BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.275 of 2024

Date of Decision: July11,2025

Emaar India Limited (formerly known as Emaar MGF Land Limited), 306-308, 3rd Floor, Square One, C-2, District Centre, Saket New Delhi-110017

Appellant.

Versus

1. Mr. Suresh Rawat

2. Mrs. Balvinder Kaur Rawat,

Both residents of EPF-11-002, Emerald Floor Premiere, Sector 65, Gurugram

Respondent

CORAM:

Justice Rajan Gupta **Chairman**
Rakesh Manocha **Member(Technical)**
(through VC)

Present: Ms. Tanika Goyal, Advocate along with
Mr. Rohit and Ms. Ankita Chaudhary, Advocates
For the appellant.

RAJAN GUPTA, CHAIRMAN:

Challenge in the instant appeal is to the order dated 31.05.2022, passed by the Authority[1], whereby the respondent-promoter was directed to pay interest at the prescribed rate i.e. 9.40% per annum for every month of delay on the amount paid by the complainants from 14.01.2013 till 17.03.2020 i.e. expiry of 2 months from the date of offer of possession. The appeal is accompanied by an application seeking condonation of delay of 683 days in filing thereof.

2. In the application for condonation of delay, the appellant pleaded that after adjudication of the matter by the Authority, the matter was put up before the management for requisite approvals. Thereafter, the counsel was contacted for

[1] Haryana Real Estate Regulatory Authority, Gurugram

filing the appeal. During the interregnum, the delay occurred which is neither deliberate nor intentional.

3. It is trite law that application seeking condonation of delay must provide sufficient, specific and credible reasons explaining the delay. Vague and unsubstantiated reasons are generally insufficient. If the grounds are so specious, there is no option but to reject the application seeking condonation of such huge delay. In a recent judgment of the Hon'ble 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:

> *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:*
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> *(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*

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

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 relied 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."

4. 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.

5. 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 specious pleas 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. Under 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.

6. The application is, thus, without any merit and is dismissed. Consequently, the appeal is also dismissed.

7. The allottee has suffered long enough as the order was passed way back on 31.05.2022. The pre-deposit is made to secure the interest of the allottee who has otherwise to fight a protracted battle with the promoter who is in dominant position. The amount of pre-deposit in a case of this nature thus needs to be remitted to the respondent-allottee. Relevant paragraphs of the judgment of the Supreme Court in **M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP**[3] is reproduced hereunder for ready reference:

> "*122. It may straightaway be noticed that Section 43(5) of the Act envisages the filing of an appeal before the appellate tribunal against the order of an authority or the adjudicating officer by any person aggrieved and where the*

[3] 2022(1) RCR (Civil) 367

promoter intends to appeal against an order of authority or adjudicating officer against imposition of penalty, the promoter has to deposit at least 30 per cent of the penalty amount or such higher amount as may be directed by the appellate tribunal. Where the appeal is against any other order which involves the return of the amount to the allottee, the promoter is under obligation to deposit with the appellate tribunal the total amount to be paid to the allottee, which includes interest and compensation imposed on him, or with both, as the case may be, before the appeal is to be instituted."

123. The plea advanced by the learned counsel for the appellants is that substantive right of appeal against an order of authority/adjudicating officer cannot remain dependent on fulfilment of pre– deposit which is otherwise onerous on the builders alone and only the builders/promoters who are in appeal are required to make the pre–deposit to get the appeal entertained by the Appellate Tribunal is discriminatory amongst the stakeholders as defined under the provisions of the Act.

xxxx xxxx

125. The submission in the first blush appears to be attractive but is not sustainable in law for the reason that a perusal of scheme of the Act makes it clear that the limited rights and duties are provided on the shoulders of the allottees under Section 19 of the Act at a given time, several onerous duties and obligations have been imposed on the promoters i.e. registration, duties of promoters, obligations of promoters, adherence to sanctioned plans, insurance of real estate, payment of penalty, interest and compensation, etc. under Chapters III and VIII of the Act 2016. This classification between consumers and promoters is based upon the

intelligible differentia between the rights, duties and obligations cast upon the allottees/home buyers and the promoters and is in furtherance of the object and purpose of the Act to protect the interest of the consumers vis–a–viz., the promoters in the real estate sector. The promoters and allottees are distinctly identifiable, separate class of persons having been differently and separately dealt with under the various provisions of the Act."

8. As the appeal has been dismissed, it will be in the interest of justice to remit the amount of pre-deposit to the Authority below for disbursement to the respondent-allottee along with interest accrued thereon, subject to tax liability as per law.

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

10. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(Joined through VC)

July 11,2025
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