

BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI

M.A. No. 119/19

In

Appeal No. AT006000000021259

Avinash Namdeo Thakare

V/s.

Nirmal Developers

(Mr. Ramakant D. Patil, Adv. for Appellant.

Mr. Dhawan J., Advocate for Respondent.)

CORAM : **INDIRA JAIN J.,CHAIRPERSON**
SUMANT KOLHE, MEMBER (J)
S.S. SANDHU, MEMBER(A)

DATE : **20th NOVEMBER, 2019.**

Called.

Heard Learned Counsel for parties.

Perused record.

By this application, applicant/original complainant is seeking delay condonation of 77 days as mentioned in the body of application, 95 days as claimed in the prayer clause and 76 days as submitted by Learned Counsel for applicant for preferring an appeal against the order dated 12.11.2018 passed by MahaRERA.

It is submitted that as per the impugned order, respondent was directed to refund the remaining amount to complainant within a period of 3 months from the date of order. In view of this direction applicant was under bonafide belief and waited for 3 months and thereafter within the statutory period filed online appeal on 29th March 2019. According to the Learned Counsel, delay is not intentional and considering the principle of natural justice being the basis of RERA, opportunity be granted to applicant to redress his grievances in appeal.



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Per contra, Learned Counsel for Non-applicant strongly resists the application and tried to demonstrate from the prayer in appeal that the reliefs which were not sought in the complaint in RERA are now being sought before the Tribunal as such appeal itself is not maintainable and so question of application for condonation of delay does not arise.

Learned Counsel submits that even after 3 months from the date of impugned order applicant waited for a considerable time and did not take any steps from 12.2.2019 to 28.3.2019. It is submitted that delay is not properly explained and sufficient cause is not shown by applicant and therefore application deserves to be dismissed.

A simple point that arises for our consideration is whether applicant has shown sufficient cause for condonation of delay and to this our findings is in the affirmative for the reasons to follow:

REASONS

Application is on affidavit. Reply signed by the Learned Counsel for Non-applicant is not on affidavit.

On perusal of impugned order it can be seen that direction was given to respondent to refund the remaining amount within 3 months to the complainant. Applicant has said that he was under bonafide belief and waited for 3 months to show the conduct of the Non-applicant and thereafter within the statutory period he filed the appeal.

So far as objections raised by Learned Counsel for Non-applicant regarding maintainability of appeal are concerned, they are kept open and can be considered on merits in appeal.



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In this background, we do not see that delay is intentional or deliberate and taking into consideration foundation of RERA i.e principles of natural justice we do not think that opportunity of redressing the grievances is to be denied to the applicant particularly when he could demonstrate sufficient cause from the facts stated in the application. Therefore, we are inclined to allow the application.

Misc. Application is allowed.


Delay condoned.

No costs.

Appeal

Mr. Dhawan, Learned Counsel waives notice for respondents and seeks time to file reply to the appeal memo.

Stand over to 18th December, 2019 for reply.


(S.S. SANDHU)


(SUMANT KOLHE)


(INDIRA JAIN J)

ed/C/(30).