

Court No. - 17

Case :- RERA APPEAL No. - 40 of 2022

Appellant :- Arun Kumar @ Pingal

Respondent :- Ajpa Parishad Sahkari Awas Samiti Ltd.
Ghaziabad Thru. Secy./ Authorized Representative

Counsel for Appellant :- Rajesh Chadha

Counsel for Respondent :- Amit Yadav, Abhineet Jaiswal

Hon'ble Alok Mathur, J.

1. Heard Sri Rajesh Chaddha, learned counsel for the appellant as well as Sri Amit Yadav, learned counsel for respondent.

2. By means of present appeal filed under Section 58 of the Real Estate (Regulation of Development), Act, 2016 (*hereinafter referred to as "the Act, 2016"*), the appellant has assailed the order dated 31.08.2021, whereby the Tribunal has allowed the application for condonation of delay filed by the respondent and rejected the objections filed by the appellant. The said appeal has been admitted on the following substantial questions of law :-

"(i) Whether the Appellate Authority was justified in excluding the period of limitation in terms of order passed by the Apex Court in the case of suo motu extension of limitation, where the period of filing the appeal in terms of limitation provided under the Act stood expired in the month of October, 2019, whereas the order of the Apex Court only came into the picture on 20.03.2020?"

"(ii) Whether the Appellate Authority was justified in condoning the delay merely because a liberal approach is to be taken while considering the matter for condonation of delay for the facts and circumstances and the ground as indicated in the application is to be seen?"

3. It has been submitted by learned counsel for the appellant that the appellant had booked a residential flat of the respondent on 26.06.2012, situated at Ekdant Dronagiri Phase-II, being Flat No. A-704, Sector - 11, Vasundhara, Ghaziabad and was also allotted the said flat having super area of 1264 sq. ft. As per terms of allotment agreement possession was to be delivered in September, 2015, but the same was not delivered within the time promised. It is in the aforesaid circumstances that the appellant filed a complaint case on 25.08.2018, before the Real

Estate Regulatory Authority (*hereinafter referred to as "the RERA"*) and prayed for direction for delivery of possession after obtaining completion certificate from competent authority and pay interest at the rate of 18% for the delay in handing over possession.

4. The RERA by means of order dated 10.04.2019, allowed the complaint passing certain directions against the respondent. The respondent being aggrieved by order dated 10.04.2019 filed an appeal before the RERA. The said appeal was contested by the appellant and the appeal was dismissed for want of prosecution on 30.10.2019. Application for recall was filed which was also dismissed on 06.01.2020. In the aforesaid circumstances, the appellant moved an application under Section 39 for rejection of order dated 10.04.2019, which application was allowed by means of order dated 14.08.2019. The respondent being aggrieved by order dated 14.08.2019, filed an appeal under Section 44 of the Act, 2016 on 10.03.2022 after delay of 779 days. The said appeal was accompanied with an application for condonation of delay containing reasons for delay in filing the appeal. The Tribunal by means of impugned order has condoned the delay and the said order has been impugned in the present second appeal preferred by the appellant.

5. The Tribunal allowed the application for condonation of delay mainly on the ground that soon after passing of order by the RERA on 14.08.2019, COVID-19 pandemic spread within the country and same was taken cognizance of by the Hon'ble Supreme Court, which by means of general direction dated 10.01.2022 passed in Misc. Application No. 665 of 2021, in Suomotu Writ Petition (C) No. 3 of 2020, excluding the period of limitation during the Corona pandemic. Hon'ble Apex Court has clearly stated in its order dated 10.01.2022, that in the cases where limitation has expired during the period 15.03.2020 till 28.02.2022, shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings. Considering the aforesaid judgment of Apex Court the Tribunal excluded the period as per judgment of the Apex Court in the case of Suomotu Writ Petition (C) No. 3 of 2020.

6. It is further noticed that though judgment of the RERA was passed on 14.08.2019, same was communicated by uploading the same on RERA Portal on 22.11.2019. As per the provisions of Section 44 of the Act, 2016, limitation of sixty days period would start from the date order passed by the RERA is uploaded on its Portal and consequently limitation for filing the said appeal was available to the respondent till 21.01.2020.

7. The period of limitation excluded by the Apex Court was from 15.03.2020 till 28.02.2022. Accordingly, giving benefit of order of the Apex Court period from 15.03.2020 till 28.02.2022 stood excluded and after giving benefit of judgment of the Apex Court there was delay of only 12 days. The said delay has been sought to be justified in paragraph 4 of the delay condonation application stating that on coming to know about the impugned order dated 14.08.2019, the respondent filed appeal before the Tribunal, but due to COVID-19 pandemic relevant documents/demand draft could not be procured. It is orally submitted by learned counsel for the respondent that demand draft was prepared on 09.03.2022 and appeal was filed on 10.03.2022.

8. It is in the aforesaid facts that the Tribunal after discussing the aforesaid facts relied upon the judgments of the Apex Court rendered in the case of **B. Madhuri Goud Vs. B. Damodar Reddy, 2012 (12) SCC 693, Collector, Land Acquisition, Anant Nag and Another, 1987(2)SCC 107, Special Tehsildar Vs. K.V. Ayisumma, AIR 1996 SC 2750** and other judgments wherein it has been held that *"there should be a liberal, pragmatic, justice oriented, non-pendantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice. Substantial Justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis."*

9. It is submitted by learned counsel for the petitioner that the Tribunal has arbitrarily condoned the delay. He further submits that period of limitation in the present case has expired prior to on set of COVID-19 pandemic and also before the benefit granted by the Apex Court for excluding time period with regard to the limitation as provided for in Suomotu Writ Petition (C) No. 3 of 2020. He submits that in case period of limitation has expired prior to 15.03.2020, then benefit of judgment of the Apex Court would not be available to the respondent. It is further submitted by learned counsel for the petitioner that no sufficient reasons have been disclosed by the respondent in their application for condonation of delay and has consequently prayed that the impugned order passed by the Tribunal deserves to be set aside

10. Learned counsel for the respondent on the other hand has submitted that as per Clause IV of the order of the Apex Court dated 10.01.2022, it has clearly been provided that the period from 15.03.2020 till 28.02.2022, shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of

the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings. Accordingly the Tribunal has rightly considered the judgment of the Apex Court and there is no error in condoning the delay. It is further submitted that sufficient reasons were stated by the respondent in para 4 of the delay condonation application stating that due to on set of COVID-19 pandemic the relevant documents and bank draft cannot be procured by him for filing the appeal.

11. Heard learned counsel for the parties and perused the record.

12. It is noticed that benefit of judgment of the Apex Court in the case of Suomotu Writ Petition (C) No. 3 of 2020 has been granted to the respondent while condoning the delay. Bare perusal of Clause 4 of the said Judgment indicates that period from 15.03.2020 till 28.02.2022 stood excluded in computing the period of limitation. The said inclusion has accordingly been considered by the Tribunal while condoning the delay in filing the appeal. The Tribunal had condoned the delay at cost of Rs.12,000/-, out of which Rs.6000/- was deposited in the Tribunal's fund and rest Rs.6000/- was to be paid to the petitioner. After giving benefit of the order of the Apex Court, as there was delay of 65 days in filing the said appeal.

13. It is stated that order of the Authority was uploaded on the Portal of RERA on 22.11.2019. It is stated that COVID-19 pandemic has set in and lock-down was imposed only subsequently and it is due to the said pandemic the respondent could not obtain relevant documents and demand draft required for filing the appeal. It is submitted that period of limitation provided by the Apex Court expired on 28.02.2022 and appeal was filed immediately thereafter on 10.03.2022.

14. This Court after considering the entire facts is of the considered view that the Tribunal has rightly condoned the delay and even in its judgment, the Apex Court in this regard has clearly held that sufficient cause should receive liberal interpretation and should not defeat substantial justice.

15. Accordingly, this Court does not find any error in the order passed by the Tribunal. In the light of above the substantial questions of law are answered accordingly. This Court has also looked into the fact that while condoning the delay cost of Rs.12,000/- has been imposed meet the ends of justice.

16. In the light of above, the appeal is **dismissed**. Order of Tribunal dated 31.08.2021 is affirmed. The substantial questions of law are answered accordingly.

Order Date :- 7.12.2023

A. Verma

(Alok Mathur, J.)