

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

**CM No. 255 of 2024 in/and
Appeal No.128 of 2024
Date of Decision: May 21, 2025**

Brig. Surender Singh Chhikara and Nisha Chhikara, Flat No. 503, Pharohs Tower, The Omex Nile Society, Uppal South End Estate, Sector 49, Gurugram

Appellants.

Versus

M/s Vatika Limited, A-002, INXT City Centre, Ground Floor, Block-A, Sector 83, Vatika India Next, Gurugram, Haryana-122012

Respondent

Present : Mr. Parvez Chugh, Advocate for the appellants
Mr. Yashvir Singh Balhara, Advocate for the respondent.

CORAM:

**Justice Rajan Gupta
Rakesh Manocha**

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

ORDER:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 10.11.2021 passed by the Authority¹, whereby the respondent has been directed to give possession to the appellants after

¹ Haryana Real Estate Regulatory Authority, Gurugram

receipt of occupation certificate and to pay amount of assured return from August, 2018 till date of handing over of possession. The appeal is accompanied by an application seeking condonation of delay of 662 days filing thereof.

2. The impugned judgment is dated 10.11.2021. As per the appellants, after coming to know of the appeal preferred by the respondent before this Tribunal in October, 2023, they contacted their counsel to represent them in the said appeal. The Advocate, who was engaged, apprised them that the appeal on their behalf against the same order would also be maintainable. They, thus, met him (counsel) in February, 2024 and filed the present appeal. The delay occurred for bonafide reasons which were beyond their control.

3. We have heard learned counsel for the parties and given careful thought to the facts of the case.

4. 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.

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

- (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.”*

5. 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, yet it cannot be used to

defeat the substantial law of limitation as laid down in the Limitation Act. Every application has to be decided in light of 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. If the grounds are so specious, there is no option but to reject the application seeking condonation of delay.

6. In the instant case, the grounds given by the appellant for condoning the delay in filing appeal are not at all convincing. The appellants also preferred the execution petition before the Authority. The appeal appears to have been filed by the allottees as an after-thought after the promoter preferred appeal against the impugned order. The appellants have merely taken circuitous pleas in support of their application for condonation of delay. When they were so vigilant in filing the execution petition, they could also have filed this appeal within limitation. 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 delay of 662 days and no cogent reasons are forthcoming for condonation thereof. The appellants have failed to prove that they were reasonably diligent in pursuing the matter and this vital test for condoning the delay is not satisfied in the present case.

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

8. Consequently, the appeal is also dismissed.

9. Pending application(s), if any, stand disposed of.

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10. Appeal No.705 of 2023 preferred by the promoter against the same impugned order after a delay of 549 days has also been dismissed by order of even date.

11. Copy of the order be communicated to the parties/their counsel and the Authority.

12. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(joined through VC)

May 21, 2025
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