

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

Misc. Application No. 181/2019 (Delay Condonation)
In
Appeal No. AT006000000010721

Mr. Vijay Athwani & Anr.

Both residing at Paramba Shree Bhawan,
7H/3, Tashkand Marg,
Civil Lines, U.P.
Allahabad-211

.. Applicants

Versus

M/s Omkar Realtors & Developers and Anr.

Pvt. Ltd., Omkar Esquare
Off Eastern Express Highway,
Sion (East)
Mumbai- 400 022

.. Non-Applicants

Advocate Mr. Ajit Shinde for Applicants.
Advocate Mr. Devendra Patankar a/w Mr. Rakesh Patel
for Non-Applicants

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

DATE : 27th JULY, 2020


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

Heard the parties through their Counsel on the point of condonation of delay in terms of captioned Miscellaneous Application (MA) filed by Applicants in this Appeal preferred against order dated 20.07.2019 passed by learned Chairperson of MahaRERA (hereinafter referred to as the Authority).

2. Applicants are allottees. They booked a flat in the project of Non-applicants. On failure of Non-Applicants in delivering possession within prescribed period Applicants filed complaint before the Authority seeking *inter alia* interest till the possession of flat. After hearing the parties, impugned order was passed on 20.07.2018. On finding that their prayer was wrongly recorded in Para 1 of the impugned order, Applicants filed Review Application on 25.07.2018 for suitable rectification in the order. Pending the order in Review Application, the Appeal has been filed with delay which is sought to be condoned vide Miscellaneous Application under consideration.

3. During the hearing learned Counsel for Applicants argued that as prayer of Applicants was incorrectly recorded for seeking refund instead of interest till possession in Para 1 of the impugned order, Review Application was filed immediately on 25.07.2020 with the Authority under Section 39 of the Real Estate (Regulation and Development), 2016 (for short, the 'RERA'). Certified copy of impugned order was also applied immediately on 24.07.2018. The same was ready on 30.07.2018 and collected on 06.08.2018. Applicants waited for

order in the Review Application. Pending consideration of the same and to avoid further delay, Applicants filed the Appeal on 06.10.2018 with a delay of 10 days. With these submissions learned Counsel contended that Applicants have taken earnest steps for obtaining the certified copies of the order and filing of Review Application. As Applicants waited under bona-fide belief for order in Review Application, they could not file the Appeal within prescribed time. Learned Counsel therefore argued that there was no deliberate or intentional delay caused by Applicants in filing appeal and prayed for its condonation failing which Applicants may suffer irreparable loss. He also submitted affidavit in support of the grounds of delay.



4. In counter arguments, learned Counsel for Non-applicants contended that there is a delay of 278 days and not 10 days. He reasoned that on the day of online submission of Appeal, Applicants did not submit hard copy of Appeal which is mandatory for considering the Appeal. He further argued that Applicants had already filed the Review Application and therefore pending the same Appeal cannot be filed as per law. It was also submitted that by filing Review Application and Appeal at the same time Applicants have indulged in Forum Shopping. He therefore urged to reject the application for condonation of delay being not maintainable.

5. We have considered submissions of the parties and also perused documents on record such as Appeal memo,