

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: April 09, 2025

**(1) CM No. 583 of 2024 in/and
Appeal No. 272 of 2024**

Emaar India Limited (formerly known as Emaar MGF Land Limited) through its authorized representative Mr. Manish Mahajan, aged 35 years son of Anil Kumar, 306-308, 3rd Floor, Square One, C-2, District Centre, Saket, New Delhi-110017

Appellant.

Versus

Brig. Puneet Ahuja, resident of 26/4, Old Rajendra Nagar, New Delhi-110060

Respondent.

Argued by: Mr. Kunal Dawar, Advocate along with
Ms. Tanika Goyal, Mr. Rohit and
Ms. Ankita Chaudhary, Advocates for the appellant.

Mr. Hemant Saini, Advocate along with
Ms. Neha Singh, Advocate for the respondent.

CORAM:

**Justice Rajan Gupta
Rakesh Manocha**

**Chairman
Member (Technical)**
(Joined through VC)

ORDER:

RAJAN GUPTA, CHAIRMAN

The present appeal is directed against order dated 24.11.2022, passed by the Authority¹ whereby the appellant-promoter has been directed to pay interest @10.35% per annum for every month of delay on the amount paid by the complainant-allottee from due date of possession i.e. 26.08.2013 till 20.01.2021 i.e. expiry of 2 months from the date

¹ Haryana Real Estate Regulatory Authority, Gurugram

of offer of possession i.e. 20.11.2020. The appeal is accompanied by an application seeking condonation of delay of 451 days in filing thereof.

2. The impugned judgment is dated 24.11.2022. As per the appellant-company, after the order the matter was put up before the management for requisite approvals. Thereafter, counsel was approached and documents were handed over to him for filing the appeal. Thereafter, the present appeal was finalised and filed before this Tribunal. In this process, the delay occurred.

3. In reply to the application seeking condonation of delay, the respondent pleaded that delay in filing the appeal is intentional and deliberate and no sufficient cause has been shown. The reason given in the application appears to be an afterthought. The law of limitation has to be applied with all its rigour when the statute so prescribes.

4. We have heard learned counsel for the parties and given careful thought to their respective contentions.

5. It is trite law that in case the grounds are so specious that sufficient cause for condoning the delay is not made out, such application has to be rejected. In a recent judgment of the Supreme Court in **Pathapati Subba Reddy (Died) by L.Rs. & Ors. V. The Special Deputy Collector (LA)**², various principles governing condonation of delay have been culled out. Paragraph 26 thereof is reproduced hereunder:

² SLP (Civil) No. 31248 of 2018, decided on 08.04.2024

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;*
- (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.”

6. On a perusal of the principles laid down in the aforesaid judgment, it is evident that 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 in the facts and circumstances of each case. 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.

7. In the instant case, the grounds given by the appellant-company for condoning the delay in filing appeal are not at all convincing. The appellant-company has merely given circuitous plea in support of its application for condonation of delay. The appellant is a real estate company having sufficient means at its command to act promptly in the eventuality it wishes to prefer an appeal before this forum. Section 44(2) of the Real Estate (Regulation and Development) Act, 2016, period of 60 days has been prescribed for preferring an appeal. However, in the instant case, appeal has been filed after inordinate delay and no cogent reasons are forthcoming for condonation thereof. The appellant has failed to prove that it was reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in the present case.

8. The allottee has suffered long enough as the order was passed way back on 24.11.2022. The allottee had to fight a protracted battle with the promoter who is in dominant position. Though due date of possession was 26.08.2013, the

same was offered on 20.11.2020. The allottee has made the entire payment.

9. The application is, thus, without any merit and is dismissed.

10. Consequently, the appeal is also dismissed.

11. The instant order is being passed in the facts and circumstances of this case and would not act as a precedent.

12. The pre-deposit amount along with interest accrued thereon be remitted to the Authority, who shall retain the same till culmination of execution proceedings. The amount shall be released to the parties as per their entitlement. The Bench hope and trust that execution proceedings shall be conducted expeditiously.

13. Copy of the order be communicated to the parties/counsel for the parties and the Authority.

14. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(Joined through VC)

April 09,2025
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