

Bench No.1.

Appeal No. (D) 209/2023

Greater Noida Industrial Development Authority.

Vs.

Prashant Chaudhary

Hon'ble Mr. Justice (Dr.) D. K. Arora, Chairman.
Hon'ble Mr. Kamal Kant Jain, Technical Member.

1. Heard Shri Rishindra Vikram Singh, learned counsel for the applicant, and Sri Prashant Chaudhary, respondent in person, on the application for condonation of delay in filing the appeal.
2. The submission of learned counsel for the applicant is that the impugned order dated 15.06.2022 passed by the U.P. Real Estate Regulatory Authority, Regional Office, Gautam Budh Nagar (hereinafter referred to as the 'Regulatory Authority') was uploaded on the webpage of the U.P. RERA and communicated to the parties through link on 13.07.2022. The certified copy of the order was applied on 24.01.2023 and the same was received on 01.02.2023. The limitation for filing appeal against the order of the Regulatory Authority dated 15.06.2022 was upto 11.09.2022. The appeal was filed on 06.02.2023 with a delay of about 147 days. The learned counsel for the applicant submitted the reasons for delay as under:--
 - 2.1 The applicant firstly sent the file to CA for calculation of amount as per the order passed by the Regulatory Authority. Thereafter the concerned file moved to CA from Manager Property. It was again sent back to the Manager Property and then again to CA with the clarification sought between the departments.
 - 2.2 Thereafter proposal to approach UP REAT Lucknow was drafted and signed by the Property Manager on 16.11.2022 and it was sent to ACEO for its consideration. The ACEO considered the brief of the file on 24.11.2022 and request for approval for preparation of the draft was sent to the Finance Department on 25.11.2022. The proposal to make two demand drafts- one for Rs.1000/- and another for compliance of the

provisions of Section 43(5) of the Act 2016 in reference to the CA Certificate was approved in the last week of November 2022.

- 2.3 In compliance of the provisions of Section 43(5) of the Act 2016 the bank demand draft for Rs.4,49,087/- was got issued in favour of the Uttar Pradesh Real Estate Appellate Tribunal, Lucknow on 30.12.2022 and the bank draft of Rs.1000/- was got issued on 30.12.2022.
- 2.4 The Law Department of the applicant sent an email to its counsel on 06.01.2023 apprising that the applicant has decided to approach the UP REAT against the order passed by the Regulatory Authority on 15.06.2022 and requested the counsel to apply for the certified copy of the order dated 15.06.2022.
- 2.5 Meanwhile, panel counsel of the applicant was suffering from appendix disease and stomach pain and another counsel was suffering from viral fever and cold, due to which regular office work was affected and counsels were advised to take proper rest, due to which the counsels were unable to appear physically in many other matters before UP REAT on several occasions in the month of January and 1st week of February 2023.
- 2.6 The applicant applied for certified copy of the order dated 15.06.2022 on 24.01.2023, which was received on 01.02.2023.
- 2.7 The office of the counsel received the documents from the office of the applicant on 02.02.2023. Thereafter, attempt was made to go through the complete set of documents inspite of bad health of the counsels.
- 2.8 The appeal was prepared from 02.02.2023 to 05.02.2023 and finally filed on the UP REAT portal on 06.02.2023 with a delay of about 147 days.
- 2.9 The applicant being the Government Department, wherein at every stage the file moves from one department to another for approvals at various level, day to day delay cannot be explained.
- 2.10 The delay in filing the appeal was neither deliberate nor intentional, but the same had occurred on account of various approvals required from

various departments. Further, in case the delay in filing the appeal is not condoned, the applicant shall suffer irreparable loss.

2.11 The learned counsel for the applicant has submitted that in view of the facts stated above the delay of 147 days in filing the appeal is liable to be condoned. He placed reliance on the following judgments:--

- (1) Collector, Land Acquisition, Anant Nag and another Vs. Mst. Katiji and others, reported in (1987)2 SCC 107.
- (2) Special Tehsildar Vs. K.V.Ayisumma, reported in AIR 1996 (SC) 2750.
- (3) State of Nagaland Vs. Lipok AO and others, reported in (2005)3 SCC 752
- (4) Shakuntala Devi Jain Vs. Kuntal Kumari, reported in AIR 1969 SC 575.
- (5) O.P. Kathpalia Vs. Lakhmir Singh, reported in AIR 1984 SC 1744.

3. Sri Prashant Chaudhary, the respondent in person, while opposing the application for condonation of delay, submitted that the application for condonation of delay in filing the appeal is based on false and frivolous grounds. The applicant has not come with clean hands. The respondent further submitted that:

3.1 The applicant failed to appear before the Regulatory Authority even after receiving show cause notice dated 12.09.2022 on the execution application, then the Regulatory Authority issued Recovery Certificate dated 30.12.2022 against the applicant. The applicant, finding no alternative and to avoid the liability, preferred the present appeal with application for condonation of delay.

3.2 Out of compulsion, the respondent had to approach the Hon'ble High Court at Allahabad on 18.03.2023 by filing Writ-C No.9543/2023 against the non-recovery of the amount of recovery certificate. In the aforesaid writ petition the Hon'ble High Court permitted the respondent to withdraw the amount deposited by the applicant in the present appeal.

- 3.3 The applicant has filed the present appeal after a long delay of more than 147 days which itself shows the non-seriousness of the applicant towards the case.
- 3.4 The applicant has preferred the appeal only after the Regulatory Authority issued Recovery Certificate dated 30.12.2022 against the applicant for recovery of an amount of Rs.4,67,576/-. This act of the applicant itself shows that the delay in filing the appeal is intentional and just to avoid the liability to make the payment as directed by the Regulatory Authority. This act of the applicant itself is sufficient for dismissal of the application for condonation of delay with heavy cost.
- 3.5 It is totally wrong that being a government body the applicant has a lengthy procedure to collect the details and to grant permission for further procedure. The legislature has not made any difference between the private body and a government body for the purpose of limitation in filing the appeal.
- 3.6 The respondent has placed reliance on the following judgments:--
- (1) Office of the Post Master & Others Vs. Living Media & Another, reported in (2012)3 SCC 563.
 - (2) The State of Madhya Pradesh & Ors. Vs. Bherulal, SLP(C) Diary No. 9217 of 2020.
 - (3) Commissioner of Wealth Tax, Bombay Vs. Amateur Riders Club, Bombay, 1994 Su pp (2) SCC 603.
 - (4) Pundikalam Patil (dead) by LRs Vs. Executive Engineer, Jalgaon Medium Project and Another, (2008) 17 SCC 448.
 - (5) Kolkata West International City Pvt. Ltd. Vs. Devashish Rudra, Civil Appeal No. 3182/2019, decided on 25.03.2019.
 - (6) Pioneer Urban Land and Infrastructure Limited Vs. Govind Raghavan, Civil Appeal No.12238/2018.
 - (7) Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India & Ors., Writ Petition No. 2737/2017, Bombay High Court.

4. We have considered the submissions of both the parties and gone through the record.
5. Before we proceed to examine the cause shown by the applicant regarding filing of present case with the delay of 147 days, we deem it proper to examine the issue of condonation of delay, bonafides, sufficient cause shown, and the factors required to be considered in the light of various pronouncement of Hon'ble Apex Court where the principles are culled out on the issue of condonation of delay.
6. In the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [(2013)12 SCC 649]***, Hon'ble Apex Court enunciated broad principles in paras 21 and 22 as follows:-

“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 legalize 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 scrutinized 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.*

22. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:*

22.1 (a) *An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

22.2 (b) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

22.3(c) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*

22.4 (d) *The increasing tendency to perceive delay as a non-serious matter and hence, lackadaisical propensity*

can be exhibited in a nonchalant manner requires to be curbed of course, within legal parameters.”

Thus, broadly speaking, the approach, while considering a prayer or application seeking condonation of delay in instituting any proceedings, which should be adopted by a court or a judicial forum is that it should not proceed on the premise or assumption that delay in approaching the court is always deliberate and that the primary function of the court or of an adjudicatory authority is to adjudicate the dispute, rather than to shut its door to a litigant or a party.

7. The Apex Court in ***Ramlal, Motilal and Chhotelal Vs Rewa Coalfields Ltd. 1962 (2) SCR 762: AIR 1962 SC 361*** while construing Section 5 of the Limitation Act 1963 has held that the Court should bear in mind two important considerations while dealing with the explanation for condonation of delay. Firstly, that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties and this legal right which accrues to the decree holder by lapse of time should not be light-heartedly disturbed, and secondly, that if sufficient cause for the delay is shown, discretion is given to the Court to condone the delay. The Apex Court, however, has further ruled that:-

“It is however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condonation of delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant.”

8. In ***Arjun Singh V. Mohindra Kumar AIR 1964 SC 993***, the Hon’ble Supreme Court explained the difference between a “good cause” and a “sufficient cause” and observed that every sufficient cause is a good

cause and vice versa. However if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree proof than that of sufficient cause.

9. Further the expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (*Vide: Madanlal V. Shyamlal AIR 2002 SC 100; and Ram Nath Sao @ Ram Nath Sahu and Ors. V. Gobardhan Sao and Ors. AIR 2002 SC 120*).
10. In the case of *Pundik Jalam Patil Vs. Executive Engineer, Jalgaon Medium Project, (2008) 17 SCC 448* it is observed that :--

“The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as “statutes of peace”. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim “interest reipublicae ut sit finis litium”, that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.”

11. In *Basawaaj and Ors V. The Spl. Land Acquisition Officer: (2013) 14 SCC 81*, the Hon'ble Apex Court in para 9 & 15 was pleased to observe that:-

“9. Sufficient cause is the cause for which Defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than

that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose.”

“15. The law on the issue can be summarized 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 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 tantamount to showing utter disregard to the legislature.”

12. In ***Balwant Singh (dead) Vs. Jagdish Singh & Ors [(2010) 8 SCC 685]***, the Hon’ble Supreme Court explained the expression “sufficient cause” to mean the presence of legal and adequate reasons.
13. The Hon’ble Apex Court in the case of ***University of Delhi Vs. Union of India & Ors.*** [Civil Appeal Nos. 9488-9489 of 2019 arising out of SLP (Civil) Nos. 5581-5582 of 2019] in the month of

December, 2019 while dismissing the appeal observed that the learned single Judge was not only justified in holding that the writ petition inter alia is hit by delay and laches but the decision of Division Bench in dismissing the LPA on the ground of delay of 916 days is also justified and the orders do not call for any interference, while examining the judgment of ***Dehri Rohtas Light Railway Company Ltd. Vs. District Board, Bhojpur & Ors*** (1992)2 SCC 598 wherein it has been indicated that the real test to determine the delay is that the petitioner should come to the Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence, further in the matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice.

The Hon'ble Apex Court further opined that condonation of long delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective and in that back ground while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating “sufficient cause” to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Courts based on the facts of the situation. It has been further observed that in the case of **Katiji (Collector Land Acquisition Vs. Mst. Katiji & ors.)** decided by Hon'ble Supreme Court on 19.02.1987, the entire conspectus relating to condonation of delay has been kept in focus. However, what cannot also be lost sight is that the consideration therein was in the background of dismissal of application seeking condonation of delay in a case where there was delay of four days pitted against the consideration that was required to be made on merits regarding the upward revision of compensation amounting to 800 per cent.

The Hon'ble Apex Court was further pleased to observe that in the matter of condonation of delay and laches, the well accepted position is that the accrued right of the opposite party cannot be lightly dealt with.

14. Further, Hon'ble Supreme Court in the case of ***Postmaster General and others Vs. Living Media India and another*** (2012)³ Supreme Court

Cases 563 was pleased to hold that law of limitation binds everybody equally and condonation of delay is an exception and should not be used as an anticipated benefit for any party. Paragraphs 27 to 30 of the said judgment are as follows:-

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the

Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

15. Admittedly the impugned order dated 15.06.2022 was uploaded on the website of the RERA and communicated to the parties on 13.07.2022. The limitation for filing the appeal was upto 11.09.2022 and the appeal was filed on 06.02.2023 after a delay of about 147 days. As per endorsement on the certified copy of the impugned order, the applicant applied for certified copy of the impugned order on 24.01.2023 and the same was received by the applicant on 01.02.2023, and as per the averments of the applicant, on receipt of the information regarding impugned order dated 15.06.2022 the process was initiated after expiry of the limitation for filing appeal against the impugned order. Even certified copy of the impugned order was applied after expiry of the limitation period on 24.01.2023, though the same was received on 01.02.2023, but the appeal was filed on 06.02.2023. Further, as far as illness of counsel for the applicant is concerned that too was much after the expiry of the limitation period, and, therefore, in our considered view, no benefit of illness of the counsel can be claimed by the applicant in order to give sufficient cause for delay in filing the appeal against the impugned order.
16. The Hon’ble Supreme Court in its latest judgment passed in ***Civil Appeal No.3327 of 2020, V. Nagarajan Vs. SKS Ispat and Power Ltd. & ors*** dated 22.10.2021 was pleased to observe that application for certified copy has to be made before expiry of the limitation period to claim benefit of exclusion of time requisite for obtaining a copy and if no application for certified copy has been made, no exclusion can ensue. The Hon’ble Apex Court further observed that the act of filing application for a certified copy is not just technical requirement for computation of limitation but also an indication of the diligence of the aggrieved party in pursuing the litigation in a timely fashion.
17. At this stage we would like to refer the judgment of Hon’ble Supreme Court passed in SLP No.2054-2055/2022 ***Lingeswaran etc. Vs. Thirunagalingam*** decided on 25th February, 2022, reported in 2022

LiveLaw (SC)227 wherein the Hon'ble Supreme Court has been pleased to observe that the court has no power to extend the period of limitation on equitable grounds. Para 5 of the aforesaid judgment reads as follows:--

“5. We are in complete agreement with the view taken by the High Court. Once it was found even by the learned trial Court that delay has not been properly explained and even there are no merits in the application for condonation of delay, thereafter, the matter should rest there and the condonation of delay application was required to be dismissed. The approach adopted by the learned trial Court that, even after finding that, in absence of any material evidence it cannot be said that the delay has been explained and that there are no merits in the application, still to condone the delay would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches. At this stage, the decision of this Court in the case of Popat Bahiru Goverdhane v. Land Acquisition Officer, reported in (2013) 10 SCC 765 is required to be referred to. In the said decision, it is observed and held that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. 5.1 In the case of Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157, in paragraph 14, it is observed and held as under: “The law of limitation is founded on public policy. The limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the

applicant for not availing the remedy within the prescribed period of limitation.”

18. The Hon’ble Supreme Court in the case of ***Estate Officer, Haryana Urban Development Authority and another Vs. Gopi Chand Atreja, (2019)4 SCC 612*** vide paras 13,14, and 15 has been pleased to observe that in case Incharge of Legal Cell failed to discharge his duty promptly and with due diligence despite of availability of all facilities and infrastructure, he should be made answerable for lapse on his part and make good the loss suffered by the appellant. Paras 13,14 and 15 of the aforesaid judgment read as follows:--

“13. In our view, it was equally the duty of the appellants (their legal managers) to see that the appeal be filed in time. If the appellants noticed that their lawyer was not taking interest in attending to the brief in question, then they should have immediately engaged some other lawyer to ensure that the appeal be filed in time by another lawyer.

14. In our view, it is a clear case where the appellant HUDA, i.e., their officers, who were incharge of the legal cell failed to discharge their duty assigned to them promptly and with due diligence despite availability of all facilities and infrastructure. In such circumstances, the officers in-charge of the case should be made answerable for the lapse on their part and make good the loss suffered by the appellants HUDA.

15. A delay of 1942 days (4 years 6 months), in our view, is wholly inordinate and the cause pleaded for its condonation is equally unexplained by the appellants. In any case, the explanation given does not constitute a sufficient cause within the meaning of Section 5 of the Limitation Act. It was, therefore, rightly not condoned by the High Court and we concur with the finding of the High Court.”

19. The Hon’ble Supreme Court of India in the matter of ***The State of Madhya Pradesh & Ors Vs. Bherulal SLP (C) Diary No. 9217 of 2020, dated 15th October 2020*** while dealing with the issue of delay by the Government department, was pleased to observe that :--

“We are constrained to pen down a detailed order as it appears that all our counseling to Government and the Government authorities have fallen on deaf ears i.e., the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue

that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government authorities because of their gross incompetence. That is not so. Till the Statute subsists, the appeals/petitions have to be filed as per the Statutes prescribed.”

The Hon’ble Supreme Court further observed that the matters like these are “certificate cases”. The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed.

20. We would like to add further that the purpose of prescribing period of limitation is not to destroy the right of parties. It is meant to see that parties do not resort dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The period of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.
21. On the basis of the aforesaid analysis we have no hesitation in observing that the applicant failed to show sufficient cause for condoning the delay of about 147 days which could warrant us to exercise our discretion for the purpose of condoning the delay after appreciating the same.

22. Accordingly, the application for condonation of delay is **rejected**. Consequently Appeal No. (D) 209 of 2023 is also **dismissed**.
23. Now the issue to be decided is as to what should be done of the pre-deposit made by the appellant/promoter in compliance of the provisions of Section 43(5) of the Act in case of dismissal of appeal. In normal circumstances, taking into consideration the order of Hon'ble Supreme Court passed in Civil Appeal Nos. 6745-6749 of 2021 *M/S Newtech Promoters and Developers Vs. The State of U.P. and others*, we remit the deposited amount to the RERA with direction to release the same during the execution proceeding, but in the instant case the respondent has approached the Hon'ble High Court vide Writ C No. 9543 of 2023 (Prashant Chaudhary Vs. State of U.P. and Ors.) wherein the Hon'ble High Court vide order dated 24.03.2023 permitted the petitioner (the present respondent) to withdraw the amount deposited by respondent no. 4 in the writ petition (applicant/promoter herein). The Respondent has also filed an affidavit dated 26.03.2023 for release of the amount deposited by the applicant. Hence, in pursuance to aforesaid order of Hon'ble High Court, we, instead of sending the amount deposited by the applicant to the RERA for release of same during the execution, release the said amount in favour of the respondent. The respondent is directed to file an application before the Registrar of the Tribunal giving the details of the bank account and IFSC Code in which he wants the amount to be remitted. On receipt of the application, the Registry/Accounts Department after verifying the amount deposited by the applicant will release the same in favour of the respondent in the bank account intimated by the respondent through RTGS.

(K. K. Jain)

(D. K. Arora)

Dated: 13.04.2023
Shakir.