

THE U.P. REAL ESTATE APPELLATE TRIBUNAL, LUCKNOW

Division Bench Court No. 1

RA-93/2024

IN

Appeal/624/2021

GORAKHPUR DEVELOPMENT AUTHORITY

.....Appellant

Versus

SARITA DUBEY

.....Respondent

Counsel for Appellant

Counsel for Respondent

Hon'ble Mr. Justice Suneet Kumar, Chairman

Hon'ble Mr. Sanjai Khare, Judicial Member

Hon'ble Mr. Rameshwar Singh, Administrative Member

Heard learned counsel for the applicant on 'Application for recall of order dated 30.09.2021.

The appellant/applicant by the instant application seeks condonation of delay of more than three years in filing application for recall of order dated 30.09.2021.

The appeal came to be dismissed for non-prosecution vide order dated 30.09.2021. The application for recall of order, supported by application for condonation of delay has been filed on 13.11.2024.

It has been submitted in the explanation furnished by the applicant that erstwhile counsel, along with several other counsels were appearing in the matter. During Covid-19, earlier counsel engaged to pursue the matter succumbed to the pandemic, therefore, the appellant was not aware of the status of the case. It has been further submitted that on receiving notices in execution proceedings, it was for the first time, the applicant came to know that the appeal was dismissed.

It has been submitted that earlier, the Engineering Department of the applicant was looking after the affairs of the cases and it was found that they were casual in their approach due to which several matters of the promoter got dismissed for want of prosecution. Taking note of this fact, the cases of the appellant/applicant was transferred to the Legal Department. Vide communication dated 18.10.2024, the Legal Department of the appellant sought legal opinion and it is thereafter, that an effort was made to contact the present counsel, thereafter, filing the instant application for recall of order dated 30.09.2021.

In our opinion, the explanation furnished by the appellant/applicant is not satisfactory. The delay is willful and deliberate. In principle, the stand taken in the application is basically to contend that the designated office of the appellant failed in managing the cases of the promoter/Development Authority. We do not find any merit to condone the delay in filing the inordinate delayed recall application. Application for condonation of delay in filing the application to recall the order dismissing the appeal in default is accordingly **rejected**. The recall application is **dismissed**.

Order for release of Amount, deposited by the Appellant/Applicant Promoter

Registry is directed to transfer the amount deposited by promoter in compliance of Section 43 (5) of Real Estate (Regulation & Development) Act, 2016 (Act 2016) in favour of RERA, if already not released.

Pending application for release of amount, if any, is accordingly **allowed**.

(Rameshwar Singh)

(Sanjai Khare)

(Suneet Kumar)

Dated: 18.11.2024
MANSINGH