

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.229 of 2023

Date of Decision: August 02,2025

TDI Infrastructure Ltd., Mahindra Tower, 2A, Second Floor,
Bikaji Cama Place, New Delhi-110066

Appellant.

Versus

1. Smt. Sushma W/o Sh. Krishan Kumar Gupta
2. Sh. Krishan Kumar Gupta S/o Sh. Bhagwan Dass,
Residents of A-2/55-56, Sector 11, Rohini, New Delhi-
110085

Respondents

CORAM:

**Justice Rajan Gupta
Rakesh Manocha**

**Chairman
Member (Technical)**

Present: Mr. Shubnit Hans, Advocate with
Mr. Anjanpreet Singh, Advocate for the appellant.

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RAJAN GUPTA, CHAIRMAN:

Challenge in the instant appeal is to the order dated 23.02.2022, passed by the Authority¹, whereby the appellant-promoter was directed to pay upfront payment of Rs.17,71,086/- to the respondents within 90 days on account of delay caused in offering possession. Further, direction was also issued that if more than thirty days are taken in offering possession to the respondents, further interest @ 9.30% shall be paid by the appellant-promoter. The appeal is accompanied by applications seeking condonation of delay of 373 days in filing and 172 days in re-filing thereof. The applications are accompanied by an affidavit of authorised representative of the appellant.

¹ Haryana Real Estate Regulatory Authority, Panchkula

2. Referring to the application seeking condonation of delay, counsel for the appellant has contended that he never came to know about the judgment passed by the Authority as no intimation was sent to him. The appellant-company came to know about the judgment incidentally when it was searching for judgment in some other case. It is thereafter that authorised representative contacted higher officials of the company and got in touch with the counsel in May, 2022. Besides, due to holidays in the month of June, 2022 and non-availability of Advocates, some further delay occurred. As the company was going through financial crunches, it did not have adequate administrative and legal staff to help in filing the appeal. Some delay was also occasioned due to Covid-19 pandemic. Further, on account of holidays in the week of December, 2022 and first week of January, 2023, Advocates were not available. Thereafter, the appellant-company changed its address and relevant file could not be located. Thereafter, there being change in counsel, the appeal could not be finalised and filed before the Appellate Tribunal.

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:

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.”

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 light of 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. 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 373 days.

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

8. The allottees have suffered long enough as the order was passed way back on 23.02.2022. The pre-deposit is made to secure the interest of the allottees who have 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 respondents-allottees. 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

³ 2022(1) RCR (Civil) 367

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.

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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 respondents-allottees 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)

August 02,2025
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