

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.608 of 2019
Date of Order:14.07.2020**

Emaar MGF Land Ltd., Emaar Business Park, MG Road,
Sikanderpur, Sector 28, Gurugram-122002, Haryana.

Applicant/Appellant

Versus

1. Samrath Vikram Singh, Flat No.1403-A, Beverly Park-2,
DLF Phase-2, Gurugram, Haryana.
2. Haryana Real Estate Regulatory Authority, Gurugram.

Respondents

CORAM:

Justice Darshan Singh (Retd.)	Chairman
Shri Inderjeet Mehta	Member (Judicial)
Shri Anil Kumar Gupta	Member (Technical)

Hearing through WhatsApp Video Conferencing:

Argued by: Shri Shekhar Verma, Advocate, Ld. counsel for
the applicant/appellant.
Shri Mayank Aggarwal, Advocate, Ld. counsel
for the respondent/allottee.

ORDER:

JUSTICE DARSHAN SINGH (Retd.) CHAIRMAN:

This order of ours shall dispose of an application filed
by the appellant/promoter for condonation of delay of 143 days
in filing the present appeal.

2. As per averments in the application, the impugned
order was passed on 13.12.2018 which was uploaded on the
website of the learned Haryana Real Estate Regulatory
Authority, Gurugram (hereinafter called 'the Authority') on

08.01.2019. The record was collected and after internal discussions, the same was supplied to the learned counsel for the appellant in January, 2019. In the meanwhile, it transpired that a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called 'the Code'), titled "Neeraj Gupta Vs. Emaar MGF Land Ltd." was filed in the National Company Law Tribunal, New Delhi. As per the order dated 24.01.2019 passed by the Hon'ble National Company Law Tribunal, New Delhi, a moratorium in terms of Section 14 of the Code was declared and in order to facilitate the process of insolvency resolution, an Insolvency Resolution Professional (IRP) was appointed. The appellant filed a Company Appeal in National Company Law Appellate Tribunal. The Hon'ble Tribunal ordered that the moratorium period shall continue, however, the IRP was asked to ensure that the appellant Company remains a going concern. The appellant filed Civil Appeal in the Hon'ble Supreme Court of India on March 29, 2019. The insolvency proceedings were set aside by the Hon'ble Apex Court. So, the moratorium period remained in effect from 24.01.2019 to 29.03.2019. During this period, the appellant could not file the appeal. It is further pleaded that after 19.03.2019, the entire staff of the appellant had to put in efforts to bring the Company back on track. The process in filing the appeal took sometime and in the meanwhile the summer vacation started and some new proforma was introduced to be

attached alongwith the appeal by the office of this Tribunal. Thus, the delay of 143 days occurred in filing the appeal. Hence, this application.

3. The application is supported with an affidavit of Shri Rajnish Kaushik, authorised person, of the Company.

4. The application has been contested by the respondent/allottee by raising preliminary objections that the appellant has miserably failed to provide cogent, legal and acceptable reasons for such a substantive delay in filing the appeal; that the appellant has taken vague, illusive and non-specific pleas and has filed the present appeal to unduly harass the respondent/allottee. The appellant has failed to show any reasonable and sufficient cause for months of delay let alone of days. It shows negligence on the part of the appellant and a callous attitude towards this Tribunal. The appellant has failed to explain each day's delay and has instead attempted to explain the gross delay with vague and non-specific averments. It was the duty of the appellant to explain the delay of each day but the appellant has deliberately and with mala fide intention decided to file the belated appeal which is a gross misuse of the process of law. It is further pleaded that the appellant was highly negligent, inactive and lacked bona fide. It is further pleaded that the moratorium was not a sufficient cause/ground for explaining the delay as there was no legal bar to file appeal even during the period of moratorium. No attempt has been

made to initiate the appeal with or without the permission of IRP. It is further pleaded that moratorium has ceased to exist on 29.03.2019. No sufficient cause has been shown to justify the further lapse of almost four months in filing the appeal. The appellant has been sleeping over its rights. The appellant could have filed the application for exemption of the requirements of the Registry of this Tribunal and ignorance of law is no ground for condonation of delay. All other averments raised in the application were controverted.

5. The averments in the reply have also been supported by an affidavit of the respondent-Samarth Vikram Singh.

6. We have heard learned counsel for the parties.

7. Learned counsel for the applicant/appellant contended that there is bona fide delay of 143 days in filing the present appeal. He contended that the delay of 64 days has occurred as the appellant company remained under moratorium in the proceedings. He further contended that thereafter the Company has to be put back on track and the records have to be up-dated. The documents to file the appeal have to be collected and a huge sum was required to be deposited in order to comply with the provisions of proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called 'the Act'). He further contended that the appellant was not going to gain anything by filing the belated appeal. The valuable rights of the appellant are involved. It is well settled

principle of law that the Court should adopt a liberal and non-pedantic approach while dealing with the question of condonation of delay as the rights of the parties should be decided on merits. To support his contentions, learned counsel for the appellant has relied upon cases **DHIRAJ SINGH (DEAD) THROUGH LEGAL REPRESENTATIVES AND OTHERS VS. STATE OF HARYANA AND OTHERS, (2014) 14 Supreme Court Cases 127** and **K. SUBBARAYUDU AND OTHERS Versus SPECIAL DEPUTY COLLECTOR (LAND ACQUISITION), (2017)12 Supreme Court Cases 840.**

8. On the other hand, Shri Mayank Aggarwal, learned counsel for the respondent/allottee contended that the imposition of moratorium was not a hurdle in filing the appeal by the appellant. Section 14 of the Code only prohibits the proceedings against the Company concerned, but there is no bar to the Company to initiate the legal proceedings. He further contended that the appellant could have approached the IRP to file the appeal. Thus, the appellant cannot take the benefit of the period of moratorium.

9. He further contended that the appellant could have filed appeal even without the certified copy of the order by moving an application for exemption to file the certified copy. There is absolutely no explanation with respect to the delay of 79 days after the moratorium has ceased to exist. The plea raised by the appellant in the application is vague, indefinite

and illusive. No specific ground has been taken for condonation of delay. He contended that it was the duty of the appellant to explain each day's delay in filing the appeal. He further contended that the appellant was highly negligent and inactive in filing the present appeal with substantive delay. This deliberate delay has been caused in filing the appeal just to harass the respondent/allottee. With these pleas, learned counsel for the respondent pleaded for dismissal of the application. To support his contentions, he relied upon cases **Ramlal and others Versus Rewa Coalfields Ltd. AIR 1962 SC 361** and **Basawaraj and another Versus Special Land Acquisition Officer, AIR 2014 SC 746**.

10. We have duly considered the aforesaid contentions. As per the proviso to Section 44(2) of the Act, the Appellate Tribunal may entertain any appeal after the expiry of 60 days if it is satisfied that there was "sufficient cause" for not filing it within that period. The expression "sufficient cause" mentioned in the Act is analogous as provided in Section 5 of the Limitation Act, 1963. The Hon'ble Apex Court had occasion to interpret the expression "sufficient cause" in number of cases. It is well settled legal proposition that expression "sufficient cause" should be given a liberal interpretation to ensure that substantive justice is done. Reference can be made to cases **Collector, Land Acquisition, Anantnag and another Versus Mst. Katiji and others, 1987(2) SCC 107, Madanlal vs.**

Shyamalal, 2002(2) R.C.R. (Civil) 361 and K. SUBBARAYUDU AND OTHERS Versus SPECIAL DEPUTY COLLECTOR (LAND ACQUISITION) (Supra).

11. In the instant case, it is an admitted fact that the appellant company remained under moratorium under the provisions of the Code w.e.f. 24.01.2019 to 29.03.2019. So, for a period of 64 days, the appellant company was under the moratorium and IRP was appointed. It could not be disputed at bar by learned counsel for the respondent/allottee that during this period the appellant company was not in a position to operate its accounts. As per proviso to Section 43(5) of the Act, the appellant/promoter was required to deposit the amount imposed by the learned Authority to get the appeal entertained. So, there was a serious handicap with the appellant to file the appeal during the period of moratorium as the appellant company was not in a position to utilise its funds. The IRP was under no legal obligation to file the appeal.

12. The present appeal has been filed with the office of this Tribunal on 29.07.2019 i.e. with a further delay of 79 days after the moratorium has ceased. The appellant has explained this delay on the ground that after the moratorium ceased to operate, the time was spent in bringing the appellant company back on track as the records were to be updated and documents were to be collected, which took considerable time.

13. In order to show the “sufficient cause” for not filing the appeal, the appellant was required to demonstrate that it has not acted in a negligent manner; that the delay was bona fide; that the delay was not deliberate and mala fide and the appellant was not going to have any undue advantage in filing the delayed appeal.

14. Vide impugned order, the learned Authority has directed the appellant to pay the delayed possession charges @ 10.75% per annum on the amount deposited by the respondent/allottee w.e.f. 26.02.2014 till the date of offer of possession/handing over of the possession. So, the appellant was required to pay a huge sum on account of delayed possession charges. In order to get its appeal entertained, the appellant/promoter has deposited a sum of Rs.20,23,799/- with this Tribunal. So, huge amount has been deposited by the appellant to get its appeal entertained. The deposit of such a substantial amount itself shows the bona fide on the part of the appellant. As the appellant was directed to pay the huge sum on account of delayed possession charges, it was not going to gain anything by filing the belated appeal. The amount payable to the respondent/allottee as per the impugned order has already been deposited with this Tribunal by the appellant. So, the respondent is not going to suffer any prejudice if the delay is condoned and the appeal is heard on merits.

15. Thus, we do not find that the delay in filing the present appeal was deliberate and intentional on the part of the appellant. The appellant was initially handicapped to file the appeal due to moratorium under the provisions of the Code and thereafter the time was spent in bringing the appellant company back on track by collecting documents and updating the records. All these factors constitute a “sufficient cause”, in our opinion, to condone the delay and to give a chance to the appellant to contest the lis on merits.

16. In case **Hemlata Verma Versus M/s ICICI Prudential Life Insurance Co. Lt. & Anr., 2019(5) R.C.R. (Civil) 504**, there was a delay of 207 days in filing the appeal. The Hon’ble Apex Court observed that in the matter of condonation of delay, the Court should take liberal view and the said delay was condoned.

17. In case **Balkrishna Waman Zambare Versus Siddheshwar Shikshan Sanstha, Dongarsoni & Ors., 2019(9) SCC 446**, there was a delay of two years, ten months and fourteen days in filing the appeal. This long delay was condoned by the Hon’ble Apex Court in order to grant the appellant an opportunity to contest the lis on merits, otherwise he would have been subjected to the great hardship.

18. In the instant case also, if the appellant is denied the opportunity to contest the appeal on merits, it will certainly result in a great hardship to it.

19. In case **Ishwar Singh Versus Naresh Kumar and Ors., 2019(4) PLR 727**, there was a delay of 1012 days. The Hon'ble High Court held that the Court should adopt a liberal and non-pedantic approach while dealing with the question of condonation of delay along with the fact that neither the applicant had gained in any manner by filing the appeal at a belated stage nor any prejudice has been caused to the other side. This authority is also squarely applicable to the facts of the present case as in this case also there is nothing on record to show that the appellant has gained in any manner by filing the belated appeal, rather the appellant has deposited more than rupees twenty lacs to get the appeal entertained and on the other hand no prejudice is being caused to the rights of the respondent/allottee.

20. In case **Basawaraj and another Versus Special Land Acquisition Officer** (Supra), relied upon by learned counsel for the respondent/allottee, there was delay of 5½ years and only explanation for this long delay was that one of the appellant was ill, so it was found that there was no "sufficient cause" to condone the delay.

21. As far as the plea raised by the learned counsel for the respondent/allottee that explanation of each day's delay is required, the same has no merits as the court has to take a non-pedantic approach and to act in pragmatic manner. The Hon'ble Apex Court in **Collector, Land Acquisition, Anantnag and**

another Versus Mst. Katiji and others (Supra) has laid down the following salient principles for condonation of delay:-

“The expression “sufficient cause” employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters, instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that: -

- 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 mala fides. 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 legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

22. In case **DHIRAJ SINGH (DEAD) THROUGH LEGAL REPRESENTATIVES AND OTHERS VS. STATE OF HARYANA AND OTHERS** (Supra), the Hon'ble Apex Court held that approach of the court should be pragmatic and not pedantic. The substantive rights cannot be allowed to be defeated on technical grounds.

23. In **Ummer Versus Pottengal Subida & Ors. 2018(2) R.C.R. (Civil) 232**, the Hon'ble Apex Court has laid down as under: -

"18. One cannot now dispute the legal proposition that the earlier view of this Court that the appellant was required to explain the delay of each day till the date of filing the appeal has since been diluted by the later decisions of this Court and is, therefore, held as no longer good law."

24. In view of the consistent rule of law laid down in later cases referred to above, case **Ramlal and others Versus Rewa**

Coalfields Ltd. (Supra) is of no help to the learned counsel for the respondent/allottee.

25. Thus, keeping in view our aforesaid discussions, there is sufficient cause to condone the delay in filing the present appeal. Consequently, the present application is hereby allowed, the delay of 143 days in filing the present appeal is hereby condoned. However, for the inconvenience caused to the respondent/allottee, he shall be entitled to Rs.7,000/- as costs.

Announced:
July 14, 2020

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

CL

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Vs.
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Hearing through WhatsApp Video Conferencing:

Present: Shri Shekhar Verma, Advocate, Ld. counsel for the appellant.
Shri Mayank Aggarwal, Advocate, Ld. counsel for the respondent/allottee.

Remaining arguments heard.

The application of the appellant for condonation of delay stands allowed vide our separate detailed order of even dated.

Now to come up on 06.08.2020 for payment of costs and preliminary hearing.

Justice Darshan Singh (Retd.)
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

July 14th, 2020
CL