

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

**MISC. APPLICATION NO. 345 OF 2023 (Delay)  
IN  
APPEAL NO. AT006000000144241 OF 2023**

**1. Mr. Hyder Esmailjee Lakdawala**

131, Raj Building, 2<sup>nd</sup> Floor,  
Room No.14, Ebrahim Rehmatulla Road,  
Bhendi Bazaar, Mumbai – 400 003.

**2. Mrs. Vibha Kawle**

Flat No. 403, 4<sup>th</sup> floor,  
Bhatnagar Terrace, Pandurang Wadi,  
Road No. 3, Near St. Thomas School,  
Goregaon (East), Mumbai – 400 063.

... **Applicants**

~ versus ~

**1. Sankalp Developers & Projects Consultant**

1407, Aishwarya,  
Western Express Highway,  
Vanria Colony, Goregaon East, Mumbai 400 063.

**2. Deepak Vasant Sankhe**

Partner- Sankalp Developers & Projects Consultants,  
C-6/6, S. G. Barve Nagar,  
Ghatkopar (West), Mumbai 400 086.

**3. Kiran Damodar Patil**

Partner- Sankalp Developers & Projects Consultants  
1407, Aishwarya, Western Express Highway,  
Vanria Colony, Goregaon East, Mumbai 400 063.

**4. Shri Sai Baba Co-operative Housing  
Society Limited (Proposed)**

TPS No. Bandra II, FP No. 45, 45A, 45B and 45C;

.... **Non-applicants**

Behind Jari Mari Temple, S.V. Road,  
Bandra West, Mumbai – 400 050.

**5. Ranjiv Jhangiani**

302, Amrit "A" Building, 15,  
Carter Road, Khar West, Mumbai 400 052.

**6. Slum Rehabilitation Authority**

SRA Buildinig, B Wing, Anant Kanekar Marg,  
Bandra, Mumbai 400 051.

.... **Non-applicants**

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*Adv. Mr. Abir Patel for Applicants.*

*Adv. Mr. Gaurav Sharma for Non-applicant Nos.1 to 3.*

*None for Non-applicant Nos.4 to 6.*

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**CORAM : SHRI S. S. SHINDE, CHAIRPERSON(J) &**

**DR. K. SHIVAJI, MEMBER (A)**

**DATE : 12<sup>th</sup> SEPTEMBER 2024**

*(THROUGH VIDEO CONFERENCE)*

**O R D E R**

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

Heard learned counsel for parties *in extenso*.

2. By this application, Applicants are seeking condonation for 298 days of delay in filing of captioned Appeal on 06<sup>th</sup> January 2023 beyond the permissible limitation period and has prayed for reliefs *inter alia* to quash and set aside the impugned order dated 27<sup>th</sup> October 2021, passed by the learned Member, Maharashtra Real Estate Regulatory Authority (hereinafter to be referred as "MahaRERA" in short) in Complaint Nos. CC 006000000 171796 lodged before



MahaRERA under The Real Estate (Regulation and Development) Act of 2016 (herein after to be referred as "the Act") seeking direction to non-applicant no. 1 to 3 to execute and register agreement for sale under the provisions of the Section 13 of the Act in respect of their allegedly booked flats in the non-applicants duly registered project known as "Sale Building", located at Bandra (W), Mumbai.

3. For the purpose of disposal of the present application, it is not necessary to narrate its background in detail, suffice it to say that non-applicant no. 1 is the promoter, non-applicant nos. 2 and 3 are partners of non-applicant no. 1, non-applicant no. 4 is this society, who has appointed non-applicant no. 1 to implement the construction scheme. Non-applicant no. 5 is the real estate agent. Upon hearing the parties, MahaRERA has disposed of the captioned complaint by recording its findings *inter alia* that "*MahaRERA does not find any merits in the complaint. Consequently, the complaint stands dismissed for want of merits, vide its order dated 27<sup>th</sup> October 2021.*"
4. Aggrieved Applicants have challenged this impugned order by filing the present Appeal on 6<sup>th</sup> January 2023, seeking *inter alia* to quash and set aside the impugned order dated 27<sup>th</sup> October 2021.
5. Applicants have prayed for the condonation of said delays of 298 days on various grounds *inter alia* as set out in the above application and learned counsel for Applicants made manifold submissions as follows: -
  - a) Captioned appeal was statutorily required to be filed within 60 days from the date of receipt or knowledge of the impugned order i.e. on or before 14<sup>th</sup> March 2022. However, it has been filed only on 06<sup>th</sup> January 2023.



- b) Impugned order dated 27<sup>th</sup> October 2021 was intimated to applicants by MahaRERA by its email dated 14<sup>th</sup> January 2022.
- c) The said delay has happened in taking decision by the applicants as to whether to challenge the impugned order or not, because it was nearly impossible to deal with the non-applicants especially non-applicant nos. 1 to 3, who have collected large amounts from the applicants but are refusing to recognise their rights as allottees.
- d) Applicants are aggrieved and disappointed by the hyper technical approach taken by MahaRERA and for its one-sided decision despite obvious breaches by the non-applicants/ developer. Therefore, the efforts made by applicants for amicable settlements have not been successful particularly on account of non-inclination of non-applicant nos.1 to 3, which led to the said delay in filing of the appeal. Thereafter, applicants had to file police complaint against non-applicant nos.1 to 3. This case is pending under consideration before the Hon'ble Bombay High Court.
- e) Even though, non-applicant no.1 had agreed before the police to enter an agreement for sale and a draft agreement was also sent on 11<sup>th</sup> July 2022, but non-applicant nos.1 to 3 have backed out of their commitments. Upon failure to execute the agreement for sale, applicants were left with no option but to prefer the captioned appeal.
- f) Applicant no.1 is 80 years old, residing in U.S.A, who is not keeping well to take decision of challenging impugned order and. Applicant No.2 is 63 years old lady, who has given the power to act on her behalf to her husband, Mr. Kishore Kawale and she had to wait for applicant no.1 to decide, whether



to challenge the impugned order or not? It is because the subject flats were jointly booked by them.

- g) On account of above, decision to file the captioned appeal took considerable time in preparing the draft, circulation and finalization, which have led to the said delay.
- h) As per the judgment of the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.3 of 2020 in its order dated 10<sup>th</sup> January 2022 has excluded the entire period from 15<sup>th</sup> March 2020 up to 28<sup>th</sup> February 2022 for the purpose of calculation of the limitation period in filing of such appeals on account of the difficulties faced by the litigants due to then, prevailing Covid-19 pandemics.
- i) Applicants have very good case on merits, who have been denied justice due to mere technicalities like limitation period, and applicants have made bonafide efforts to settle their disputes and the said delay is neither intentional nor deliberate. Therefore, urged that the captioned appeal be heard on merits for justice to old, helpless and gullible allottees and placed reliance on the judgments of The Hon'ble Supreme Court in the matter of **(i) Collector, Land Acquisition, Anantnag & Anr. vs. Ms. Katiji & Ors. [(1987) 2 SCC 107]**, **(ii) N. Balakrishnan vs. M. Krishnamurthy [(1998) 7 SCC 123]**, **(iii) O.P. Kathpalia vs. Lakhmir Singh (Dead) 7 Ors. [(1984) 4 SCC 66]**.
6. Per Contra, Advocate Mr. Gaurav Sharma, learned counsel for non-applicant nos. 1 to 3 strongly opposed this application by submitting as hereunder; -
- a. Application for condonation of delay is seen notarized only on 06<sup>th</sup> June 2023 and the appeal is notarized only on 17<sup>th</sup> February 2023 (vide page

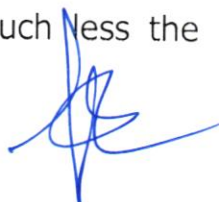


nos. 17 and 22 respectively). Therefore, the limitation period starts running from 01<sup>st</sup> March 2022 and if the application for condonation of delay is dated 06<sup>th</sup> June 2023, then also the said delay in filing of the captioned appeal is of 463 days, for which no explanation whatsoever, has been explained and this huge delay has not been justified with the sufficient cause.

- b. It is a case of gross negligence and/ or want of due diligence by applicants in filing of such a belated application without sufficient explanation at all.
- c. The argument for condonation of delay by applicants/ power of attorney holders that applicant no.1 is 80 years old, not keeping well, and resides in U.S.A including that the non-applicant no.2 is 63 years old lady, who had to wait for the decision of the applicant no.1, are also baseless, frivolous and have taken such grounds, just to cover-up their lapses, slackness and dormant approach. As such 60 days were enough for filling the appeal.
- d. The statements made in the application that the affidavit is dated 06<sup>th</sup> June 2023 and application was filed on 06<sup>th</sup> January 2023, are false.
- e. The contention of the Applicants that the said delay has happened in taking a decision, whether to prefer the appeal or not. But the decision can easily be taken within 60 days and these 60 days were enough under the law. Moreover, the power of attorney holder is stationed in 'Mumbai/ India' itself, then also such a huge delay is *prima facie* not justified.
- f. The contention of the applicants that non-applicants did not settle the disputes, is also not correct. As such, applicants have themselves filed police complaint, and the said delay was due to criminal proceedings, which is false, frivolous and mischievous. Applicants have not explained any reasons for the said huge delay and have been making false statements.



- g. Advocate Mr. Gaurav Sharma urged to reject the prayer for condonation of delay and referred the case of Pundlik Jalam Patil (2008) 17 SCC 448, wherein, The Hon'ble Supreme Court has held that limitation creates insecurity and uncertainty. But the limitation is essential for public order and to end the litigation by fixing the time limits for the litigation based on public policy. It is also to ensure that parties do not resort to dilatory tactics and to avail their legal remedies promptly. Moreover, jurisprudence demands that law comes to assistance only to vigilant and not to the persons, who sleep over their rights. The court is required to inquire into belated and stale claims on the grounds of equity, because the delay defeats equity.
- h. In the case of Basawaraj (2013) 14 SCC 81, Hon'ble Supreme Court has observed that the discretion to condone the delay has to be exercised judiciously and the expression "sufficient cause" cannot be liberally interpreted, if negligence, inaction or lack of bonafide is attributed to parties. In case, the party has acted with negligence, lack of bonafides or inaction then, the condonation cannot be justified even by imposing conditions. Section 5 of the 'Limitation Act', highlights the rights so accrued ought not easily be taken away by lapse of time.
- i. Learned counsel also placed reliance on the judgement of the Hon'ble Supreme Court in the case of Ajay Dabra vs. Sundar Singh and ors. 2023 SCC online SC 92, wherein, it has been held in paras 5, 12 and 23 that, delay can be condoned only if, every day of delay is explained with sufficient cause and with cogent explanations to the satisfaction of the court without resorting to pedantic in its approach. But Applicants herein have demonstrated no explanation, much less the sufficient and satisfactory



explanation for the huge delay of 463 in filing of the captioned appeal/application, wherein no plausible explanation has been demonstrated. The alleged delay of 463 days is intentional, with malafide intention coupled with negligence and the submissions are baseless, false and frivolous in utter disregard of the facts of the case. As such, applicants have been throughout casual, irresponsible and negligent.

- j. Moreover, the appeal does not stand even on merits nor qualify the test of law. Therefore, the captioned application be outrightly rejected in limine with heavy cost.
7. Captioned application has proceeded ex-parte against the non-applicant nos. 4, 5 and 6.
8. From the rival submissions and upon perusal of pleadings, a short point that arises for our determination is whether Applicants have explained with sufficient causes together with cogent reasons for the condonation of said delay in filing of the 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 positions of law on condonation of delay.
10. 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 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 pragmatic manner.*
  - d) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred as 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 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.*
11. 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:
- a. Lack of bona fide imputable to a party seeking condonation of delay are significant and relevant facts.*



- 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. *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 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, with legal Parameters".*
12. In the above backgrounds, we have to now examine, whether causes put forth by applicants herein, amount to sufficient cause within the provisions of Section 44 of the Act.
13. It is not in dispute that captioned complaint was disposed of by MahaRERA by its order dated 27<sup>th</sup> October 2021, which has been challenged by claiming that the captioned appeal has been filed on 6<sup>th</sup> January 2023 beyond the prescribed permissible limitation period of 60 days. However, perusal of the record more particularly page 35 of the appeal, reveals that the captioned appeal was actually filed online only on 12<sup>th</sup> January 2023 in the tribunal. Moreover, the



- affidavit in support of the captioned appeal as on page number 17 and 22 shows that applicants and the notary have signed these only on 17<sup>th</sup> February 2023. Whereas the perusal of the affidavit accompanying the application as on page no. 128 demonstrates that applicants and notary have signed it only on 6<sup>th</sup> June 2023. Therefore, the contention of the learned counsel for the applicants that the appeal has been filed on 6<sup>th</sup> January 2023, appears to be incorrect.
14. These serious inconsistencies of crucial dates have not been satisfactorily explained, which are important for calculation of the actual number of delays in filing of the captioned appeal and to examine the underlying reasons for delay, which have profound ramifications for condonation of delays more particularly in the context of assessing the alertness, seriousness of applicants in filing of appeal, veracities and also reflect lack of bonafide in the claims of the applicants. Including to assess negligence, inaction or lack of bonafide attributable to parties. It appears that applicants have acted with negligence, and they lack of bonafides.
15. It has also been claimed by applicants that the captioned impugned order dated 27<sup>th</sup> October 2021 was actually received and communicated to them only on 14<sup>th</sup> January 2022. However, perusal of the impugned order demonstrates that this is not an ex-parte order, rather complainants have been duly represented before MahaRERA in the complaint proceeding, were also represented even on the date of the final hearing before MahaRERA. We also notice that there is no change of advocate for the applicants even for filing the appeal in this tribunal. Even then, applicants have claimed delay of 79 days in getting to know about the issuance of the impugned order dated 27<sup>th</sup> October 2021. It does not appear to be plausible, more particularly because MahaRERA has the practice of



promptly uploading such impugned orders on their website, which can easily be accessed by anyone from any part of the globe.

16. Even though the length of delay is not important and the quality of justifications for such delays are important considerations, admittedly the power of attorney holder is residing in Mumbai itself. Even then, the reasons for the said huge delay have not been satisfactorily explained.
17. One of the grounds put forth by the applicants for condonation of delay is on account of their attempts to settle the disputes amicably. But applicants have not placed any documentary evidence including any communications/ meeting dates in this regard/ minutes of the meeting for settlement meetings etc, in support of their contentions nor have placed any documentary evidence in support of any of the grounds/ reasons in support of their contentions.
18. Another ground, advanced by the applicants have taken in their support, is that the applicant no.1 is residing in USA. However, the power of attorney holder of applicant no. 2 is residing in Mumbai itself. Moreover, in view of the present communication facilities available between India and USA as well as because, the same advocate has been representing both in MahaRERA and in this tribunal, the reason for such huge delay appears to be grossly not satisfactory on the face of it.
19. As per the order of the Hon'ble Supreme Court in Suo Motu Writ Petition No. 3 (Civil) of 2020, litigants are eligible for extension of the limitation period up to 30<sup>th</sup> May 2022 on account of the difficulties faced by the then Covid -19 pandemics under certain conditions. However, the Hon'ble Supreme Court in **Sagufa Ahmad Vs. Upper Assam Plywood Products (P) Ltd.** [(2021) 2 SCC 317] has held that Judgment dated 23<sup>rd</sup> March, 2020 in cognizance for



extension of limitation (in Suo Moto Writ Petition Civil No.3 of 2020) has extended **only the period of limitation** and it **did not extend period up** to which, delay can be condoned in the exercise of discretion conferred by the statute. The Hon'ble Supreme Court has observed that-

**"19.** *But we do not think that the appellants can take refuge under the above order. What was extended by the above order of this Court was only "the period of limitation" and not the period upto which delay can be condoned in exercise of discretion conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. 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."*

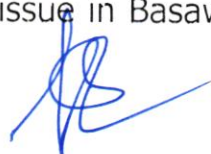
20. But we find that in the instant case, the captioned appeal has been filed only in 2023. Therefore, applicants are not entitled to get the benefit of the extension of the limitation period under the said judgement of the Hon'ble Supreme Court on account of the COVID-19 pandemic. Moreover, applicant has failed to produce cogent and convincing reasons to explain even for further delay from 30<sup>th</sup> May 2022 up to the date of filing of the captioned appeal.

21. In view of the above, prima facie, it appears that applicants were casual, careless and not vigilant about their rights in filing these appeals in the time. Whereas on the other hand, applicants are expected to advance sufficient convincing reasons, and also required to justify each day of delay based on genuine and cogent explanations. Whereas it is settled position of law including in the above judicial pronouncements that "*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 lis on merits is seminal to justice dispensation system;"*

22. Perusal of the application further reveals that applicants have made only bald statements about the reasons for delay without any supporting documentary evidence. As such, a number of the facts placed on the records are not only inconsistent but also are contradictory as well.
23. As observed here in above that applicants have failed to produce even single concrete evidence on record demonstrating tangible action rather, no step is seen taken by applicants at all for filing the captioned appeals in time within the limitation period. All these indicate that applicants have *prima facie* not taken any visible, tangible and demonstrable action. Accordingly, it is more than evident that applicants, being not vigilant, cannot now take shelter under the aforesaid grounds mentioned in their applications and seek benefits of condonation of delay on these counts.
24. The Hon'ble Supreme Court in its judgement in the case of P.K. Ramachandran [(1997) 7 SCC 556], has held *inter alia* that in the absence of reasonable satisfactory explanation, the delay is not to be condoned lightly, law of limitation may harshly affect but has to be applied with all its rigour, when the statute so prescribes and the courts have no power to extend the period of limitation on the equitable grounds, while exercising discretion for condoning the delay and court has to exercise discretions judiciously.
25. 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 disputes between the parties and to advance substantial justice. The Hon'ble Supreme Court has summarized the law on this issue in Basawaraj and Anr vs. Special

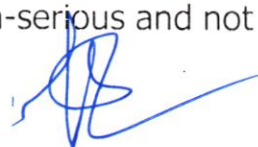


Land Acquisition Officer [(2013) 14 SSC 81]. In para 15 the Hon'ble Supreme Court held thus -

*"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".*

26. In the instant case, applicants have made only vague and unsubstantiated submissions for delay after the limitation period, which have been conclusively controverted by non-applicants on affidavit. Despite providing enough opportunities, applicants have failed even remotely to demonstrate sufficient meaningful, convincing and cogent reason/s to justify the said delay, much less the sufficient cause, which is required for condonation of delay.

27. Keeping in view of the propositions of law laid down by the Hon'ble Supreme Court relating to condonation of delay and having regard to the totality of facts and circumstances of these facts as discussed above, in our considered view, applicants are found to be casual, non-serious and not vigilant in preferring the



appeal against the impugned order in time. Therefore, in the absence of cogent reasons to condone the huge delay in filing respective appeals and in order to avoid injustice to non-applicants, we are of the considered view that applicants are not eligible for condonation of the said huge delay. In the aforesaid circumstances, the captioned 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 Nos. 345 of 2023 for condonation of delay stands rejected.
- b.** In view of dismissal of Misc. Application for condonation of delays, pending captioned Appeal Nos. AT0060000000144241 will not survive, consequently stand disposed of.
- 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)

  
(S. S. SHINDE, J.)