

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 1494 OF 2017**

(Against the Order dated 01/05/2017 in Complaint No. 1129/2015 of the State Commission  
Delhi)

1. MAHBOOB ALAM QURESHI & ANR.

R/O. 2184, QASIMJAN STREET, BALLIMARAN  
DELHI-110006

2. MR. JAVED ALAM QURESHI

THROUGH AR, MR. MAHBOOB ALAM QURESHI, R/O.  
2184, QASIMJAN STREET, BALLIMARAN,

DELHI-110006

.....Appellant(s)

Versus

1. M/S. TDI INFRASTRUCTURE PVT. LTD.

THROUGH ITS MANAGING DIRECTOR, 9, KASTURBA  
GANDHI MARG,

NEW DELHI-110001

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER  
HON'BLE DR. SADHNA SHANKER, MEMBER**

FOR THE APPELLANT :           MR. RAJESH MAHNA, ADVOCATE WITH  
  MR. NASIR AZIA, ADVOCATE  
  MR. M. YADAV, ADVOCATE  
  MR. SHIVA NARANG, ADVOCATE

FOR THE RESPONDENT :       MR. SHAURYA ROHIT, ADVOCATE

**Dated : 19 August 2024**

**ORDER**

**DR. SADHNA SHANKER, MEMBER**

1. The present appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (for short 'the Act') by Mr. Mahboob Alam Qureshi and Mr. Javed Alam Qureshi (hereinafter referred to as the 'complainants') assailing the Order dated 01.05.2017 passed by the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the 'State Commission') in complaint No. 1129 of 2015 whereby the complaint was dismissed as barred by limitation.

2. We have heard the learned counsel for the appellants (hereinafter referred to as the 'complainants') and the learned counsel for the respondent (hereinafter referred to as the 'builder company') and perused the memorandum of appeal.

3. There is a delay of 21 days in filing the present appeal.

In the interest of justice and considering the reasons mentioned in the application for condonation of delay, the delay in filing the appeal is condoned.

4. The facts, in brief, are that the complainants booked a plot measuring 350 sq. yds. in Future Township Project TDI City and deposited a sum of Rs.5,42,500/-, being 20% of basic price, by cheque dated 27.08.2005 and opted for option-II whereby the complainants were required to pay 10% of basic price at the time of allotment and then 10% every two months from the date of allotment with balance 10% at the time of offer for possession. It is alleged that 10% of the basic price was to be paid on or before 08.08.2006 when the allotment was to be made. However, the builder company sent letter as early as on 16.12.2005 asking them to pay balance Rs.3,40,375/- The said letter showed second installment to be due on 10.12.2005. It is further alleged that the builder company again sent reminder dated 25.01.2006 demanding Rs.3,40,375/- citing financial constraint for issuing said reminder and persuaded the complainant to pay Rs.1,40,000/- on 03.02.2006 through cheque. The complainants paid a sum of Rs.2,00,000/- in cash for which only a kacha receipt was given. Kacha receipt mentioned the amount as Rs.2000/- (as short of Rs.2,00,000/-). The builder company issued revised communication dated 29.05.2006 vide which balance due, including Rs. 6590.87 as interest, was shown as Rs.10,16,160/-, the same being due on 10.02.2006 and 10.04.2006. On persuasion, the complainants again made payment of Rs.2,00,000/- on 13.07.2006 and Rs.375/- on 14.07.2006. Thereafter, another communication dated 27.06.2006 showing amount due as Rs.6,82,500/- was sent. The builder company allotted plot No. J-139 vide allotment letter dated 08.08.06 and showed balance of Rs.14,03,312/-. Final reminder dated 05.09.2006 showing balance of Rs.16,95.070/- was received. It is alleged that the complainant had paid a total sum of Rs.8,16,000/- in cash for which kacha receipt was issued which were not reflected by the builder company in the letters sent by it and wanted to clandestinely avoid the said payment. On insistence by complainants, the builder company agreed to adjust the said amount by the reducing rate of plot from Rs.7750/- per sq. yd. to Rs.6150/- per sq. yd. Still payment of Rs.2,00,000/- paid in cash on 02.02.2006 was not adjusted. To utter shock and dismay of complainants the builder company cancelled the allotted plot.

5. Being aggrieved, the complainant filed a complaint before the State Commission with the prayer to restore the allotted plot at original cost along with interest @ 18% per annum on amount of Rs.25,08,250/- and compensation of Rs.5,00,000/- towards mental agony and harassment.

The builder company party did not file reply before the State Commission.

6. The State Commission, vide its order dated 01.05.2017, dismissed the complaint as barred by limitation.

7. Being aggrieved, the complainants have filed the present appeal before this Commission with following prayer:

a) Set-aside the order dated 01.05.2017 passed by the Hon'ble State Consumer Disputes Redressal Commission, Delhi in Complaint Case No. 1129 of 2015;

- b) Direct the respondent to restore the plot No. J-139 in TDI City to the complainants at the original cost as agreed at the time of booking the plot.
- c) Direct the respondent to pay compensatory interest to the complainant @ 18% per annum on the amount of Rs.25,08,250/- retained by the OP
- d) to direct the respondent to award compensatory damages to be paid by Respondent to the complainants for mental agony and harassment amounting to Rs.20 lakhs.
- e. Direct the respondent pay cost of the proceedings which may further be awarded in favour of the complainant
- f. Any other relief which this Hon'ble Forum may deem fit and proper in the circumstances of the case is also awarded to the complainant.
- g. Respondent be directed to bear litigation expenses of Rs.1 lac;
- h. to pass any further and other orders, as may be deemed necessary in the facts and circumstances of the present case.

8. On the point of limitation before the State Commission is concerned, learned counsel for the complainants has argued that after the cancellation of the said plot, the complainants rushed to the office of the builder company and explained about the payments made as per schedule but the officials insisted on for further payment of Rs. 2 lakhs as it was not reflecting in their account and on producing the receipt in original, they promised to resolve the issue. Thus, cause of action is a continuing one. He further argued that the complainant kept meetings with the officials who kept giving false promises but nothing fruitful came out of it and only in response of legal notice, they even offered a smaller plot. He further argued that the complainants wanted to get his complaint resolved without recourse to litigation and the promises made by the builder company kept the hope alive. Hence, the cause of action is continuing one and finally arose in August 2015 when the builder refused on personal visit to restore the allotment of plot.

9. The law of limitation requires delay for each day of delay to be explained after expiry of the period of limitation. It is necessary that this explanation is rational, reasonable and realistic and to be acceptable. In the instant case, the complainant has taken the ground that the cause of action is a continuing one.

10. In *State Bank of India vs B S Agriculture Industries* (I) (2009) 5 SCC 121 decided on March 20, 2009, it has been held by the Hon'ble Supreme Court that:

“It would be seen from the aforesaid provision that it is peremptory in nature and requires the consumer forum to see before it admits the complaint that it has been filed within two years from the date of accrual of cause of action. The consumer forum, however, for the to be recorded in writing may condone the delay in filing the complaint if sufficient cause is shown. **The expression, ‘shall not admit a complaint’ occurring in Section 24 A is sort of a legislative command to the consumer forum to examine on its own whether the complaint has been filed within the limitation period prescribed thereunder.**

12. As a matter of law, the consumer forum must deal with the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in writing. In other words, it is the duty of the consumer forum to take notice of Section 24 A and give effect to it. **If the complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside.”**

[Emphasis added]

11. The Hon’ble Apex Court has laid down that the settled legal proposition of law of limitation under the Consumer Protection Act has to be applied with all its rigour when the statute so prescribes, though it may harshly affect a particular party. The complainant has not been able to provide adequate and sufficient reasons which prevented him to approach the State Commission within the limitation.

12. The Hon’ble Supreme Court has also held that party who has not acted diligently or remained inactive is not entitled for condonation of delay. The Hon’ble Supreme Court in *R. B. Ramlingam vs. R. B. Bhavaneshwari*, I (2009) CLT 188 (SC) has also described the test for determining whether the petitioner has acted with due diligence or not and held as under:

"We hold that in each and every case the Court has to examine whether delay in filing the special appeal leave petitions stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition.”

13. The Hon’ble Supreme Court in *Ram Lal and Ors. Vs. Rewa Coalfields Limited*, AIR 1962 Supreme Court 361 has held as under:

“It is, however, necessary to emphasise that **even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right.** The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant.”

[Emphasis added]

14. The burden is on the complainants to show that there was sufficient cause for the delay. The expression ‘sufficient cause’ has been discussed and defined by the Hon’ble Supreme

Court in the case of *Basawaraj & Anr. Vs. The Spl. Land Acquisition Officer*, 2013 AIR SCW 6510 as under:

“Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of *bona fide* on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever he court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. **The court has to examine whether the mistake is *bona fide* or was merely a device to cover an ulterior purpose.** (See: *Manindra Land and Building Corporation Ltd. V. Bhootnath Banerjee & Ors*, AIR 1964 SC 1336; *Lala Matadin V. A.Narayanan*, AIR 1970 SC 1953; *Parimal V. Veena alias Bharti* AIR 2011 SC 1150 L2011 AIR SEW 1233); and *Maniben Devraj Shah V. Municipal Corporation of Brihan Mumbai*, AIR 2012 SC 1629: (2012 AIR SCW 2412).

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**It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds.** “A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim “*dura lex sed lex*” which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.

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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”.**

[Emphasis supplied]

15. Further, in *Anshul Aggarwal Vs. New Okhla Industrial Development Authority*, (2011) 14 SCC 578, the Hon’ble Supreme Court has advised Consumer Forums to keep in mind while dealing with such applications the special nature of the Consumer Protection Act. The Hon’ble Supreme Court has held as under:

“It is also apposite to observe that while deciding an application filed in such cases for condonation of delay, **the Court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if this court was to entertain highly belated petitions filed against the orders of the consumer foras.**”

[Emphasis supplied]

16. The purpose of Section 69 of the Consumer Protection Act, 2019 (corresponding to Section 24 A the Consumer Protection Act, 1986) is to ensure that the provisions of the Consumer Protection Act as a beneficial legislation are not diluted through challenges which cause cases to be prolonged through litigation even in Consumer Fora. The complainant has not been able to provide adequate and sufficient reasons which prevented them to approach the State Commission within the limitation. Condonation of delay is not a matter of right and the applicants have to set out the case showing sufficient reasons which prevented them to come to the Court/Commission within the stipulated period of limitation.

17. Based on the facts and circumstances in the present case and after perusal of evidences on record, it is seen that the complainant himself admitted that they received the cancellation letter dated 13.12.2012 regarding the said plot which gave rise to cause of action. The complainant filed the complaint along with application for condonation of delay in November 2015 which constitutes delay of about a year. The grounds mentioned in the application do not constitute sufficient cause to condone the delay.

18. In view of the above discussion, we are of the opinion that the complainant kept sleeping upon his rights when cause of action arose way back on 13.12.2012 with letter of cancellation of plot as received by the complainant. There is a clear delay of about a year in filing the complaint and any efforts thereafter to reconcile the matter cannot have the effect of extending the limitation. Hence, we are of the opinion that the State Commission has rightly dismissed the complaint as barred by limitation.

**19.** In the result, the present appeal is dismissed. All pending I.A.s shall stand disposed of accordingly.

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**SUBHASH CHANDRA  
PRESIDING MEMBER**

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**DR. SADHNA SHANKER  
MEMBER**