

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.585 OF 2020

Lucina Land Developers Limited
Having its office at
Indiabulls Finance Centre, Tower-I,
Plot No.612-613, Elphinstone Mill Compound
Mumbai – 400 013.

....Appellant

V/S

Navin Kumar
9/501, Motiaz Royal City,
Ambala Chandigarh Road,
Zirakpur, District Mohali,
Punjab – 140 603.

....Respondent

Mr. Nirman Sharma a/w Mr. Abir P, Ms. Protyusha Thanawala i/b
M/s. Wadia Ghandy & Co. *for the Appellant.*

Mr. Satish Dedhia *for Respondent appeared on 29 November 2023 and filed
written submissions on 6 December 2023.*

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 22 MARCH 2024.

PRONOUNCED ON : 27 MARCH 2024.

JUDGMENT:

1 The Appellant has filed this Appeal challenging the judgment and order dated 19th August 2019 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai (**Appellate Tribunal**) in Miscellaneous Application No.17 of 2019 by which the Appellate Tribunal has condoned the delay of 395 days in filing Appeal by the Respondent on payment of costs of Rs.5,000/-.

2 The facts of the case, in brief, are that Respondent-flat purchaser entered into the registered Agreement for sale on 18 October 2011 with the Appellant for purchase of Apartment bearing No.203 in the project Indiabulls Greens-II situated at Panvel, District, Raigad. As per the Agreement, possession was to be handed over within 60 months with grace period of 9 months. Respondent filed Complaint before the Maharashtra Real Estate Regulatory Authority, (**Regulatory Authority**) complaining non-delivery of possession within the agreed period and claimed interest under provisions of section 18 of the Maharashtra Real Estate (Regulation and Development) Act, 2016 (**RERA**). The Regulatory Authority proceeded to dispose of the complaint by order dated 13 December 2017 holding that the Respondent failed to establish that the Appellant did not complete the project or was unable to deliver possession of the Apartment in accordance with the Agreement. The Regulatory Authority therefore directed the Appellant to handover possession of the Apartment with occupancy certificate to Respondent before 31 December 2018, failing which the Appellant was directed to pay interest as per Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration of Real Estate Agents, Rates of Interest and Disclosures on Website) Rules, 2017 with effect from 1 January 2019 till the actual date of possession on the entire amount paid by the Respondent.

3 Respondent filed Appeal before the Appellate Tribunal on 11 January 2019 challenging the order dated 13 December 2017 and filed Miscellaneous

Application No.17 of 2019 seeking condonation delay in filing the appeal. The Appellate Tribunal has proceeded to allow the application for condonation of delay by order dated 19 August 2019, which has given rise to the present Appeal.

4. By order dated 25 August 2023, this Court issued notice to the Respondent as to why the Appeal should not be admitted by framing the suggested question of law. By order dated 11 March 2024, this Court admitted the Appeal on the substantial question of law suggested in the order dated 25 August 2023, which is as under:

“Whether the Appellate Tribunal was justified in condoning the delay of 395 days in filing the appeal by the original complainant (Respondent herein)?

5 Mr. Nirman Sharma, the learned counsel appearing for the Appellant would submit that the Appellate Tribunal has committed a manifest error in condoning inordinate delay of 395 days in filing the Appeal. That the Appellate Tribunal failed to appreciate that Respondent continuously communicated with Appellant during the time gap of 395 days, during which time, he sent dozens of emails threatening action against the Appellant. According to Mr. Sharma, making of such continuous correspondence by Respondent clearly proved that he was not prevented by any disability or cause from filing the Appeal within the period of limitation. Mr. Sharma would take me through various correspondences made by the Respondent to demonstrate as to how Respondent was continuously pursuing his alleged

rights and repeatedly threatening the Appellant of action against RERA. That Respondent repeatedly desired inspection of the flat meaning thereby that he was not prevented by any alleged ailment from visiting Mumbai for filing of Appeal in time. That the email dated 27 July 2018 shows that Respondent had in fact visited Mumbai in July 2018 completely belying the claim of cardiac ailment.

6 Mr. Sharma would further submit that Respondent took a false plea of heart disease, which was relatable to the year 2016 and no document was produced on record about any treatment being availed during the time gap of 395 days. That the Appellate Tribunal erred in relying on medical reports pertaining to the years 2016 and 2017 for condoning the inordinate delay which occurred mainly in the year 2018 till early 2019. That lack of *bona fides* on the part of Respondent were writ large, who was busy in continuously pursuing his demands about inspection of the flat and later took a false defence of heart ailment. That the conduct, behavior and attitude of Respondent was such that the Appellate Court ought to have rejected his application for condonation of delay. In support of his contentions Mr. Sharma would rely upon the three following judgments.

- i) **Majji Sannemma alias Sanyasirao vs. Reddy Sridevi and others**, 2021 SCC OnLine SC 1260;
- ii) **Basawaraj and Another vs. Special Land Acquisition Officer**, (2013) 14 Supreme Court Cases 81;
- iii) **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.**, (2013) 12 Supreme Court Cases 649.

7 Mr. Satish Dedhia, learned counsel has filed Vakalatnama on behalf of the Respondent on 21 January 2021. When he appeared before this Court on 29 November 2023, he sought time to file written submissions. Accordingly, Mr. Dedhia has filed written submissions on behalf of the Respondent on 6 December 2023. He has, however, failed to appear in the Appeal thereafter, possibly on account of filing of written submissions. Accordingly, the written submissions filed on behalf of Respondent are being treated as submissions canvassed by Mr. Dedhia.

8 In his written submissions, Mr. Dedhia has contended that no substantial question of law is involved in the present Appeal as the impugned order merely condones delay of 395 days in filing the Appeal. That condonation of delay is the discretionary power exercised by the Appellate Court in which this Court cannot interfere in exercise of jurisdiction under Section 100 of the Code of Civil Procedure (**Code**). That the Appellant was given sufficient opportunity of hearing by the Appellate Tribunal before deciding the application for condonation of delay. That the provisions of procedural law like the Code are not applicable to proceedings before the Regulatory Authority or Appellate Tribunal and therefore technicalities cannot be permitted to overtake the substantive rights sought to be agitated by a flat purchaser.

9 It is further submitted in the written submissions that the Appellate Tribunal was first constituted by the State Government by Government Resolution dated 8 May 2018 and that is started functioning from 4 January

2019 and that therefore the Respondent could not have effectively filed First Appeal under section 44 of the RERA till 4 January 2019. Even otherwise the Bench of two members required under section 43(3) of RERA started functioning only after June 2019. It is further submitted on behalf of Respondent that sufficient cause was shown for condonation of delay. That Respondent suffers from serious cardiac ailments for prolonged time, which is evidenced in various certificates produced before the Appellate Tribunal. That Respondent was not allowed to travel, which is also one of the reasons why he could not file the Appeal in time. That Respondent also faced financial distress on account of health issues suffered by him. That the Respondent has excellent case on merits, and the same cannot be thrown out on the ground of limitation without considering the merits involved in the Appeal. In support of his contentions Respondent has relied upon the following judgments:

- i) *Sheth Infrawordl Pvt. Ltd. Vs. Mahesh Kelkar & Ors.*, (Second Appeal No.565 of 2022, decided by this court by order dated 24 August 2022);
- ii) *Brihan Mumbai Electric Supply and Transport through its General Manager vs. BEST Jagrut Kamgar Sanghatana through Parivartan & Ors.* (Writ Petition No.8045 of 2023, decided by this Court by Judgment dated 25 September 2023);
- iii) *Manoharan vs. Sivarajan & Ors.*, (Civil Appeal No.10581 of 2013, decided by the Apex Court by Judgment dated 25 November 2013);
- iv) *Improvement Trust, Ludhiana vs. Ujagar Singh & Ors.*, (Civil Appeal No.2395 of 2008, decided by the Apex Court by Judgment dated 9 June 2010).

10 Rival contentions of parties now fall for my consideration.

11 The short issue that requires consideration in the present Appeal is about correctness of the order passed by the Appellate Tribunal in condoning delay of 395 days in filing the Appeal. The Regulatory Authority's order was passed on 13 December 2017 and the Respondent filed his Appeal before the Appellate Tribunal on 11 January 2019.

12 Before proceeding further, it must be observed at the outset that the numeral figure '395' for computation of delay appears to have been considered from contents of paragraph 15 of the application filed by the Respondent. In my view, the delay is slightly lesser in view of the fact that the order was passed by the Regulatory Authority on 13 December 2017 and period available for filing of Appeal under section 44 (2) of the RERA is 60 days. Furthermore, the period spent in procuring certified copy from 24 December 2018 to 10 January 2019 is also required to be excluded. In my view, therefore, the total delay caused in filing the Appeal is less than 395 days.

13 In his application seeking condonation of delay, Respondent offered following justifications:

"4. After hearing before the Ld. Chairman and particularly the manner in which the hearing was conducted caused a huge shock to the Appellant. After having knowledge of contents of the Impugned Order, Appellant again suffered hypertension and related ailments. The Appellant went into major depressive disorder for a long period. It took a long time to recover and achieve present health status. In between Appellant tried several times to take up the matter but even attempts thinking caused stress resulted into an adverse impact on the health of

the Appellant. Appellant was clearly told by consulting cardiologist that slightest stress would definitely cause sudden major cardiac arrest. The Appellant had no choice but to survive first, recover instead of losing his life and leave his family to suffer several hardships for their rest of life. Due to these uncertainties, the Appellant was compelled not to take up the matter for the time being.

5. As a further setback, the Appellant had to take leaves as well as regular income of salary was stopped during this period. Appellant and his family had to face tremendous financial stress due to the burden of payment of instalments of housing loan as well as payment of leave and license charges.

6. As such it was not possible for the Appellant to come to Mumbai and inquire about the further steps to be taken to challenge the Impugned Order. Appellant was strictly warned not to travel alone and to avoid stress at all cost as there were serious chances of sudden stroke.

7. Appellant made numerous attempts to make the telephonic inquiry with MahaRERA to know about the further remedy. Most of the time the lines were engaged and despite continuous efforts, it was difficult to get a connection. After efforts of several days, Appellant could only learn that he can approach the Appellate Authority which is constituted and has started functioning in recent past i.e. around April 2018. He thereafter learnt that the Presiding Officer was on leave.

8. Despite all efforts, the Appellant could not find contacts with other similarly aggrieved flat purchasers who can guide him. Lastly, in second last week of December 2018 Appellant came in contact with one of the flat purchasers and after inquiring through a chain of persons, Appellant came in contact with the present advocate.

9. After understanding the impact of impugned Order and understanding remedies available, the Appellant filed the said Appeal.

10. Initially, it took some time due to delay in service of papers sent by the Appellant. Present advocate agreed to communicate over emails or phone and prepare present Appeal. Also Appellant was not able to

trace all papers available with him at the time of hearing before Ld. Chairman

11. As per discussion with the Appellant, his advocate prepared draft Appeal and finalized the same. It took considerable time to finalise the Appeal as Appellant is not conversant with legal language, formats and procedures.

12. Also, meantime Respondent's representative shown hope of chances of the amicable settlement but after waiting for a few days it was clear that Respondent was just killing time so that Appellant is deprived of his lawful claim.

13. Appellant was unaware of procedure that certified a copy of Impugned Order is to be attached and it can be applied online only. Appellant had applied on 24.12.2018 for a certified copy of the Impugned Order which was issued on 10.01.2019.

14. Thus there is no intentional delay on part of the Appellant in filing the present appeal. The delay for not filing the Appeal has been for the reasons beyond the control of the Appellant and the delay is unintentional. Aforesaid events prevented the Appellant from filing the Appeal in time. The Appellant respectfully submits that the aforesaid reasons are sufficient and reasonable to explain and justify the said delay.

15. It is therefore just, necessary and in the interest of the justice that the delay of approx 395 days, be condoned by this Hon'ble Tribunal on such terms as this Hon'ble Tribunal may deem fit. The Impugned Order is on apparently improper and needs interference. Respondent has contravened the law and purposely delayed the project for its own benefit. Therefore, no prejudice will be caused to the Respondent if the said delay is condoned by this Hon'ble Tribunal."

14 Thus broadly, the reasons pleaded by the Appellant seeking condonation of delay of 395 days are - (i) suffering from hypertension and

related ailments after acquiring knowledge of Regulatory Authority's order, (ii) advice by the Doctor not to take any stress on account of his cardiac ailments, (iii) financial stress due to burden of payment of installments as well as stoppage of salary, (iv) inability to travel to Mumbai to avoid stress, (v) repeated inquiries made by him in the Registry of MahaRERA to know about further remedy and information given to him about constitution of Appellate Tribunal in April 2018 and leave of the Presiding Officer, (vi) contact with his advocate through information given by another flat purchaser in same project.

15 By pleading above broad reasons, applicant sought condonation of delay of 395 days in filing the Appeal. The Appellate Tribunal has proceeded to condone the delay by recording following findings:

“15. The ailment suffered by applicant is cardiac ailment. Medical report dated 20th March 2019 indicates that applicant was suffering from heart disease and was under medical treatment. This would show that from 2016 to 2019 applicant could not recover and had heart problems. So far as mail communications are concerned, though the applicant many times expressed his desire to visit Mumbai to inspect the flat there is nothing on record to show that he visited Mumbai at any time during the intervening period. The other grounds for condonation of delay are supported by affidavit of the applicant.”

16 Condonation of delay is a matter of discretion to be exercised by a Court. So long as exercise of discretion is sound, the Appellate Court shall not substitute its discretion with the discretion exercised by the Court

condoning the delay. Both the sides have relied upon judgments in support of their respective claims.

17 In *Esha Bhattacharjee* (supra) the Apex Court has summarized the principles relating to condonation of delay in paragraph 21 of its judgment as under:

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic 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.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal, the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of *bona fides* imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance

of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation, or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

18 In *Basawaraj* (supra) the Apex Court has explained the concept of “sufficient cause” and has held in paragraph 15 as under:

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of *bona fide* on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

19 In *Majji Sannemma alisa Sanyasirao* (supra) the Apex Court has reiterated the principles in *Basawaraj* (supra) and held in paragraph 20 as under.

“20. In the case of *Basawaraj* (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judicially based on facts and circumstances of each case. It is further observed that the expression “sufficient

cause” cannot be liberally interpreted if negligence, inaction, or lack of bona fide is attributed to the party. It is further observed that even though limitation may harshly affect the rights of a party but it has to be applied with all its rigor when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fide or there is inaction, then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions, then that would amount to violation of statutory principles and showing utter disregard to legislature.”

20 In **Manoharan** (supra) the Apex Court was held in paragraphs 8 and 16 are as under:

“8. Section 149 of the Civil Procedure Code prescribes a discretionary power which empowers the Court to allow a party to make up the deficiency of court fee payable on plaint, appeals, applications, review of judgment etc. This Section also empowers the Court to retrospectively validate insufficiency of stamp duties etc. It is also a usual practice that the court provides an opportunity to the party to pay court fees within a stipulated time on failure of which the Court dismisses the appeal. In the present case, the appellant filed an application for extension of time for remitting the balance court fee which was rejected by the learner sub Judge. It is the claim of the appellant that he was unable to pay the requisite amount of court fee due to financial difficulties. It is the usual practice of the court to use this discretion in favour of the litigating parties unless there are manifest grounds of mala fide. The Court, while extending the time for our exempting from the payment of court fee, must ensure bona fide of such discretionary power. Concealment of material fact while filing application for extension of date for payment of court fee can be a ground for dismissal. However, in the present case, no opportunity was given by the learner sub Judge for payment of court fee by the appellant which he was unable to pay due to financial constraints. Hence, the decision of the learned a sub Judge is wrong and is liable to be set aside and accordingly set aside.”

“16 The learned senior counsel Mr. K.P. Kylasantha Pillay, appearing on behalf of the respondents alleged that the appeal of the appellant before this court is based on wrong and frivolous grounds. The material produced by them in support of their contention is totally based on the merit of the case. Since, we are not deciding the merit of the case, the material produced by the respondents in support of their contention becomes irrelevant. We have condoned the delay in paying the court fee by the appellant while answering point nos.1 and 2. We see no reason in

rejecting the application filed by the appellant for condonation of delay in filing the appeal before the High Court as well.”

21 The present judgment need not be burdened by discussing every caselaw cited by the learned counsel appearing for rival parties. What is important to be considered is whether the discretion exercised by the Appellate Tribunal in condoning the delay of 395 days is sound or otherwise.

22 Mr. Sharma has sought to suggest that Respondent did not suffer from any ailments and was fit enough to make a repeated correspondence with Appellant during the time gap of 395 days. On the contrary, what is pleaded by the Respondent in his application for condonation of delay is the fact that he was unable to bear stress on account of the heart ailment suffered by him. Thus, it was not necessary for the Respondent to prove before the Appellate Tribunal that he actually undertook any treatment for heart ailment during the time gap of 395 days. What he pleaded before the Appellate Tribunal was that delay in possession, coupled with the rejection of Complaint by Regulatory Authority caused stress to him and he was advised not to take any further stress, which would have resulted into another cardiac arrest.

23 What must be borne in mind is the fact that the Respondent prosecuted Complaint before Regulatory Authority in person. He pleaded in his application seeking condonation of delay that he used to make repeated enquiries with MahaRERA about further remedy against the order passed by the Regulatory Authority and it was very difficult to get connected with the

concerned person in MahaRERA to guide him about the further remedy. Respondent further pleaded that he was informed on the telephone by the office of MahaRERA that the Appellate Tribunal was constituted in April 2018, but the Presiding Officer was on leave. Therefore though Mr. Sharma has attempted to contend that the ground of non-constitution of Appellate Tribunal was not pleaded by the Respondent in his application, I find some suggestions to that effect in the application. The applicant further pleaded that he then got in touch with some other flat purchasers in the same project and accordingly established contact with the advocate who could present Appeal on his behalf before the Appellate Tribunal.

24 Considering the averments made by the Appellant in application seeking condonation of delay, it cannot be stated that there is complete absence of any cause in the application. Respondent, in his capacity as a flat purchaser first made an attempt to prosecute his complaint personally considering the ease of access provided to parties-in-person before Regulatory Authority. He was however was not aware of the exact remedy to be exercised in respect of the order of the Regulatory Authority and was required to search for a lawyer. It must also be borne in mind that Respondent is a resident of Zirakpur, District, Mohali, Punjab. There is no denial to the fact that he has suffered cardiac ailments during the year 2016 and 2017. His pleading that the Doctor advised him not to take any further stress on account of order of the Regulatory Authority cannot entirely disbelieved.

25 In my view, therefore, there is sound exercise of discretion by the Appellate Tribunal in condoning the delay. So long as the exercise of discretion by the Appellate Tribunal is not arbitrary, interference by this Court in exercise of discretion is clearly unwarranted. The Apex court, in *Sheo Raj Singh vs. Union of India* in Civil Appeal No.5867 of 2015 decided on 9 October 2023 has held in paragraphs 31 and 32 as under:

“31. The order under challenge in this appeal is dated 21st December 2011. It was rendered at a point of time when the decisions in **Mst. Katiji** (supra), **Ramegowda** (supra), **Chandra Mani** (supra), **K.V. Ayisumma** (supra) and **Lipok AO** (supra) were holding the field. It is not that the said decisions do not hold the field now, having been overruled by any subsequent decision. Although there have been some decisions in the recent past [**State of M.P. v. Bherulal** (2020) 10 SCC 654 is one such decision apart from **University of Delhi** (supra)] which have not accepted governmental lethargy, tardiness and indolence in presenting appeals within time as sufficient cause for condonation of delay, yet, the exercise of discretion by the High Court has to be tested on the anvil of the liberal and justice oriented approach expounded in the aforesaid decisions which have been referred to above. We find that the High Court in the present case assigned the following reasons in support of its order:

- a. The law of limitation was founded on public policy, and that some lapse on the part of a litigant, by itself, would not be sufficient to deny condonation of delay as the same could cause miscarriage of justice.
- b. The expression sufficient cause is elastic enough for courts to do substantial justice. Further, when substantial justice and technical considerations are pitted against one another, the former would prevail.
- c. It is upon the courts to consider the sufficiency of cause shown for the delay, and the length of delay is not always decisive while exercising discretion in such matters if the delay is properly explained. Further, the merits of a claim were also to be considered when deciding such applications for condonation of delay.

d. Further, a distinction should be drawn between inordinate unexplained delay and explained delay, where in the present case, the first respondent had sufficiently explained the delay on account of negligence on part of the government functionaries and the government counsel on record before the Reference Court.

e. The officer responsible for the negligence would be liable to suffer and not public interest through the State. The High Court felt inclined to take a pragmatic view since the negligence therein did not border on callousness.

32. Given these reasons, we do not consider discretion to have been exercised by the High Court in an arbitrary manner. The order under challenge had to be a clearly wrong order so as to be liable for interference, which it is not.”

26 True it is that the Respondent repeatedly pursued various issues with Appellant after passing of the order by the Regulatory Authority. The email correspondence started from 24 February 2018 and went on till 4 December 2018. Most of the emails were in respect of permission to visit the flat, since the Respondent believed that the same was not habitable. Mr. Sharma has sought to highlight threats given by the Respondent to escalate the issues to RERA. I have gone through the various emails sent by the Respondent to the Appellant. It is not unnatural for a flat purchaser, who had book the flat in 2011 and was yet to receive possession, to feel anxious especially when he was not permitted to inspect the flat. While this Court does not think it necessary to hold Appellant responsible for denying inspection of the flat to Respondent, addressing of emails seeking inspection of flat is something which is not unnatural. Also, mere addressing of emails and ability to take steps for filing of Appeal are two entirely different aspects. Though visit by

the Respondent to Mumbai in July 2018 is highlighted, the same appears to be in connection with inspection of the flat after possible issuance of work completion certificate. In my view, therefore mere act of Respondent in sending various emails to the Appellant during the delay period cannot be a reason to disbelieve his assertion that he was prevented from filing Appeal on account of mental stress in view of cardiac ailments suffered by him.

27 Considering the overall conspectus of the case, I am of the view that the Appellate Tribunal was justified in condoning the delay in filing the Appeal by Respondent. The question of law framed by this Court is answered accordingly.

28 Consequently, I do not find any merit in the Second Appeal. The Second Appeal is accordingly dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)

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signed by
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KATKAM
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