

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

**Misc. Application No. 158/20 (Delay)**

**In**

**Appeal No. AT006000000052309**

Om Sai Infra & Om Sai Group ... Applicant

Versus

Priyanka R. Mokashi ... Non-applicant

*Adv. Harshad Bhadbhade for Applicant.*

*Adv. Shirish Deshpande for Non-applicant.*

**CORAM : SUMANT M. KOLHE, MEMBER (J)  
S.S. SANDHU, MEMBER (A)**

**DATE : 12<sup>th</sup> JANUARY, 2021**

**ORDER BELOW MISC. APPLICATION NO. 158/20 IN  
APPEAL NO. AT006000000052309**

**[PER: S. S. SANDHU, MEMBER(A)]**

Heard.

The delay of 241 days is sought to be condoned in filing the Appeal in this Application.

Applicant is a Promoter. Non-applicant is an Allottee. Vide order dated 16.04.2019 passed by MahaRERA in complaint No. CC006000000057797 filed by Allottee, Promoter is directed to refund the amount to Allottee with interest. The said order is challenged in this Appeal filed with a delay of 241 days.

2. Learned counsel for Applicant submits that Non-applicant filed complaint with the Authority and suppressed the fact that parties have executed deed of cancellation on 11.02.2019. However, MahaRERA passed ex-parte order and denied Applicant opportunity of being heard. Applicant came to know of the impugned order on 09.08.2019 from Tahsildar Thane when the impugned order was sought to be executed. Thereafter Non-applicant and her brother, on being contacted promised that they will not take further steps but kept avoiding settlement. Therefore, Applicant approached MahaRERA and filed Appeal after obtaining certified copy on 05.02.2020. In the process, delay of 241 days has occurred. It is submitted that there is no deliberate negligence or intention to frustrate the proceedings of the case by filing Appeal with delay. It is therefore pleaded to condone the delay and decide Appeal on merits failing which irreparable loss will be caused to Applicant.

3. On the contrary, learned counsel for Non-applicant submitted that Applicant ought to have diligently followed up the outcome of the complaint proceedings lodged by Applicant. He denied suppression of deed of cancellation as Applicant itself violated the conditions thereof. It is further contended that merely to claim that delay is not deliberate or intentional will not suffice to condone the delay of 241 days. It is submitted that delay is the result of gross carelessness or mala fide intention to purposely delay the legal process. It is further contended that let alone the delay condonation Application, the Appeal itself filed after commencement of



execution proceedings cannot be entertained. It was submitted that condoning delay in the above circumstances will be against the provisions of RERA and therefore Application for condonation of delay be outrightly rejected.

4. We have considered the submissions of the parties. Perused the records and impugned order. It is pertinent to note that Non-applicant has not denied the execution of deed of cancellation suggesting thereby that parties were in the process of settlement of dispute between them. It is alleged by Non-applicant that settlement failed due to breach of conditions of the deed of cancellation. It is also observed that the order is passed ex-parte as Applicant did not attend hearing even though Applicant was present on previous date. We also see that Applicant was pursuing settlement with Non-applicant even after passing of the impugned order. In the fact circumstances, though we agree that Applicant ought to have been diligent in following up or attending to the matter, we do not find that the said negligence in attending to the matter in diligent manner and default in filing the Appeal in time is intentional or deliberate and mala fide.

5. The Hon'ble Supreme Court of India has time and again prescribed to adopt a justifiably liberal approach in respect of matters involving condonation of delay for the reason that no litigant stands to gain by lodging an Appeal late. It is further laid down that in order to advance the cause of substantial justice it would be advisable to decide the case on merits instead of throwing out the same at the very threshold.