

**THE UTTAR PRADESH REAL ESTATE APPELLATE
TRIBUNAL AT LUCKNOW.**

1.

Appeal No. D410/2023

Ratan Buildtech Pvt.Ltd.

.....

Appellant.

Versus

Raginee Singh

.....

Respondent.

With
2.

Appeal No. D443/2023

Ratan Buildtech Pvt.Ltd.

.....

Appellant.

Versus

Raghavendra Singh

.....

Respondent.

With
3.

Appeal No. D482/2023

Ratan Buildtech Pvt.Ltd.

.....

Appellant.

Versus

Nishant Dang

.....

Respondent.

With
4.

Appeal No. D411/2023

Ratan Buildtech Pvt.Ltd.

.....

Appellant.

Versus

Ved Prakash Singh

.....

Respondent.

With
5.

Appeal No. D438/2023

Ratan Buildtech Pvt.Ltd.

.....

Appellant.

Versus

Anil Kumar

.....

Respondent.

With

6.

Appeal No. D439/2023

Ratan Buildtech Pvt.Ltd.

Appellant.

Versus

Swati Maheshwari

Respondents.

With

7.

Appeal No. D441/2023

Ratan Buildtech Pvt.Ltd.

Appellant.

Versus

Satvinder Singh & Shilpi Malhotra

Respondent.

With

8.

Appeal No. D412/2023

Ratan Buildtech Pvt.Ltd.

Appellant.

Versus

Kaushik Kumar

Respondent.

With

9.

Appeal No. D420/2023

Ratan Buildtech Pvt.Ltd.

Appellant.

Versus

Akhil Saxena

Respondent.

With

10.

Appeal No. D382/2023

Ratan Buildtech Pvt.Ltd.

Appellant.

Versus

Shaktidhar Sahani

Respondent.

With

11.

Appeal No. D417/2023

Ratan Buildtech Pvt.Ltd.

Appellant.

Versus

Neeraj Kataria

Respondent.

AND

12.

Appeal No. D442/2023

Ratan Buildtech Pvt.Ltd.

.....

Appellant.

Versus

Vishal Mani

.....

Respondent.

Hon’ble Mr. Sanjai Khare, Judicial Member.
Hon’ble Mr. Rameshwar Singh, Administrative Member.

1. Since the cause of action for condonation of delay in filing the appeals is similar in all the above mentioned 12 defective appeals as well as the applicant is also the same, therefore, they were heard together and the application for condonation of delay in all the appeals is being disposed of by a composite order. For the sake of convenience we take Appeal No. D410 of 2023 (Ratan Buildtech Pvt.Ltd. Vs. Raginee Singh) as lead case.

Following table has been prepared in order to show the number of days delay in each appeal :

S No.	Appeal No.	Complaint No.	Date of Impugned order	Number of days delay in filing appeal
1.	D 410/2023	ADJ/NCR144/07/97634/2022	11.11.2022	93 days
2.	D 443/2023	ADJ/NCR144/09/100595/2022	10.02.2023	64 days
3.	D 482/2023	ADJ/NCR144/11/102560/2022	15.02.2023	38 days
4.	D 411/2023	ADJ/NCR144/11/102262/2022	15.02.2023	44 days
5.	D 438/2023	ADJ/NCR144/10/101190/2022	10.02.2023	12 days
6.	D439/2023	ADJ/NCR144/10/101453/2022	15.02.2023	36 days
7.	D 441/2023	ADJ/NCR144/11/102522/2022	15.02.2023	60 days
8.	D 412/2023	ADJ/NCR144/11/102640/2022	15.02.2023	11 days
9.	D420/2023	ADJ/NCR144/09/100736/2022	10.02.2023	36 days
10.	D382/2023	ADJ/NCR144/08/98078/2022	11.11.2022	126 days
11.	D417/2023	ADJ/NCR144/07/97142/2022	11.11.2022	124 days
12.	D442/2023	ADJ/NCR144/09/100359/2022	10.02.2023	62 days

2. Heard Ms.Mahima Pahwa, learned counsel for applicants and Dr.Azhar Ikram & Sri Manish Singh, learned counsel for respondents on the application for condonation of delay.

3. Submission of learned counsel for applicant is that the present appeal is being filed against the order dated 11.11.2022, passed by the learned Adjudicating Officer, UP RERA, Gautam Budh Nagar, U.P. in Complaint Case No.ADJ/NCR144/07/97634/2022. Impugned order dated 11.11.2022 was uploaded by the learned U.P. Real Estate Regulatory Authority on its official website on 23.11.2022. Certified copy was applied on 17.04.2023 which could be prepared by 18.04.2023 and was received on 20.04.2023.
- 3.1 The applicant has submitted that as the learned adjudicating officer had been pleased to grant interest at the rate of MCLR+1% delay interest as compensation; which was beyond the jurisdiction vested with the learned adjudicating officer, the same was challenged by the applicant before the Hon'ble High Court by way of petition being Petition under Article 227 No. 272 of 2023; wherein it was held that it would be appropriate that the dispute be adjudicated by the appellate tribunal and the said petition was dismissed vide order dated 23.01.2023.
- 3.2. After the dismissal of the aforesaid petition, the legal department of the applicant advised to seek legal opinion for the action to be taken against the said order, and decide whether to file SLP before the Hon'ble Supreme court or file appeal.
- 3.3 The legal department of the appeal sought opinion from counsel and was opined that it would be in interest of the applicant to file the appeal before the Hon'ble Appellate Tribunal which was the statutory remedy available to the applicant.
- 3.4 The applicant decided to act in furtherance of the legal advise to file appeal before this Hon'ble Tribunal and instructed their counsel to prepare the appeal for which the counsel gave the list of required documents for proper preparation of the appeal.
- 3.5 As per procedure, the documents filed on Rera portal are locked once the case is disposed of; hence the applicant was approached by the counsel to provide the pleadings filed before the learned authority below.
- 3.6 The applicant contacted its previous counsel who had conducted the case before the learned authority for procuring the said documents. It took some time for the counsel to provide the documents.

- 3.7 The applicant thereafter handed over the documents to the counsel and the counsel prepared the appeal and send it to the applicant for verification. The applicant thereafter suggested certain changes in the appeal which were to be finalized by the counsel and the appeal was to be filed thereafter.
- 3.8 In the interregnum, there was a medical emergency in the family of the counsel and the appeal could not be finalized in absence of the counsel. Now that the office of the counsel for the applicant has resumed functioning, the appeal is being filed without any further delay.
- 3.9 The applicant has submitted that the Hon'ble Supreme Court in catena of cases has been pleased to hold that a lenient view ought to be taken in cases having sound legal grounds. Relevant extracts of few of such legal propositions are reiterated below for convenient perusal of this Hon'ble Tribunal:-

A. That Hon'ble Supreme Court in the case titled **Collector, Land Acquisition, Anant Nag and another reported in (1987) 2 SCC 107** has laid down that the Hon'ble Supreme Court has expressed the necessity of liberal approach in condonation of delay under Section 5 of the Limitation Act.

"It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

And such a liberal approach is adopted on principle as it is realized that:

1. *Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
2. *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
3. *"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*

4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides, a litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

From the above citation it is very clear that the Hon'ble Apex Court has ruled that ordinarily a litigant does not benefit by lodging an appeal late and if the Hon'ble Court does not condone delay, it can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated.

B. That Hon'ble Supreme Court of India in the case **B Madhuri Goud Vs B. Damodar Reddy**, reported in (2012)12 SCC 693 has been pleased to hold that there should be a liberal, pragmatic, justice oriented non pedantic approach while dealing with an application for condonation of delay, for the court are not supposed to legalize Injustice but are obliged to remove Injustice. Substantial Justice being paramount and pivotal the technical considerations should be given undue and uncalled for emphasis.

- 3.10. In view of above, the delay in filing of appeal, if any is neither deliberate nor intentional but due to reasons as explained above.
4. Dr.Azhar Ikram, learned counsel for respondent at the very outset, denies all and contentions, averments and submissions of the Applicant contained in the Application for condonation of delay as if the same is specifically traversed and denied and except such of those contentions and submissions which have been expressly hereinafter admitted.
- 4.1 Learned counsel for respondent submits that the Applicant has approached this Hon'ble Tribunal with unclean hands and the present Application for

condonation of delay has been preferred in gross misrepresentation and is liable to be dismissed.

- 4.2 The present Appeal is hopelessly barred by limitation as the same has been filed at a belated stage after lapse of more than 117 days of prescribed time limit of 60 days from the date of impugned order dated 11.11.2022 (date of order uploading on RERA Portal 23.11.2022) passed by Ld. Adjudicating Officer, Regional Office Real Estate Regulatory Authority U.P. (hereinafter referred as “Ld. Authority”) that contravene the provision of Section 44 (2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as “Act”). The appeal before the Hon’ble Tribunal is preferred with no satisfactory explanation for delay and without sufficient cause for not approaching the Tribunal in time. Thus, the application for condonation of delay in filing the appeal lacks the merit and is liable to be dismissed with heavy cost.
- 4.3 The contents of paragraphs 4 of Applicant’s application are admitted to the extent that the applicant has filed the case Matters Under Article 227 No. - 272 of 2023, before the Hon’ble High Court and Hon’ble High Court was pleased to dismiss the same vide order dated 23.01.2023 rest denied. It is further submitted that said petition has not related to present matter hence has no relevancy.
- 4.4 Learned counsel for respondent submits that the applicant did not approach to this Hon’ble Tribunal within time and delay has not been properly explained day to day hence the application for condonation of delay deserves to be dismissed with heavy costs. It is further submitted that no date is mentioned in the present application that when legal department received the order and when 3 they took decision regarding filling of present appeal against that order and forwarded to counsel for preparation of present appeal.
- 4.5 He further submits that the Applicant was having sufficient time to prepare and file the present appeal before Hon’ble Tribunal within statutory and prescribed time of 60 days but due to their laxity and negligent approach, they did not bother and adhere to file the instant appeal in prescribed time of 60 days for filing of appeal under Section 44 (2) of the Act. It is evident and obvious that, Applicant has been highly careless and negligent in filing the present appeal in prescribed period. The Hon’ble Supreme Court in **Sagufa**

Ahmed & Ors. Vs Upper Assam Plywood Products Pvt. Ltd. & Ors. (Civil Appeal Nos 3007-3008 of 2020) has stated that “It is needless to point out that the law of limitation finds its root in two latin maxims, one of which is Vigilantibus Non Dormientibus Jura Subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.”

- 4.6 It is further submitted that the Applicant could not provide “sufficient cause” which prevented him to approach the court within limitation. In the present case it is clear that the Applicant’s approach in filing the appeal has been highly careless and negligent and he has not acted diligently or remained inactive, there cannot be a justified ground to condone the delay.
- 4.7 The present application for condonation of delay of 117 days, after expiry of prescribed period of 60 days, in filing the Appeal is nothing but abuse of process of law because there has been no sufficient cause shown by the Applicant that prevented him to approach the court on time and hence condoning the delay will tantamount to showing utter disregard to the legislative intent of the RERA Act, 2016 and thus the application for 5 condonation of delay deserves to be rejected with cost in the interest of justice.
5. Ms.Mahima Pahwa, learned counsel for applicant submitted that the Applicant has declared that the appeal is filed beyond the limitation prescribed and the delay in filing of Appeal is neither deliberate nor intentional but due to reasons as explained in application for condonation of delay and the delay is liable to be condoned for facts and circumstances stated in the accompanying application.
- 5.1 Learned counsel for applicant further submits that the Applicant has not caused any deliberate delay in filing the appeal but the delay is purely procedural and the sufficient cause for delay has been duly explained by the applicant in the application for condonation of delay, submitted before this Hon'ble Tribunal. The Respondent has made false, vexatious and baseless allegations against the applicant in its reply and is merely grasping at straws while the Applicant has admitted that there is definitely bona fide sufficient cause for the delay of 94 days in filing the appeal.

- 5.2 As per the Section 44(2) of the 2016, Act, the statutory period of limitation prescribed for the preferring an appeal against the decision or order or direction of the Authority or the Adjudicating Officer is 60 days. For ease of perusal and kind consideration of the Hon'ble Court, the provisions contained under Section 44(2) of the 2016, Act, is reproduced hereunder:

"Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the Adjudicating Officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed: Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filing it within that period."

- 5.3 In addition to above, it is humbly submitted that the delay in filing appeal is beyond the limitation prescribed in sub-section (2) of section 44 of The Real Estate (Regulation and Development) Act, 2016 but neither deliberate nor intention but due to the reasons stated in filed application and the provisions contained in sec 44(2) of RERA ACT, clearly indicate that the Tribunal may condone the delay for not filing the appeal within prescribed time if the reasons are sufficiently demonstrated. Suffice to submit that that the delay in filing appeal by the Applicant should be condoned otherwise it can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated.
- 5.4. Learned counsel for applicant has also reiterated the averments made in the application for condonation of delay. It is submitted that the Applicant has admitted that the delay has occurred in filing appeal but the delay is purely procedural. It is pertinent to mention here that the impugned order dated 11.11.2022 was uploaded on official site of RERA on 23.11.2022 thus the limitation was being ended on 22.01.2023 while the order passed against the applicant has been challenged by the applicant the before Hon'ble High Court which was later dismissed vide order dated 23.01.2023 thereafter the Applicant sought legal advised to take action against the order and the delay in filing has been explained by the applicant in accompanying application for condonation of delay as well as the submissions made in this rejoinder

and if the Hon'ble Tribunal does not condone delay, a meritorious matter would failed to decided and cause of justice being defeated. The applicant does not stand to gain by deliberately filing a meritorious appeal belatedly and therefore the allegation that appeal has been filed deliberately late is misconceived and wrong.

5.5 In view of the facts and circumstances stated herein above, it is most respectfully prayed before this Hon'ble Tribunal that it may kindly be pleased to allow the said application for condonation of delay thereby condoning the delay and admit the appeal in the interest of justice.

5.6 Ms. Mahima Pahwa, learned counsel for the applicant, during the course of hearing has submitted that the order of the Adjudicating Officer is without jurisdiction and it would amount to nullity as the matter goes to the root of the cause and the finding of a Court or Tribunal becomes irrelevant and unenforceable/in-executable once the forum is found to have no jurisdiction. The issue of lack of jurisdiction is purely a question of law and can be raised at any stage. The Hon'ble Supreme Court in Appeal (Civil) No. 9493 of 1995 (Sri Singam Chetty Attendrooloo & Ors. Vs. The State of Tamil Nadu & Ors.) while examining the point of limitation was pleased to hold that an order can be challenged after expiry of the period provided therefore only if the order was without jurisdiction.

5.7 The learned counsel for the applicant further submitted that recently the Hon'ble Supreme Court in **Civil Appeal No. 5867 of 2015 (Sheo Raj Singh (deceased) through LRs & Ors. Vs. Union of India)** vide its order dated 09.10.2023, while examining the issue of condonation of delay, vide para 31 & 32 pleased to observe that 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. Relevant paras 31 and 32 of the said judgment are quoted as follows:

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. Bherulal¹⁴ 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.*

6. On the point of jurisdiction Ms Mahima Pahwa, learned counsel for the applicant submitted that the order of the Adjudicating Officer is without jurisdiction and it would amount to nullity as the matter goes to the root of the cause and the finding of a Court or Tribunal becomes irrelevant and unenforceable/in-executable once the forum is found to have no jurisdiction. The issue of lack of jurisdiction is purely a question of law and can be raised at any stage. The Hon'ble Supreme Court in Appeal (Civil) No. 9493 of 1995 (Sri Singam Chetty Attendrooloo & Ors. Vs. The State of Tamil Nadu & Ors.) while examining the point of limitation was pleased to hold that an order can be challenged after expiry of the period provided therefore only if the order was without jurisdiction.
7. Submission of learned counsel for the respondent is that the applicant has to explain the delay of every day, which he has failed to explain and acted in highly unprofessional and negligent manner, hence the application for condonation of delay in filing the appeal deserves to be rejected.
- 7.1 Learned counsel for the respondent further submitted that the delay in filing the appeal is without "sufficient cause". The delay is deliberate just to harass the respondent and the same is not liable to be condoned. He placed reliance on the case of ***Basawaraj and Ors. Vs. The Spl. Land Acquisition Officer: (2013) 14 SCC 81, State of Punjab and others Vs. Gurdeo Singh (1991) 4 SCC 1, Prahlad Raut Vs. All India Institute of Medical Sciences (2021) 14 SCC 472 and Pathapati Subha Reddy (died) by L.Rs. and others Vs. The Special Deputy Collector (LA), 2024 INSC 286 SC***
8. In order to examine the issue raised by the learned counsel for the applicant, we first examine the issue of lack of jurisdiction and its effect.
- 8.1 Jurisdiction can be lacking mainly in three ways:-
 - 8.1.1 **Subject Matter Jurisdiction.** When the court has no jurisdiction to hear & dispose of the subject matter of case brought before it.

8.1.2 **Pecuniary Jurisdiction.** When the court has no jurisdiction regarding the valuation of the matter.

8.1.3 **Territorial Jurisdiction.** When the court has no authority over the geographical area, where the dispute occurred.

When the court lacks jurisdiction on any of the above ground, any judgement/order, passed in violation of jurisdiction is typically considered invalid or void or without jurisdiction.

8.2 Jurisdiction is pre-condition for the lawful exercise of judicial power. There is a basic/fundamental difference between the ‘Lack of Jurisdiction/Without Jurisdiction’ and ‘Exceeding Jurisdiction’.

8.2.1 When the Court/Authority/Officer decide a dispute relating to matter over which it has no jurisdiction, such order/judgement is called without jurisdiction.

8.2.2 When the Court/Authority/Officer has jurisdiction to decide a dispute by exercising its power but exceeds its jurisdiction, such order/judgement is not without jurisdiction but passed exceeding its jurisdiction.

8.2.3 A judgement/order without jurisdiction is fully *void ab-initio* while judgement/order passed exceeding jurisdiction is void due to overreach rather than the complete absence of jurisdiction. It is partially void to the extent of overreach.

9. The ***Hon’ble Supreme Court in Smt. Shrisht Dhawan Vs. M/s Shaw Brothers (1992) 1 SCC 534*** has held as under:

“ No statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad.”

9.1 In the light of Judgment rendered by Hon'ble Supreme Court in Smt. Shrisht Dhawan Vs. M/s Shaw Brothers, it is settled law that no statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated.

9.2 The Hon'ble Supreme Court in ***Dr. Jagmittar Sain Bhagat Vs. Dir. Health Services, Haryana & Ors (2013) 10 SCC 136*** held that-

Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or Tribunal becomes irrelevant and unenforceable/ inexecutable once the forum is found to have no jurisdiction. Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. The Court cannot derive jurisdiction apart from the Statute. In such eventuality the doctrine of waiver also does not apply. (Vide: United Commercial Bank Ltd. v. Their Workmen, AIR 1951 SC 230; Smt. Nai Bahu v. Lal Ramnarayan & Ors., AIR 1978 SC 22; Natraj Studios (P) Ltd. v. Navrang Studios & Anr., AIR 1981 SC 537; and Kondiba Dagadu Kadam v. Savitribai Sopan Gujar & Ors., AIR 1999 SC 2213).

In Sushil Kumar Mehta v. Gobind Ram Bohra (Dead) Thr. Lrs., (1990) 1 SCC 193, this Court, after placing reliance on large number of its earlier judgments particularly in Premier Automobiles Ltd. v. K.S. Wadke & Ors., (1976) 1 SCC 496; Kiran Singh v. Chaman Paswan, AIR 1954 SC 340; and Chandrika Misir & Anr. v. Bhaiyalal, AIR 1973 SC 2391 held, that a decree without jurisdiction is a nullity. It is a coram non judice; when a special statute gives a right and also provides for a forum for adjudication of rights, remedy has to be

sought only under the provisions of that Act and the Common Law Court has no jurisdiction; where an Act creates an obligation and enforces the performance in specified manner, performance cannot be forced in any other manner.

9. Law does not permit any court/tribunal/authority/forum to usurp jurisdiction on any ground whatsoever, in case, such a authority does not have jurisdiction on the subject matter. For the reason that it is not an objection as to the place of suing;, it is an objection going to the nullity of the order on the ground of want of jurisdiction. Thus, for assumption of jurisdiction by a court or a tribunal, existence of jurisdictional fact is a condition precedent.

9.3 Thus an order which is passed by any authority usurping the jurisdiction not assigned to him specially by the statutes, it would amount to nullity as the matter goes to the roots of the cause The finding of a Court or Tribunal becomes irrelevant and unenforceable/ inexecutable once the forum is found to have no jurisdiction. Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative intention. The Court cannot derive jurisdiction apart from the Statute. In such eventuality the doctrine of waiver also does not apply.

9.4 It is also settled proposition of law that a pure question of law not dependent upon any question of fact can be allowed to be raised for the first time before the appellate court. The Hon'ble Supreme Court vide its judgment in ***Chittoori Subbanna Vs. Kudappa Subbanna 1965 AIR (SC) 1325*** has held that a pure question of law not dependent upon any question of Fact can be allowed to be raised for the first time before the appellant Court and the Apex Court in ***State of Punjab and Ors. Vs. Dr. R.N. Bhatnagar and others (1999) 2 SCC 330*** clearly established that pure question of law in the absence of any disputed question of fact can be raised in supreme court and in ***T.C. Appanda Mudaliar Vs. State of Madras (1976) 4 SCC 821*** has held that new pleas raising pure question of law relating to interpretation of Statutes can be raised and in ***Saroj Rani Vs Sudarshan Kumar Chadha (1984) 4 SCC 90*** has held that pure

question of law can be allowed to be raised even for the first time in Supreme Court and in *State of Uttar Pradesh and others Vs. Dr. Anupam Gupta and others (1993) Supp (1) SCC 594* has clearly held that pure question of law arising from the records, though never raised nor argued before can be raised and in *Lakshmi Shanker Mehrotra and others Vs. S.M. Sengupta and others (1995) supp (4) SCC 40* has held that pure question of Law to fortify the original grounds for relief can be permitted to be raised as a new plea.

10. The law of limitation is founded on public policy. It is enshrined in the legal maxim "*interest reipublicae us sit finis litium*" i.e. it is for the general welfare that a period of limitation be put to litigation. The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely. Even public policy requires that there should be an end to the litigation otherwise it would be a dichotomy if the litigation is made immortal vis-à-vis the litigating parties i.e. human beings, who are mortals.
- 10.1 The courts have always treated the statutes of limitation and prescription as statutes of peace and repose. They envisage that a right not exercised or the remedy not availed for a long time ceases to exist. This is one way of putting to an end to a litigation by barring the remedy rather than the right with the passage of time.
- 10.2 The RERA Act provides that every appeal shall be filed within a period of sixty days and also confer the discretionary power to the Tribunal that the Appellate Tribunal may entertain any appeal after expiry of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.
- 10.3 It has been observed by the Hon'ble Supreme Court in Appeal (Civil) No. 9493 of 1995 (**Sri Singam Chetty Attendrooloo & Ors. Vs. The State of Tamil Nadu & Ors.**) judgement dated 25.04.2021 that an order can be challenged at belated stage only if the order was **without jurisdiction**.

11. Learned counsel for respondent has referred following judgments regarding his contention that in case of void judgment/order if any appeal is filed with delay then while deciding delay condonation application appellant has to show sufficient cause for delay :

- (i) **State of Punjab & others Vs. Gurdev Singh**
(1991) 4 SCC 1.
- (ii) **Prahlad Raut Vs. All India Institute of Medical Sciences**
(2021) 14 SCC 472.
- (iii) **Pathapati Subha Reddy (died) by L.Rs. and others Vs. The Special Deputy Collector (LA)**
2024 INSC 286 (SC).

11.1 Perusal of the above referred judgments reveals that in all the above 3 matters Court deciding the matter had jurisdiction to decide.

11.2 In the case of **State of Punjab Vs. Gurdev Singh** (supra), the plaintiff's services were terminated for unauthorized absence without an inquiry and he was not given any opportunity to explain his conduct by holding proper inquiry. There is no plea that authority or officer passing termination order has no power or authority to pass such order. The dismissal order was vitiated due to the violation of principles of natural justice (denial of right of hearing). But the employee was not dismissed by the order of authority/officer, who has no power/jurisdiction to pass such an order.

11.3 In the other above referred case of **Prahlad Raut Vs. All India Institute of Medical Sciences** (supra), the appellant/employee was removed by the respondent from service with retrospective effect and was directed to refund the subsistence allowance received by him during suspension. In this case the appellant/employee was terminated with retrospective effect. This one is also not a case that authority/officer, who passed such order has no power/jurisdiction to remove the employee from service. This one is a matter of exceeding jurisdiction by passing order with retrospective effect. This one is not an order being passed without jurisdiction.

11.4 In the case of **Pathapati Subha Reddy Vs. The Special Deputy Collector (LA)** (supra), the reference was dismissed on merits along with some other references vide common judgment upholding the award of the Collector. There were 16 claimants in this matter, 15 of them impliedly accepted the judgment and order of the Reference Court. Only the heirs and legal

representatives of claimant no.11 filed the appeal. It was averred by the appellant that claimant no.11, Pathapati Subha Reddy, died during the pendency of the reference but the heirs and legal representatives of deceased claimant no.11 were not brought on record before the decision of the reference. The legal representatives of deceased claimant no.11 filed appeal against the judgment with huge delay. Delay condonation application was rejected. This matter is of procedural mistake of court because Legal Representatives of deceased claimant no.11 were not brought on record by way of substitution. That is why Hon'ble Supreme Court observed in para-32 of the judgment that party should have applied for procedural review. This one is also not a case of reference decided by the court having no jurisdiction because the reference was decided by the court of Additional Senior Civil Judge, which court has jurisdiction to decide the reference.

12. In view of the above analysis, we conclude that 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. Further, this Tribunal has been vested with the discretion to entertain any appeal after the expiry of 60 days on being satisfied that there is sufficient cause for not filing the same within a period prescribed.
- 12.1 Applying the above principles, it can be safely concluded that the condonation of delay is a discretionary power granted to the Tribunal vide its parent statutes, and the law of limitation was founded on public policy, 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. 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. Further, the merits of a claim were also to be considered when deciding such applications for condonation of delay.
- 12.2 As discussed earlier that since Statute is the only birth place of Jurisdiction and every authority derives jurisdiction from the Statute and no authority

can assume the jurisdiction which had not been vested to him by the provision of the Act and jurisdiction cannot be derived by the mutual consent of the parties. If any authority passes any order transgressing its jurisdiction that order is considered to be a Nullity, and that order is not executable and the matter goes to its roots.

- 12.3 When an appeal challenging a non jurisdictional order is preferred before the Appellate Authority though belatedly and it is dismissed on Limitation the legal consequences will be by applying the above ratios will be held as amounting to a confirmation of the decree of the Trial Court on the merits of the case. Thus the decree of the Trial Court gets merged in the Appellate Courts decree even when the Appeal is dismissed on a preliminary ground or as time-barred. The logical sequitur of the analysis is that an Appeal filed along-with an Application for condonation of delay in filing that Appeal when dismissed on refusal to condone the delay is a decree within the meaning of Section 2 (2) of the Code of Civil Procedure.
- 12.4 Thus such a situation will create a legal deadlock that a non jurisdictional judgment under challenge will be held to be legal and valid against the settled principles of Hon'ble Supreme Court.
- 12.5 This is the reason why the courts had been granted the discretionary power to condone the delay and applying the above ratios, condonation of delay is a discretionary power granted to the tribunal vide its parent statutes, and the law of limitation as being founded on public policy, hence 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. 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. Further, the merits of a claim were also to be considered when deciding such applications for condonation of delay. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this; when delay is condoned, the highest that can happen is that a cause would be decided on merit after

hearing the parties. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

- 12.6 Thus on the basis of the above discussion we can safely conclude that in cases where the jurisdiction and the competence of the authority passing the impugned order is under challenge, in case of delay the same may not be dismissed, instead exercising the discretionary powers and in the interest of justice, the delay deserves to be condoned unless the delay is not deliberate & intentional or negligence as well as want of due diligence or irresponsibly etc. and without sufficient cause.
- 12.7 It has been argued that the Adjudicating Officer has granted delay interest without jurisdiction. It has also been argued that the Regulatory Authority has jurisdiction to grant delay interest, as per proviso to Section 18 if allottee intends to continue with the project and/or has taken possession of the Unit in question. However, an allottee is entitled for compensation for other issues in pursuance to provisions of Section 18(3), meaning thereby that except the delay in possession.
13. In view of the aforesaid analysis and examining the cause shown as well as impugned judgment and order, which *prima facie* appears to have been passed without jurisdiction, and since the issue of jurisdiction goes to the root of the matter and in order to examine the same on merit, in the interest of justice we deem it proper to condone the delay. Hence, **we allow the applications for condonation of delay in all the 12 appeals.** Accordingly, the **delay** in filing all the Appeals is **condoned.**
14. **The Registry is directed to convert all the above referred 12 defective appeals into regular appeals.**
15. List all the appeals for orders/hearing on **23.10.2024.**

Dated: 24.09.2024
Irfan

(Rameshwar Singh)

(Sanjai Khare)