

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

CM No.748 of 2023 in/and
(1) Appeal No.285 of 2023

Date of Decision: January 28, 2025

Fairway Estates Private Ltd., D-13/60, First Floor,
Sector 8, Rohini, New Delhi-110085.

...Appellant.

Versus

Pioneer Urban Land & Infrastructure Ltd., A-22, Green
Park, 3rd Floor, Aurobindo Marg, New Delhi-110016.

....Respondent

(2) Appeal No. 286 of 2023

Fairway Estates Private Ltd., D-13/60, First Floor,
Sector 8, Rohini, New Delhi-110085.

...Appellant.

Versus

Pioneer Urban Land & Infrastructure Ltd., A-22, Green
Park, 3rd Floor, Aurobindo Marg, New Delhi-110016.

....Respondent

(3) Appeal No. 287 of 2023

Fairway Estates Private Ltd., D-13/60, First Floor,
Sector 8, Rohini, New Delhi-110085.

...Appellant.

Versus

Pioneer Urban Land & Infrastructure Ltd., A-22, Green
Park, 3rd Floor, Aurobindo Marg, New Delhi-110016.

....Respondent

(4) Appeal No. 288 of 2023

Fairway Estates Private Ltd., D-13/60, First Floor,
Sector 8, Rohini, New Delhi-110085.

...Appellant.

Versus

Pioneer Urban Land & Infrastructure Ltd., A-22, Green
Park, 3rd Floor, Aurobindo Marg, New Delhi-110016

....Respondent

(5) Appeal No. 289 of 2023

Fairway Estates Private Ltd., D-13/60, First Floor,
Sector 8, Rohini, New Delhi-110085.

...Appellant.

Versus

Pioneer Urban Land & Infrastructure Ltd., A-22, Green
Park, 3rd Floor, Aurobindo Marg, New Delhi-110016.

...Respondent

(6) Appeal No. 290 of 2023

Fairway Estates Private Ltd., D-13/60, First Floor,
Sector 8, Rohini, New Delhi-110085.

...Appellant.

Versus

Pioneer Urban Land & Infrastructure Ltd., A-22, Green
Park, 3rd Floor, Aurobindo Marg, New Delhi-110016.

...Respondent

(7) Appeal No. 291 of 2023

Parveen Kumar Aggarwal R/o 906-B, The Aralias, DLF
Golf Links, Gurugram, Haryana-122011.

...Appellant.

Versus

Pioneer Urban Land & Infrastructure Ltd., A-22, Green
Park, 3rd Floor, Aurobindo Marg, New Delhi-110016.

...Respondent

(8) Appeal No. 292 of 2023

Anju Aggarwal R/o 906-B, The Aralias, DLF Golf Links,
Gurugram, Haryana-122011.

...Appellant.

Versus

Pioneer Urban Land & Infrastructure Ltd., A-22, Green
Park, 3rd Floor, Aurobindo Marg, New Delhi-110016.

...Respondent

Present : Mr. Jatin Bansal, Advocate for the appellant.
Mr. Anand Chibber, Senior Advocate assisted by
Mr. Rajat Khanna & Mr. Vijay Pratap Singh, Advocates
for the respondent.

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)

ORDER:**RAJAN GUPTA, CHAIRMAN (ORAL):**

This order shall dispose of the above-mentioned eight appeals, as common question of law and facts are involved. However, the facts have been extracted from Appeal No. 285 of 2023.

2. The instant appeal has been filed by appellant-Fairway Estate Pvt. Ltd. along with an application seeking condonation of delay of 454 days in filing the same.

3. It has been stated in the application that delay in filing the appeal occurred due to exceptional circumstances. Eight complaints were preferred by Pioneer Urban Land & Infrastructure Ltd. (respondent herein), which were disposed of by a single order dated 30.09.2021. It was directed by the Authority¹ to provide equivalent number of flats to the appellant to the extent of amount remitted by it after adjusting DPC² as well as interest on delayed payment.

3.1 As per the appellant, the complaints preferred by the builder were in relation to different flats belonging to three separate entities but were disposed of by a common order.

3.2 As per the appellant, the order being ambiguous in nature, the appellant could not understand the interpretation thereof. It is stated that one Mr. Parveen, Director of the appellant-Company, had requested his counsel to file appeal

¹ Haryana Real Estate Regulatory Authority, Gurugram

² Delayed Possession Charges

against the impugned order, however, the counsel advised that the order was favourable to the appellant, thus it would be more appropriate to file execution petition before the competent authority empowered under the Act.³ Accordingly, execution petition bearing No. 5315 of 2022 was filed. The builder filed its reply to the execution petition.

3.3 As per the appellant, it discovered that during execution proceedings, six units were cancelled by the builder. The appellant sought advice of the counsel about the course of action to be adopted. The stand of the appellant is that it was advised to withdraw the execution petition. The relevant paragraph of the application is reproduced hereunder for ready reference:

“16. Finally, from the aforesaid sequence of events getting a sense of the outcome of the impugned order, Mr. Parveen was shocked and realised that the impugned order is against the appellant’s interests. Doubting the legal advice so far received, the Director decided to seek advice from other counsels. Accordingly, an overwhelming view from other lawyers that the impugned order was against the unit holders’ interests, the appellant withdraw the said execution petition and decided to file an appeal. Thereafter, the then counsel informed Mr. Parveen that an appeal is filed and is under scrutiny. Believing the then counsel, the appellant herein had no option but to wait for the appeal to come up for the hearing.”

3.4 The appellant further took a stand that the Director’s wife was suffering from knee problem and had undergone surgery at Max Hospital, Gurugram. This led to further delay in filing the appeal. Relevant paragraph is reproduced hereunder:

³ The Real Estate (Regulation and Development) Act, 2016

“17. It is also important to state herein that since July, 2022, the Director’s wife Mrs. Anju Aggarwal was suffering from knee problem and had undergone knee replacement surgery for which she was admitted at Max Hospital, Gurugram on 04.08.2022 and then again later between 16.09.2022 and 24.09.2022. Thereafter, Mr. Parveen had to take care of his wife for almost 4 months and was unable to follow up with the then counsel regarding the appeal. The copy of relevant hospital document is annexed herewith and marked as Annexure-2.”

3.5 As per the appellant, further delay was occasioned as it discovered that despite persuasion, its counsel had not filed the appeal. Thus, all documents were taken back from the said counsel and handed over to present counsel pursuing the appeal. Despite this, further delay was occurred due to fracture suffered by old mother of the Director of M/s Fairway Estate Pvt. Ltd. Relevant paragraphs of the application are reproduced hereunder:

“18. When the date of hearing was informed even after 3 months, Mr. Parveen/Director visited the office/chamber of the then counsel and upon inquiry and after much persuasion, discovered that the then counsel had not filed the appeal. The Director of the appellant-Company was shocked and immediately requested the then counsel to give back all the documents relating to the HREERA complaints and contacted the present counsel for filing the present appeal.

19. However, during this time, Mr. Parveen/Director’s old mother fractured her hip and was admitted at Max Hospital, Gurugram between 10.03.2023 and 15.03.2023 and the Director had to take care of his mother, causing him stress and making him unable to effectively pursue the present matter. The relevant

hospital documents are annexed herewith and marked as Annexure-3.”

4. The respondent filed reply to the application and vehemently opposed the plea for condonation. It has taken a stand that the appellant has failed to explain each day's delay in filing the appeal. As per the respondent, delay cannot be condoned beyond the period of 60 days prescribed in Section 44(2) of the Act. In paragraph 3(c), it has been stated as under:

“(c) That the appellant while filing the present appeal has failed to comply with the mandate of the above-mentioned Section 44. That the appellant has failed to disclose:-

- i. The exact date on which the appellant applied for the ‘Certified Copy’ of the order dated 30.09.2021 (Annexure-1).*
- ii. The date on which the appellant received the certified copy of the order dated 30.09.2021 (Annexure-1).*
- iii. As to how it has calculated/arrived at the conclusion that a delay of 454 days has occurred in availing the remedy against the aggrieved order.*

Therefore, it is most respectfully submitted that in the absence of the above-stated information, the exact ‘Days of Delay’ cannot be calculated/ascertained by the appellant. Therefore, the present application deserves to be dismissed on this ground alone.

5. This Bench afforded opportunity of hearing to the counsel to address arguments on the question of delay. Both the counsel made submissions in line with the stands taken in their respective pleadings. They also referred to certain precedent in support of their contentions.

6. In our considered view, the grounds given by the appellant seeking condonation of delay do not carry any weight. One of the ground taken by it is that it was confused about the exact interpretation of the order and further on advice of the counsel decided to file the execution petition and later withdrew the same on similar advice. As per it, this resulted in considerable delay. This plea does not find favour with the Bench as the appellant itself being a company would have no dearth for legal advice. Its plea that it was misled by the counsel resulting in delay is unacceptable. Besides, wrong legal advice cannot be taken as a valid ground for condonation of delay. Admittedly, the execution petition was voluntarily withdrawn by the appellant after it remained pending for quite some time. As per the appellant, thereafter a decision was taken to file an appeal before this Tribunal, however, same could not be filed due to lack of proper communication with its counsel. It realised quite late that the appeal had actually not been filed. Exact dates in support of all these submissions have not been given. Admittedly, plaintiff in the instant case was M/s Pioneer Urban Land & Infrastructure Pvt. Ltd. but execution was filed by the respondent therein i.e. Fairway Estate Pvt. Ltd.. As per its stand, this was done on the advice of the counsel.

7. In our considered view, neither wrong advice by the counsel nor inaction on his part, can be a sufficient cause for condoning the delay. Though it is always effort of the Bench to adopt liberal approach in considering a plea for condonation of delay, it cannot be stretched beyond normal parameters. If the grounds are so specious, there would be no option but to reject

the application seeking condonation of delay. In a recent judgment of the Supreme Court in **Pathapati Subba Reddy (Died) by L.Rs. & Ors. V. The Special Deputy Collector (LA)**⁴, various principles governing condonation of delay have been culled out. Paragraph 26 thereof is reproduced hereunder:

26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself.*
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
- (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*
- (v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*

⁴ SLP (Civil) No. 31248 of 2018, decided on 08.04.2024

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay for the reason that the conditions have been imposed, tantamount to disregarding the statutory provision.”

8. On a perusal of the principles laid down in the aforesaid judgment, it is evident that merits of the case are not required to be considered for condoning the delay. Though a liberal, justice-oriented approach has to be adopted, it cannot be used to defeat the substantial law of limitation as contained in Section 3 of the Limitation Act. Every application has to be decided on the basis of parameters laid down for condoning the delay. A right or remedy which has not been exercised for a long time must come to an end or cease to exist after a fixed period of time.

9. It cannot be lost sight of that there is a special provision of Section 44(2) in the legislation providing period of sixty days for filing appeal. In case, cogent reasons are available for condonation of delay, this Bench adopts a liberal approach keeping in mind the facts and circumstances of each case. However, in the instant case, the grounds made out by the appellant do not make sufficient cause for condonation of delay of 454 days in filing the appeal. The long delay has been explained in an incoherent and incomprehensible manner.

Such explanation which makes no head or tail, is unacceptable.

10. Under the circumstances, condoning delay in the instant cases is not warranted. The applications are found to be without any merit and are hereby dismissed. Consequently, the appeals meet the same fate. The same are also dismissed.

11. In view of the above, the decree would stand as it is and would be executable as per law.

12. Files be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(joined through VC)

January 28, 2025
mk