

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.392 of 2024

Date of Decision: August 01,2025

Ashiana Realtech Private Limited now known as Movish
Realtech Pvt. Ltd., KD-162, Pitampura, Delhi-34

Appellant.

Versus

Sandeep Yadav S/o Sh. Om Parkash Yadav, R/o H. No.
332, Ward No.6, Near Saini Truck Body, Vikas Nagar,
Kalka Road, Rewari, Haryana

Respondent

CORAM:

**Justice Rajan Gupta
Rakesh Manocha**

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

Present: Mr. Kamaljeet Dahiya, Advocate for the appellant.
Mr. Irshaan Singh Kakar, Advocate with
Mr. Kunal Thapa, Advocate for the respondent.

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RAJAN GUPTA, CHAIRMAN:

Challenge in the instant appeal is to the order dated 27.04.2022, passed by the Authority¹, whereby the respondent-allottee was granted possession of the unit along with delayed possession charges from the deemed date of offer of possession till actual offer of possession. The appeal is accompanied by an application seeking condonation of delay of 671 days in filing thereof. The application is accompanied by an affidavit of authorised representative of the appellant.

2. Referring to the application seeking condonation of delay, counsel for the appellant has contended that it had filed

¹ Haryana Real Estate Regulatory Authority, Panchkula

review application against the impugned order which was disposed of on 11.04.2023. The order in the review application was uploaded on 18.04.2023. As per it, delayed has occurred while awaiting the outcome of the said review application. The delay is neither intentional nor deliberate.

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:

- (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;*

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

- (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.”*

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 reasons given do not make any head and tail. Mere filing of review application and awaiting outcome thereof would not enure any benefit to the appellant. 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.

6. It is not a case of ignorance of an illiterate person which has resulted into delay in filing the appeal. Since the appellant is a company having all resources, financial and material, legal advice as well as the means to approach the Courts in time, yet the appeal has been filed with huge delay. Therefore *bona fide* of the appellant qua any delay which has occurred in filing the appeal is simply ruled out. Otherwise also, perusal of the material on record does not show any sufficient cause for condoning the delay of 671 days.

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

8. The allottee has suffered long enough as the order was passed way back on 27.04.2022. 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 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

³ 2022(1) RCR (Civil) 367

discriminatory amongst the stakeholders as defined under the provisions of the Act.

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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.”

9. 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 this order be sent to the parties/their counsel 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)

August 01,2025
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