

**BEFORE THE HARYANA REAL ESTATE APPELLATE  
TRIBUNAL**

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**Appeal No.597 of 2021  
Date of Decision: 16.12.2022**

Orchid Island Residents Welfare Association, Maintenance  
Office, Orchid Island, Sector 51, Gurugram-122018, Haryana.

Appellant

Versus

1. Orchid Infrastructure Developers Private Limited, Level 2,  
Global Arcade, M.G. Road, Gurugram-122002, Haryana.
2. Sheetal International Private Limited, G-81A, 2<sup>nd</sup> Floor,  
Vijay Chowk, Laxmi Nagar, New Delhi-110092.
3. Perfect Facilities Management Private Limited, Level 2,  
Global Arcade, M.G. Road, Gurugram-122002, Haryana.

Respondents

**CORAM:**

Shri Inderjeet Mehta,	Member (Judicial)
Shri Anil Kumar Gupta,	Member (Technical)

Argued by: Shri Rishabh Jain, Advocate, learned counsel  
for the appellant.

Shri Aashish Chopra, Learned Senior  
Advocate, assisted by Shri Yashpal Sharma,  
Advocate, counsel for the respondents.

**ORDER:**

**INDERJEET MEHTA, MEMBER (JUDICIAL):**

By virtue of the present order, an application  
preferred by the applicant/appellant under Section 44 of the  
Real Estate (Regulation and Development) Act, 2016

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(hereinafter called 'the Act'), for condonation of delay of 927 days in filing of the present appeal shall be disposed of.

2. To challenge the order dated 26.03.2019 and uploaded on 03.05.2019, passed by the learned Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'), in Complaint No.2298 of 2018, titled 'Orchid Island Resident Welfare Association vs. Orchid Infrastructure Developers Private Limited and Others', the aforesaid captioned appeal has been preferred by the appellant/applicant on 25.11.2021.

3. The applicant/appellant had preferred the complaint no.2298/2018 before the learned Authority against the respondents/promoters and had sought the following reliefs:

- “1. Respondents be directed to return the IFMS money to the complainant RWA along with interest @ 18% per annum from the date of its receipt till realization.*
- 2. Respondent/opposite party be directed to withdraw the forged bills/invoices and audit report.*
- 3. To pass such other order/direction/relief as deemed fit and proper in the facts and circumstances of the present case.”*

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4. The complaint preferred by the applicant/appellant association was disposed of by the learned Authority vide impugned order dated 26.03.2019, with the following observations:-

*“Since the audit has already been concluded and audit report can not be challenged at this juncture. The matter turns out to be of civil in nature for which the association has approached the civil court and the matter is sub-judice before it.*

*In order to sort out the matter it is advisable that the court verdict in the civil matter may be awaited, once it comes out in that case the association can approach the RERA authority for its implementation.*

*It is a matter to be adjudicated by the Adjudicating Officer, both the parties are directed to get the matter adjudicated by filing the matter before the Adjudicating Officer.*

*Complaint stands disposed of in above terms. File be consigned to the registry.”*

5. The applicant/appellant has alleged that plaint filed by it before the Civil Court involves completely different questions of law and facts on different cause of action, which has been elaborated in the main appeal. Further, it has been alleged that as directed by the learned Authority, the appellant association waited for the final disposal of the issues pending

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before the Civil Court, which delivered the verdict on 15.10.2019. After receipt of the impugned order in May, 2019, from the learned Authority and the judgment dated 15.10.2019, of the Civil Court, the appellant association sought consultation and guidance to look into the aspect and amicably settle the grievances between the allottees and the promoters. It has been also alleged that the applicant/appellant association was in state of dilemma and confusion with regard to approach an appropriate forum for settlement of its grievances against the promoter and ultimately, the applicant/appellant filed a complaint before the Hon'ble National Consumer Disputes Redressal Commission, New Delhi (for brevity 'NCDRC') in the month of January, 2020. Vide order dated 10.08.2020, Hon'ble NCDRC admitted the claim filed by the appellant. Thereafter, Hon'ble NCDRC advised the applicant/appellant that the reliefs sought by the applicant/appellant in the complaint were not within the scope of the powers of the NCDRC. Since, option for filing fresh complaint before the learned Authority was not available to the applicant/appellant, so, having no other option, the applicant/appellant has preferred the appeal along with the application for condonation of delay. The applicant/appellant

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has also prayed that in the given facts and circumstances, the application for condonation of delay of 927 days be allowed.

6. Upon notice, the respondents/promoters have resisted the present application by taking the stand that the applicant/appellant has not even prayed for setting aside much less any modification of the purported impugned order dated 26.03.2019, rather, has prayed for altogether different reliefs from the ones prayed by the applicant/appellant in its complaint before the learned Authority. Moreover, it has not been averred as to how the applicant/appellant is aggrieved by the impugned order dated 26.03.2019. Further, it has been alleged that the applicant/appellant has not approached this Tribunal with clean hands as in the application, the applicant/appellant has not disclosed the material fact that the learned Civil Judge (Junior Division), Gurugram, vide judgment dated 15.10.2019, had dismissed the Civil Suit filed by the applicant/appellant and that, too, with costs. This fact has also not been disclosed that the applicant/appellant being aggrieved by the said order dated 15.10.2019, had preferred an appeal bearing no.612 of 2019, and the same is pending adjudication before Additional District & Sessions Judge, Gurugram. The respondent has also alleged that on one hand, the applicant/appellant has taken the stand that the litigation

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before the Civil Court involved completely different questions of law and facts, on different cause of action, whereas, on the other hand, in order to seek condonation, the applicant/appellant has sought to take benefit of the order dated 26.03.2019, itself by stating that the applicant/appellant has been waiting for final disposal of the issues pending before the Civil Court. Lastly, it has been alleged that the application filed by the applicant/appellant does not provide even a prima facie proof showing “sufficient cause” for not filing the appeal within the prescribed period of limitation i.e. 60 days and there is absolutely no “sufficient cause”, which entitles the applicant/appellant to get the condonation of delay of 927 days. While denying all other averments made in the application, the respondents/promoters have prayed for dismissal of the same.

7. We have heard learned counsel for the parties and have meticulously examined the record of the case.

8. Section 44(2) of the Act is as follows:-

*“(2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it*

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*shall be in such form and accompanied by such fee, as may be prescribed:*

*Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period.”*

9. From the aforesaid provision, it is explicit that this Tribunal can entertain any appeal after the expiry of 60 days if it is satisfied that there was “sufficient cause” for not filing the appeal within the stipulated period. The expression ‘sufficient cause’ has been elaborately dealt with by the Hon’ble Supreme Court in **Civil Appeal No.6974 of 2013** titled **‘Basawaraj and another vs. Special Land Acquisition Officer**, vide judgment dated 22.08.2013, and the relevant portion of the said judgment is as follows:-

*“9. Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of*

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*a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose."*

10. Keeping in view this aforesaid well established proposition of law, this Tribunal has to arrive at the conclusion that what was the "sufficient cause" which means an adequate and enough reason, which prevented the applicant/appellant to approach this Tribunal within limitation.

11. The impugned order dated 26.03.2019, was uploaded on the website of the Haryana Real Estate



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Regulatory Authority, Grogam, on 03.05.2019 and as per the proviso to Section 44(2) of the Act, the applicant/appellant had to file the appeal before this Tribunal on or before 02.07.2019, whereas, the present appeal has been preferred on 25.11.2011.

12. As per the observations made by the learned Authority in its impugned order dated 26.03.2019, the matter contained in the complaint preferred by the applicant/appellant was of civil nature regarding which the applicant/appellant association had already approached the Civil Court and it was advised that the court verdict in the civil matter may be awaited and once it comes out, in that case the applicant/appellant association can approach the RERA authority for its implementation.

13. Admittedly, a civil suit was pending before the Civil Court, preferred by the appellant association and the said case was decided by the Civil Judge, Gurugram, vide judgment dated 15.10.2019. The plea taken by the appellant that after receipt of the impugned order in May, 2019, from the learned Authority and Civil Court judgment dated 15.10.2019, the appellant association sought consultation and guidance to look into the aspect, can not be attached any legal credence because, firstly, no indefinite period can be availed by any

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litigant for seeking consultation and guidance and, secondly, as has been pleaded by the applicant/appellant, if the Civil Court matter involved completely different questions of law and fact, so, there was no need for the applicant/appellant association for awaiting the verdict of the Civil Court, which too was passed in the month of October, 2019. Here this fact deserves special mention that in the impugned order dated 26.03.2019, it was specifically observed by the learned Authority that the verdict in the civil matter may be awaited and once it comes out in that case the association can approach the RERA authority for its implementation. Admittedly, Civil Judge, Gurugram, had handed down the judgment on 15.10.2019 and as per the observations made by the learned Authority, after this verdict in October, 2019, the appellant association could have approached the RERA authority and there is absolutely no plausible explanation on the part of the appellant association as to why after the verdict of the Civil Court was handed down in October, 2019, no effort worth the name was made by the appellant association to approach the RERA authority.

14. Admittedly, the appellant association had filed the complaint before the Hon'ble NCDRC in the month of January-February, 2020 and after that the appellant association was

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advised by the Hon'ble NCDRC that the reliefs sought in the complaint were not within the ambit of NCDRC. The plea taken by the appellant association that since there was no option for filing fresh complaint before the learned Authority, so, only remedy was to file an appeal, is also of no help to the applicant/appellant because after the appellant association had been advised by the Hon'ble NCDRC, it could have at least filed the appeal in the month of August, 2020. In fact, a thorough perusal of the application preferred by the applicant/appellant shows that it has miserably failed to prove and establish a "sufficient cause" to condone the delay of 927 days in filing the present appeal.

15. The applicant/appellant by way of the present appeal has sought the following relief:-

- I. Direct the Respondents to organize a forensic audit of the account records of Perfect Facilities Management Private Limited, Respondent-3 for the financial years, 2013-14, 2014-15 and 2015-16. The Appellant/RWA submits that the cost of the forensic audit, if it is required, may be borne out by the RWA/Appellant.*
- II. Direct the Respondents to withdraw/ cancel/ revoke/waive-off the enhanced amount of extra maintenance charges for financial years 2013-14, 2014-15 and 2015-16, imposed illegally,*

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*unlawfully and fraudulently, on the allottees by the Respondents from back dates.*

- III. *Direct the Respondents to withdraw/ cancel/ revoke/waive-off the charges imposed on account of the HVAT, fraudulently, illegally, unlawfully by the Respondents on the members of the RWA.*
- IV. *Direct the Respondents to refund and return the amount charges and collected on account of the HVAT, and bogus bills fraudulently, illegally, unlawfully from the allottees of the project, with interest till the amount is refunded back to the allottees.*
- V. *Any other damages, interest and/or relief, which the Appellant is found entitled to, in the light of the facts and circumstances of the appeal and in the eyes of the law, may also be kindly awarded in favour of the Appellant.”*

16. These aforesaid reliefs, as have been claimed in the present appeal, in fact, are different and in addition to the reliefs sought in the complaint, which have been already referred above. It is also not understandable as to how the applicant/appellant association can claim these fresh reliefs, which were not earlier sought by it at the time of filing the complaint before the learned Authority, coupled with the fact that as already discussed, the appellant association has

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miserably failed to establish “sufficient cause” to condone the delay of 927 days in filing of the present appeal.

17. Thus, as a consequence to the aforesaid discussion, the present application preferred by the applicant/appellant association for condoning the delay of 927 days in filing of the present appeal, containing no merits, deserves dismissal and is accordingly dismissed. Consequently, the present appeal also stands dismissed being barred by limitation. However, the appellant association may approach the learned Authority for redressal of the new issues racked up in this appeal for the first time, in accordance with law.

18. Copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

19. File be consigned to the record.

Announced:  
December 16, 2022

Inderjeet Mehta  
Member (Judicial)  
Haryana Real Estate Appellate Tribunal,  
Chandigarh

Anil Kumar Gupta  
Member (Technical)