

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

**CM No. 148 of 2024 in/and
Appeal No.705 of 2023**

Date of Decision: May 21, 2025

Vatika Limited, Unit A002, INXT City Centre, Ground Floor,
Block A, Sector 83, Gurugram, Haryana

Appellant.

Versus

(1) Brig. Surender Singh Chhikara, Flat No. 503, Pharohs Tower,
Omaxe Neil Society, Uppal South End Estate, Sector
49,Gurugram

(2) Nisha Chhikara, Flat No. 503, Pharohs Tower, Omaxe Neil
Society, Uppal South End Estate, Sector 49,Gurugram

Respondents

Argued by: Mr. Yashvir Singh Balhara, Advocate for the appellant.
Mr. Parvez Chugh, Advocate for the respondents.

CORAM:

**Justice Rajan Gupta
Rakesh Manocha**

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

O R D E R:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 10.11.2021, passed by the Authority¹ whereby the appellant-promoter has been directed to give possession to the respondent-allottees after receipt of occupation certificate. The appellant was also directed to pay the amount of assured return as agreed upon with the respondent-allottees from August 2018 till the date of handing over possession. The

¹ Haryana Real Estate Regulatory Authority, Gurugram

appeal is accompanied by an application seeking condonation of delay of 549 days in filing thereof.

2. The impugned judgment is dated 10.11.2021. As per the appellant-company, the appeal could not be filed earlier due to the hurdles beyond the control of the appellant. After collecting complete record and internal discussions in the month of May, 2023, record was provided to the counsel for filing appeal. Further, demand draft in compliance of proviso to Section 43(5) of the Act² got misplaced. Further delay occurred in drafting and finalising the appeal. Thereafter, the present appeal was finalised and filed before this Tribunal.

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

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)**³, 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;

² The Real Estate (Regulation and Development) Act, 2016

³ SLP (Civil) No. 31248 of 2018, decided on 08.04.2024

- (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, 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. 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.

6. In the instant case, the grounds given by the appellant-company for condoning the delay in filing the appeal are not at all convincing. The appellant-company has merely given circuitous 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 Act, period of 60 days has been prescribed for preferring an appeal. However, in the instant case, appeal has been filed after inordinate delay (549 days) 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.

7. The allottees have suffered long enough as the order was passed way back on 10.11.2021. The allottees had to fight a protracted battle with the promoter who is in dominant position. Vide impugned order, the appellant has been directed to give possession to the respondent-allottees after receipt of occupation certificate.

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

9. Consequently, the appeal is also dismissed.
10. Pending application(s), if any, stand disposed of.
11. Appeal No. 128 of 2024 preferred by the allottees against the same impugned order after a delay of 662 days has also been dismissed by order of even date.
12. Copy of the order be communicated to the parties/their counsel and the Authority.
13. 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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