

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**C.M. No.427 of 2023
in
Appeal No. 182 of 2023
Date of Decision: 17.11.2023**

1. Mayank Mehta
2. Megha Mehta

Both R/o 73, Gautam Apartments, New Delhi-110049.

Applicants/Appellants

Versus

Emaar India Limited (Formerly M/s Emaar MGF Land Ltd.)

(Through its Managing Director and other Directors)

Emaar MGF Business Park, Mehrauli Gurgaon Road,

Sector-28, near Sikanderpur Chowk, Gurugram, Haryana.

Respondent

CORAM:

Justice Rajan Gupta

Chairman

Shri Anil Kumar Gupta,

Member (Technical)

Argued by: Mr. Mayank Mehta-applicant-appellant in person.

Ms. Tanika Goyal, Advocate,
for the respondent.

ORDER:

RAJAN GUPTA, CHAIRMAN:

This is an application seeking condonation of 1314 days' delay in filing the appeal. The application is supported by an affidavit of Mr. Mayank Mehta, applicant/appellant.

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2. Reply to the application has been filed opposing the plea for condonation of delay.

3. It appears that the order was passed by the Haryana Real Estate Regulatory Authority, Gurugram (hereinafter referred to as 'the Authority'), way back on 16.01.2019. As per the Real Estate (Regulation and Development) Act 2016 (further called as, 'the Act'), the appeal has to be filed within 60 days of the order. Computed as such, the limitation would expire in September, 2019 as the order dated 16.01.2019 was uploaded on the website of the authority on 08.07.2019.

4. During the course of arguments, Shri Mayank Mehta, applicant/appellant in person, has vehemently argued that the respondent/promoter filed appeal bearing no.1349 of 2019 before this Tribunal against the order dated 16.01.2019 of the Authority. Upon dismissal of the above said appeal, the respondent/promoter filed Civil Writ Petition No.1129/2020 before the Hon'ble Punjab and Haryana High Court, Chandigarh and thereafter Special Leave Petition no.3155/2021 in the Hon'ble Supreme Court. The matter by the Hon'ble Supreme Court was decided vide judgment in case titled 'M/s Sana Realtors Pvt. Ltd. vs. Union of India & Ors.' bearing SLP (c) No.13005 of 2020 and on account of this

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reason, the applicants/appellants could not prefer the appeal in time.

5. This argument does not cut ice with this bench. Mayank Mehta (applicant herein) has admittedly never preferred any appeal against the order passed by the Authority. He was merely a respondent in the entire litigation emanating from the order of the Authority and consequent appeals filed by the respondent/promoter. He has not referred to any circumstance which prevented him from filing appeal before this Tribunal within the period of limitation prescribed by the Act. It is inexplicable why the applicants/appellants kept on waiting for so long to file the instant appeal.

6. Further plea of the applicants/appellants is that the limitation deserves to be condoned in light of judgment of Hon'ble Apex Court in Suo Motu Writ Petition (Civil) No.3 of 2020 titled as "IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION".

7. This plea is untenable as the Apex Court excluded the period from 15.03.2020 till 14.03.2021 in the pending matters in view of Covid-19 pandemic. In the instant case, however, the limitation expired on 08.09.2019. Not only this, pursuant to the order passed by the authority, the applicants/appellants filed Execution Petition No.5076/2019

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and received a total amount of Rs.17,74,707/-. This fact finds mention in the order dated 15.09.2022 passed by the Executing Court. Applicants/appellants also filed a separate complaint i.e. CC/6700/2019 before the Adjudicating Officer to claim compensation which was decided vide order dated 31.05.2023. Applicants/appellants have availed number of remedies for the same cause of action. For ready reference, the details of litigation between the parties are reproduced as under:-

Sr. No.	Filing Date	Case No.	Title of the case	Order Date	Remarks
1.	21.05.2018	CC/297/2018	Mayank Mehta vs. EIL	16.01.2019 uploaded 08.07.2019	Complainant claimed delayed possession compensation till actual handing over whereas it was granted by ld. Authority till offer of possession.
2.	19.09.2019	A/1349/2019	EIL v. Mayank Mehta	21.11.2019	Dismissed for non-compliance of 43(5)
3.	04.11.2019	Exe/5076/2019	Mayank Mehta v. EIL	Pending	In execution JD/Promoter has paid Rs.17,74,707/- which is recorded in order dated 15.09.2022.
4.	23.12.2019	CC/6700/2019	Mayank Mehta v. EIL	31.05.2023 uploaded 12.07.2023	Complaint allowed by AO
5.	15.01.2020	CWP-1129/2020	EIL v. Mayank Mehta	16.10.2020	Experion Judgment dated 16.10.2020
6.	16.02.2021	SLP(c)No.3155 of 2021	EIL v. Mayank Mehta	12.05.2022	Sana Realtors judgment which upheld the Newtech judgment

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8. In view of above, we feel that the present effort of the applicants/appellants to impugn the order dated 16.01.2019 is an afterthought. Admittedly, the applicants/appellants accepted the amount of Rs.17,74,707/- pursuant to the order passed by the Authority. They were well aware of the limitation specified in the Act when the impugned order was passed by the Authority. The applicants/appellants are educated persons and are well aware of their legal rights. They have number of cases initiated at their behest either pending or decided and are conscious of the provisions of law as well as the judgment of various courts. Under these circumstances, the applicants/appellants were expected to act promptly and file appeal within statutory period of limitation provided in the Act. It needs to be reiterated here that the applicants/appellants preferred complaint no.CC/6700/2019 on 23.12.2019 seeking compensation which was allowed by the Adjudicating Officer.

9. Keeping in view the facts and circumstances of the case, we are of the considered view that "sufficient cause" for condonation of huge delay of 1314 days i.e. more than 3½ years, is not made out. The appeal suffers from serious laches and is hopelessly time barred. The huge delay in filing the appeal cannot be over looked. Prayer for condonation of delay

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is thus rejected. The application (C.M. No.427 of 2023) for condonation of delay is accordingly dismissed. Consequently, the appeal filed by the applicants/appellants cannot be entertained and the same also stands dismissed being barred by limitation.

10. Copy of this order be sent to the parties/learned counsel for the parties and the learned Authority.

11. File be consigned to the record.

Announced:
November 17, 2023

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)

CL