

BEFORE THE MAHARASHTRA REAL ESTATE**APPELLATE TRIBUNAL, MUMBAI****Application for condonation of delay****Misc. Application No. 44****In****Appeal No. AT006000000011028**

M/s Man Global Ltd.

having registered office at 101,

Man House, S.V. Road,

Vile Parle (West),

Mumbai 400 056.

.. Applicant

Versus

Mr. Ram Prakash Joukhani

207, Bhullar Star Estate,

Behind Sakinaka Tel. Exchange,

Andheri Kurla Road, Sakinaka,

Andheri (East), Mumbai 400 072

.. Non-Applicant

With**Misc. Application No. 45****In****Appeal No. AT006000000011032**

M/s Man Global Ltd.

having registered office at 101,

Man House, S.V. Road,

Vile Parle (West),

Mumbai 400 056.

.. Applicant

Versus

Mr. Bharat Joukhani
207, Bhullar Star Estate,
Behind Sakinaka Tel. Exchange,
Andheri Kurla Road, Sakinaka,
Andheri (East), Mumbai 400 072

.. Non-Applicant

Mr. Shardul Singh a/w Salomi Shah i/b DSK Legal, Advocate for Applicant.
Shri. Nimay Dave a/w Ms. Viloma Shah i/b Hariani & Co. Advocates for
Non-Applicants.

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

DATE : 2nd NOVEMBER, 2019.

ORDER (PER : INDIRA JAIN, J.)

Liberty to Applicants to file second additional affidavit in support of application for condonation of delay.

2. Since these two applications arise out of similar facts and raise identical questions of law, they are heard together and are being disposed of by this common order.

3. Both the above applications have been filed by the Promoter Man Global Ltd. for condonation of delay in filing appeals under Section 44 of 'The Real Estate (Regulation and Development) Act, 2016' (hereinafter referred to

as "the Act") for setting aside common order dated 24th September, 2018 passed by the learned Member and Adjudicating Officer MahaRERA in Complaint No. CC 0060000000044245 & Complaint No. CC0060000000044246. By the common order, the learned Member and Adjudicating Officer directed thus -

"The Respondents shall pay to each Complainant simple interest at the rate of 10.5% p.a. on Rs.5,14,00,000/- w.e.f. 1st July, 2016 till handing over the possession of flats with all agreed amenities.

The Respondents shall refund Rs.61,73,878/- charged for connected / affiliated area (lift lobby) of 118 sq. ft. on the basis of pro rata rate.

The Respondents are entitled to get the amount of refund adjusted towards the dues payable by the complainants and shall pay the balance, if any.

The Respondents shall pay each complainant Rs.20,000/- towards the cost of their complaints."

4. It is not necessary to narrate facts of the case in detail for the purpose of disposing of present applications. Suffice it to say that Non-Applicants booked Flat Nos. 1201 and 1202 having carpet area of 1110 sq.ft. on the 12th floor affiliated/abutting/connected with lobby area admeasuring 118 sq.ft with two automated car parking in Applicant's registered project 'Shanti Sadan' situated at Bandra (West). The committed date for possession agreed between the parties was on or before 30th June, 2016. According to Non-applicants, Promoter failed to hand over possession on the agreed date and therefore they claimed interest on their investment under Section 18 of the Act of 2016. In the complaint before MahaRERA, Non-Applicants also alleged that Applicant has reduced the area of their flats and failed to adhere to sanctioned

plans and project specifications thereby contravened the provisions of Section 14 of the Act. The allegations of illegal selling of lift lobby were also made by the Non-Applicants against the Promoter.

5. Applicants contested the complaints though did not file their reply in the proceedings.

6. Upon hearing the parties, learned Member and Adjudicating Officer vide common order dated 24th September, 2018 issued directions stated in para 3 above.

7. Being aggrieved by the common order of MahaRERA, Applicant filed appeals and preferred these two Miscellaneous Applications for condonation of delay of 62 days in preferring appeals. Initially applications were heard and decided by one of us (Learned Member 'A') vide order dated 2nd May, 2019 thereby rejecting both the applications for condonation of delay without any costs. The order was assailed before the Hon'ble High Court in Second Appeal (ST) No. 14845 of 2019 alongwith Civil Application No. 787 of 2019 and Second Appeal (ST) No. 14840 of 2019 alongwith Civil Application No. 785 of 2019. The order dated 2nd May, 2019 has been quashed and set aside by the Hon'ble High Court vide Oral Judgment dated 1st October, 2019 and applications have been restored to the file to be heard by the Maharashtra Real Estate Appellant Tribunal comprising of one Judicial and one Administrative Member under Section 43(3) of the Act. The Hon'ble High Court further directed that application for condonation shall be disposed of within 30 days from the date of communication of this order. As can be seen from the record the order of the Hon'ble High Court came to be uploaded on High Court website on 4th October, 2019.

8. In this background, these applications are now placed before us for fresh hearing and disposal.

9. The grounds for condonation of delay have been mainly set forth in para 2 a) to e) of the applications. The reasons assigned for condonation of delay have been seriously controverted by Non-applications vide affidavit in reply dated 8th April, 2019.

10. During arguments, learned Counsel for Applicant reiterated the grounds as stated in the applications for condonation of delay supported by additional affidavit and second additional affidavit. The learned Counsel submitted that –

- i] Applicant received copy of impugned order via email on 27th September, 2019.
- ii] Applicant uploaded online appeals on 22nd November, 2018 within prescribed period of 60 days but inadvertently the Appeals were uploaded on the 'Project Profile' instead of 'Appellate Portal' on the MahaRERA website.
- iii] In the second week of December, 2018 officers of Applicant came to know from their colleagues / Appellate Authority that certified copy of the impugned order was required to be submitted along with the appeals. Accordingly application for certified copy was moved on 18th December, 2018 and certified copy was received on 1st January, 2019.
- iv] As stated in additional Affidavit, on receiving the certified copy when Applicant's representatives visited MahaRERA Authority they learnt to their shock that the Appeals have not been uploaded as required

under law. They also came to know that the Appeals have been wrongly uploaded on 'Project Profile' instead on 'Appellate Portal'.

- v] Having learnt so, Applicant's representatives visited their advocate in the fourth week of January, 2019 (mentioned as second week in Para 6 of additional Affidavit) for advice on the process of filing online Appeals. Thereafter, Appeals along with details were uploaded on the Appellate webpage on 27th January, 2019 with a delay of 62 days.
- vi] Due to voluminous paper work involved in the appellate proceedings it took some time for preparation of hard copies with Annexures thereto. Duly prepared copies were served to Non-Applicants in the last week of February 2019 and submitted to the office of Tribunal on 6th March, 2019.
- vii] The delay is neither deliberate nor intentional but occurred on account of bona fide mistake on the part of Applicant's representatives by uploading the Appeals on wrong portal. As the Act was new they were not conversant with the procedure relating to online filing of appeals.
- viii] As stated in second additional affidavit, Assistant Legal Manager of Applicant visited MahaRERA office and on inquiry forwarded e-mail so as to get the details of date and time on which Appeals were uploaded on 'Project Profile' Portal. Accordingly on 22nd October, 2019 they received reply by e-mail informing that appeals were uploaded on 'Project Profile' Portal on 22nd November, 2018. Applicants placed strong reliance on the mails dated 17th October 2019 and 22nd October 2019 to substantiate their contention that

they uploaded appeals online within time but on 'Project Profile' Portal due to inadvertence.

11. Learned Counsel for Applicant placed strong reliance on the decision of the Hon'ble Supreme Court in case of **Collector, Land Acquisition, Anantnag and Ors. Vs. Katiji and Ors. [(1987) 2 Supreme Court Cases 107]** to submit that refusal to condone delay will result in a strong case on merits being thrown out at the threshold. Learned Counsel submits that substantive appeals filed by Applicant may not be thrown away at the threshold and if the delay is condoned highest that can happen is that the cause would be decided on merits after hearing the parties. According to Learned Counsel, Applicant is not gaining any advantage as huge interest is running against them and assuming that there are certain contradictions in the pleadings here and there, these should not be taken as grounds for rejection of condonation of delay. Learned Counsel submitted that at the most Applicant can be put to terms and may be given opportunity to place their grievances before this Tribunal on merits.

12. Per contra Learned Counsel for Non-Applicants strongly placed reliance on the facts stated in the affidavit in reply and vehemently opposed applications for condonation of delay. According to Learned Counsel for Non-Applicants –

- i] In the online Appeals uploaded on the Appellate website, the delay is stated to be of 95 days which is contrary to the delay of 62 days as mentioned in the applications for condonation of delay and also in the additional Affidavit filed by Applicant.
- ii] Though the date of uploading of Appeals through oversight on wrong portal is mentioned as 22nd November, 2018 in Para 2(b) of the

Applications, no such date is mentioned in Para 3 of the additional Affidavit and it is vaguely stated that the said Appeals were uploaded in the month of November, 2018. Also Exhibit-2 submitted by Applicants in proof of uploading the Appeals wrongly on profile page as alleged shows no date or other details to confirm this fact.

iii] Contradictory facts regarding reasons for delay are stated by Applicant in the following documents filed in these proceedings :

a] The Applicant stated in Para 2(c) of applications for condonation that they learnt about the requirement of filing of certified copy of the impugned order along with the Appeal, when they made inquiry with the Appellate Authority, whereas in Para 4 of additional Affidavit it is stated that the officers of Applicants came to know this from their colleagues. Still, in the written submissions filed, Applicants have vaguely stated that in the second week of December, 2018, they made inquiries about the Appeal Numbers in the department without mentioning specifically about inquiries relating to certified copy or name of the department they made the inquiries with.

b] Though Applicant has stated in the online appeals that on receiving no response from the Authority to the Appeals filed on 22nd November, 2018, Applicant contacted their Advocate in the fourth week of January, 2019 for filing Appeals, yet, in Para 6 of additional Affidavit it is stated that they have visited the Advocate's office in second week of January, 2019 (modified later as fourth week of January, 2019 in their written submissions). Further, in the applications for condonation of delay, Applicant simply stated that they instructed their

Advocate to file the Appeals and accordingly, Appeals were uploaded on Appellate website on 27th January, 2019.

- iv] Even assuming that Appeals were already filed inadvertently on wrong portal on 22nd November, 2019 and certified copies of the impugned order were also obtained on 1st January, 2019, there can be no plausible and satisfactory reason for filing online Appeals after 4 weeks on 27th January, 2019. Also inordinate delay is inexplicable for supplying hard copies of the Appeals and other documents on 27th February, 2019 to Respondents even though all documents were ready with them in first week of January only. From the aforesaid facts, it could be seen that Applicant has indulged in malafide conduct by making contradictory and false statements on affidavit.

13. In view of the above, learned Counsel for Respondents submitted that conjoint reading and analysis of aforementioned facts/documents suffering from serious discrepancies and contradictions show that the grounds raised by Applicants for justifying the delay are false, concocted, dilatory and not bona fide and genuine. It is alleged that there is a deliberate ploy to delay the benefits to Respondents who have made huge investments and have already waited for years for possession of the flats. Accordingly, he seeks outright rejection of the Applications for condonation of delay.

14. From the rival submissions a short point that arises for our determination is whether Applicants have explained sufficient cause for condonation of delay in filing these appeals and to this, we record our finding in the affirmative for the reasons to follow:

REASONS

15. Before we advert to the merits of the controversy let us consider the submissions made by the parties regarding law relating to condonation of delay. In this connection, learned Counsel for Applicants relied upon the judgement of the **Collector, Land Acquisition, Anantnag and Ors. Vs. Katiji and Ors. (referred above)** to submit that even if there are some mistakes on the part of the Applicants, that alone is not enough to turn down their plea and to shut the doors of justice for them. The learned Counsel submits that if the explanation does not smack of malafides and Applicants are successful in showing bonafide efforts, Tribunal has to show utmost consideration to the suitor. Learned Counsel urged that considering the settled law and liberal approach on condonation of delay, applications be allowed.

16. Per contra, learned Counsel for Non-Applicants submitted that from various contradictions and discrepancies in the reasons submitted by Applicants, it is evident that Applicants have not only acted negligently but have also made false averments and concocted stories. Referring to Appeal memo, additional affidavit, second additional affidavit and applications for condonation of delay, learned Counsel tried to demonstrate that Applicants have made self contradictory statements and took confusing stand at different places. He pointed out that in the appeal memo according to Applicants there is no delay whereas applications speaks of 62 days delay, online appeal says 95 days delay and in the affidavit something else has been stated. It is vehemently contended that variance in pleadings is of a serious nature and cannot be taken so lightly particularly in the background where DGM of Applicants is none else than an Advocate. According to learned Counsel, this

is a fit case to reject condonation of delay as Applicants were throughout negligent, offered concocted grounds and raised self contradictory pleadings at different places. The learned Counsel seriously assailed second additional affidavit and particularly exchange of mail between Assistant Legal Manager of Applicants and RERA Authorities. The learned Counsel referred to the screen shot (Exhibit '1') to submit that it shows that draft appeal was uploaded and not the appeal as required under the law. Learned Counsel submits that till 6th March, 2019, Applicants just killed time without a plausible explanation depriving Non-applicants / Allottees of possession of their respective properties even after receiving crores of rupees from them. To substantiate his submissions, learned Counsel relied upon the judgment of The Hon'ble Supreme Court in **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Academy and Ors. (supra)** by referring to principles particularly culled down by the Hon'ble Supreme Court in the following paragraphs –

- “21.5. Lack of bona fide imputable to a party seeking condonation of delay is a significant and relevant fact;
- 21.7 The concept of liberal approach has to encapsulate the conception of reasonableness and totally unfettered free play is not allowed;
- 21.9 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;
- 21.10 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;

21.11 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;

22.1 An Applications 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;

22.4 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."

17. So far as liberal approach to be adopted in condonation of delay is concerned, in **Collector, Land Acquisition, Anantnag & Anr. Vs. Ms. Katiji and Others** (referred above) The Hon'ble Supreme Court in paragraph 3 reiterated the principles as follows:

1. *Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
2. *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 the highest that can happen is that a cause would be decided on merits after hearing the parties.*
3. *"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.

- 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
- 5. 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.*
- 6. 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.*

18. In the above background, we have to now examine whether the cause put forth by Applicants amounts to sufficient cause within the provisions of Section 44 of the Act of 2016.

19. Since beginning it is the constant stand of Applicants that on receiving the intimation of the order on mail on 27th September, 2018 they uploaded online appeal on 22nd November, 2018 but due to inadvertence and oversight the Appeals have been wrongly uploaded on 'Project Profile' instead of 'Appellate Portal' of MahaRERA website.

20. In support of second additional affidavit, Applicants have relied upon mail dated 17th October, 2019 and reply mail dated 22nd October, 2019 received from MahaRERA. So far as objection to screenshot is concerned,

the learned Counsel for Applicants submitted that file name may be any but that does not mean that 'draft appeal' was uploaded particularly when the reply mail clearly indicates appeal memo was uploaded on 22nd November, 2018 at 4.05 P.M. on the 'Project' site of MahaRERA. From the reply mail, Applicants could demonstrate that on 22nd November, 2018 they uploaded the appeal memo on the 'Project Profile' Portal of MahaRERA. This being so, Appeals were apparently uploaded within limitation as there is no dispute that intimation of the order was received by Applicants on mail on 27th September, 2018.

21. True, there are certain contradictions and conflicting statements in the pleadings in appeal memos, applications for condonation of delay and both the additional affidavits. It is also true that after uploading appeal on 22nd November, 2018 on the 'Project Profile' Applicants did nothing till 18th December, 2018 when they learnt about certified copy to be filed along with appeals. It is a matter of record that application for certified copy was moved on 18th December, 2018 and copy was made available on 1st January, 2019. Applicants have stated that in the second week of January, 2019 they visited MahaRERA office and learnt about the mistake committed by them that appeals were uploaded on the wrong portal. They have stated that immediately thereafter they contacted their Advocate and on legal advice filed appeal as required under the law and paid appeal fees on 25th January, 2019. Online appeals on Appeal Portal were uploaded on 27th January, 2019. Non-Applicants did not dispute the same.

22. From the events enumerated above particularly from 18th December, 2018 to 25th January, 2019 it can be at the most said that Applicants were casual and non-serious in taking the earnest steps for filing appeals required

under the law. But one thing is clear that whenever Applicants received the information they accordingly took some or the other steps and ultimately could succeed on 27th January, 2019 in filing / uploading the appeals on the Appeal Portal.

23. It is pertinent to note that Applicants are not going to gain any advantage as the order passed by MahaRERA shows that interest is running against the Applicants. At the same time as laid down by the Hon'ble Supreme Court in **Collector, Land Acquisition, Anantnag & Anr. Vs. Ms. Katiji and Others (supra)** everyday's delay must be explained does not mean that a pedantic approach should be made. The doctrine needs to be applied in a rational common sense pragmatic manner. Applicants have stated that they have a strong case on merits as according to them, part O.C. of the project has been received till 12th floor and accordingly they have offered possession to the allottees. In such a situation, cause of substantial justice deserves to be preferred as delay does not appear to be intentional or deliberate. However, we totally disapprove the non-serious and casual manner in which Applicants have dealt with the process of filing online appeals. Considering the settled law as above, according to us this alone ought not to be a ground to deny an opportunity and shut the doors of justice for the litigants like Applicants. The purpose can be served if they can be otherwise put to terms for their non-serious and casual approach that led to avoidable delay in filing the online appeals.

24. In the above premise as we find that no malafides can be attributed to Applicant and the delay caused in preferring appeals online is not deliberate or intentional we answer the above point in the affirmative and proceed to pass the following order:

-:ORDER:-

- i] Applications are allowed subject to costs of Rs. 15,000/- per complainant / allottee;
- ii] Payment of costs in 10 days from updating this order is condition precedent;
- iii] Delay condoned subject to compliance of i] above.


(S.S. SANDHU)


(SUMANT KOLHE)


(INDIRA JAIN J.)

ed.