

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

CM No.279 of 2024 in/and

Appeal No. 116 of 2024

Date of decision: May 15, 2026

1. Amit Tyagi
2. Komal Tyagi
R/o H. No. 27, Bharola, New Sabzi Mandi, Azadpur, Delhi-
110033

Appellants

Versus

M/s Athena Infrastructure Limited, Office No. 202, 2nd Floor, A-
18, Rama House Middle Circle, Connaught Place, New Delhi-
110001

Respondent

CORAM:

Justice Rajan Gupta
Dr. Virender Parshad

Chairman
Member (Judicial)

Present: Mr. Munish Kumar Garg & Ms. Bhawna Thakur,
Advocates for the appellants.

Mr. Ajiteshwar Singh, Advocate
for the respondent.

ORDER:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against orders dated 19.12.2019 and 02.01.2024, passed by the Authority¹. Vide order dated 19.12.2019, application filed by the respondent-promoter for rectification of order 17.01.2019 was allowed to the extent that the interest paid by the respondent-promoter by way of subvention scheme shall be considered to have been adjusted in the delay possession charges and no further

¹ Haryana Real Estate Regulatory Authority, Gurugram

interest was required to be paid by the promoter to the allottees till offer of possession of allotted unit. Vide order dated 02.01.2024, application filed by the respondent-allottees for rectification of order dated 19.12.2019 was dismissed. The appeal is accompanied with an application seeking condonation of delay of 1322 days in filing thereof.

2. The factual matrix of the case is that the allottees preferred a complaint before the Authority seeking delay possession charges. Vide order dated 17.01.2019, the Authority directed the respondent-promoter to pay delay possession interest w.e.f. 27.05.2017 till date of order. Vide order dated 19.12.2019, the application filed by the respondent-promoter for rectification of order dated 17.01.2019 was allowed in the manner indicated in the opening paragraph of this judgment. The application filed by the allottees for rectification of order dated 19.12.2019 was dismissed by the Authority vide order dated 02.01.2024. The aforesaid orders have been impugned in this appeal. The appeal is accompanied with an application seeking condonation of delay of 1322 days in filing thereof.

3. In the application for condonation of delay, it is averred that copy of application filed by the respondent-promoter for rectification of order dated 17.01.2019 was never received by the allottees. The aforesaid application was allowed by the Authority vide order dated 19.12.2019 thereby changing substantive part of order dated 17.01.2019. In the execution filed by the allottees, they came to know about the order dated 19.12.2019. Thereafter, the allottees preferred an application on 10.03.2023 for rectification of order dated 19.12.2019,

which was dismissed on 02.01.2024. Thereafter, the present appeal was finalised and filed before this Tribunal. The delay is not intentional and deliberate.

4. In reply, counsel for the respondent submitted that mere filing of rectification application under the guise of review cannot be a ground to condone the delay.

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

6. 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. In a recent judgment of the 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.”*

7. On a perusal of the principles laid down in the aforesaid judgment, it is evident that though a liberal and 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.

8. In the instant case, the grounds given by the appellant-allottee for condoning the delay in filing appeal are not at all convincing. The allottees have merely given circuitous pleas in support of its application for condonation of delay. The allottees preferred rectification application after a lapse of almost four years, though the limitation of two years is prescribed in the Act for moving such an application. 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 appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in the present case.

9. It is pertinent to mention here that the allottees are in possession since 14.06.2023 and conveyance deed has been executed in their favour on 23.06.2023. They are pursuing the appeal only to get some more monetary benefits.

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

11. Consequently, the appeal is also dismissed.

12. Copy of this order be sent to the parties/their counsel and the Authority.

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13. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

May 15, 2026
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