
- f. In the present case, the impugned order is dated 11th July 2022,



Applicant has failed to produce even a single concrete and tangible supporting evidence on record demonstrating timely action. As such, 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 for filing appeal in time at all. Therefore, Applicant was not vigilant enough about her rights and law will not benefit such non-vigilant litigants for delay.

- 17.** 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 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".

- 18.** 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.
- 19.** 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 inordinate delay in filing of the captioned appeal and in order to avoid injustice to Non-applicants, we are of considered view that the captioned application for condonation of above delay 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: -

ORDER

- (a) Misc. Application No. 03 of 2023 for condonation of delay is rejected.
- (b) In view of dismissal of Misc. Application for condonation of delay, pending captioned Appeal No. U-20 of 2022 would not survive, consequently stands disposed of.
- (c) No 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.)