
(2023) 08 BOM CK 0081

In the Bombay High Court

Case No : Second Appeal No.301, 303, 311 Of 2023, Interim Application
No.4105, 4107, 4131 Of 2023

Kailash Patil

APPELLANT

Vs

Vasant S. Jadhav

RESPONDENT

Date of Decision : 31-08-2023

Acts Referred:

Maharashtra Real Estate (Regulation And Development) (Recovery Of Interest, Penalty, Compensation, Fine Payable, Forms Of Complaints And Appeal, Etc.) Rules, 2017 — Rule 9(2)

Real Estate (Regulation And Development) Act, 2016 — Section 44(2), 53(2), 58, 84(2)

Citation : (2023) 08 BOM CK 0081

Hon'ble Judges : Jitendra Jain, J

Bench : Single Bench

Advocate : Dilip Satle, Nikita Mandoniyan, Anwar Landge, Tejas Deshmukh, Anshuman Deshmukh, K. Mahuli, Aditya R. Deolekar

Final Decision : Allowed

Judgement

Jitendra Jain, J

1. These three appeals are filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act") challenging the order of the Maharashtra Real Estate Appellate Tribunal, Mumbai ("Appellate Tribunal") in M.A. No.698 of 2022 with M.A. No.657 of 2022 in Appeal No. AT00600000010806 (Second Appeal No.301 of 2023), M.A. No.699 of 2022 with M.A. No.658 of 2022 in Appeal No. AT00600000010807 (Second Appeal No.303 of 2023) and M.A. No.700 of 2022 with M.A. No.659 of 2022 in Appeal No. AT00600000010808 (Second Appeal No.301 of 2023). All the three appeals raises common issue and, therefore, is disposed of by common order.

2. The appeals are admitted on following reframed question of law:

"Whether the Appellate Tribunal was justified in rejecting the appeal on the ground that the Appellant has failed to file the hard copies of the appeal memos

and further the Appellate Tribunal was justified in dismissing the restoration application filed by the Appellant for seeking permission to file the hard copies and restore the appeals ?”

3. Brief facts are as under:

(i) The Appellant is a developer/promoter and Respondents are allottees of a residential project. The Respondents allottees filed complaint against the Appellant before the Regulatory Authority for various reliefs. The Regulatory Authority passed an order against the Appellant.

(ii) Being aggrieved, the Appellant filed Appeal Nos.301 of 2023, 303 of 2023 and 311 of 2023 online within time provided under section 44(2) of the RERA Act, challenging the common order dated 28th February 2018, passed by the learned Member and Adjudicating Officer of the Maharashtra Real Estate Regulatory Authority. However, the Appellant did not file the hard copies of the appeals along with attachments within prescribed time after having filed the appeal online.

On 13th May 2019, the Appellate Tribunal observed that since the hard copies of appeals are not submitted nor the Appellant attended any hearing, it is evident that the Appellant is not interested in prosecuting the appeals and, therefore, the appeals were dismissed for want of prosecution.

(iii) On 30th June 2022, Miscellaneous Application for restoration of the above appeals was made to the Appellate Tribunal by the Appellant. The said restoration application was filed after a delay of 1088 days. The reason given in the restoration application was that the Advocate was not aware that after having filed the appeals online, hard copies also had to be filed with the office of the Appellate Tribunal.

(iv) On 16th January 2023, the Appellate Tribunal rejected the application for condonation of delay for considering the maintainability of application for restoring the appeals. The Appellate Tribunal observed that the Appellant did not exercise due care and diligence to pursue his own appeals and slept over for a period of almost 1000 days. The Appellate Tribunal also rejected the explanation for delay that the delay was on account of the Advocate being not aware of having to file hard copies of the appeals.

(v) It is on the above backdrop, that the above appeals were filed against the Appellate Tribunal's order refusing to condone the delay in filing the restoration application and restoration of the appeals.

4. Submission of the Appellant : The Appellant submitted that he had filed the appeals online and the delay was only in filing the hard copies of the appeals with the Tribunal. The Appellant submits that delay in compliance of procedural formalities should not come in the way of a litigant to seek substantial justice. The Appellant reiterated the contention raised before the Appellate Tribunal in seeking condonation in filing the restoration application and consequently prayed

for restoration of the appeals. The Appellant also submitted that he may be given one more opportunity to pursue his appeal remedy on the terms and conditions deemed fit by the Court, including imposition of cost of Rs.2,00,000/- to each Respondent.

5. Submission of the Respondents: The Respondents submitted that they have booked the flats in the project of the Appellant in the year 2011 and, till today, they have not been given the possession of the flat after almost a period of 12 years. The Appellant submitted that the justification given for delay in filing the restoration application would not constitute sufficient cause and, therefore, the Appellate Tribunal was justified in rejecting the same. The Respondents submitted that the Appellant is adopting delaying tactics. Alternatively, the Respondents submitted that the Appellant may be put to strict terms and conditions if the present appeals are allowed.

6. Heard learned Counsel for the Appellant and the Respondents and, with their assistance, have perused the records of the appeals.

Analysis:

7. There is no quarrel that the Appellant has filed the appeals online within the time provided under the Act and, therefore, it cannot be said that there is a delay in filing the appeals. However, there is admittedly a delay in filing the hard copies of the appeals with the Tribunal, which, according to the Appellant, was on account of bonafide belief that no hard copies would be required to be filed after having filed the appeals online. The procedural irregularity or delay in filing the hard copies ought not to have come in the way of the Appellant to pursue his appellate remedy and the Appellate Tribunal ought to have considered the restoration application by taking a liberal view and by putting the Appellant to some strict terms and conditions rather than non-suiting him for non-compliance of procedural formalities.

8. Under Section 44(2) of the RERA Act, every appeal 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. The proviso to Section 44(2) empowers the Appellate Tribunal to entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not preferring it within that period.

9. On 19th April 2017, in exercise of the powers conferred by Section 84(2) of the Act, the Government of Maharashtra made the Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine payable, Forms of Complaints and Appeal, etc.) Rules, 2017 (2017 Rules). Rule 9(2) of the said Rules prescribed that every appeal shall be filed in Form 'C' and in triplicate along with documents specified therein. However, the proviso to rule 9(2) provides that when the authority makes a provision for filing a

complaint web-based, it shall not be necessary to submit such form in triplicate.

10. In exercise of the powers conferred by Section 53 (2) of the RERA Act, the Tribunal notified Maharashtra Real Estate Appellate Tribunal Regulations, 2019 (Appellate Tribunal Regulations). Rule 9(iii) of the said Regulation prescribed that the hard copy of such appeals along with the attachments shall be presented to the Office of the Registrar within seven (7) days from the date of online filing and on failure to submit hard copies within such time, such appeals shall be notified by the Registry for dismissal for want of hard copies. Rule 9(iv) of the said regulation provides that all other proceedings with attachments, if any, shall be instituted in the Office of the Registrar till the online system is in place.

11. The conjoint reading of Section 44(2), 2017 Rules and 2019 Appellate Tribunal Regulations would have lead to a bonafide belief on the part of the Advocate that hard copies are not required to be filed. Therefore, the cause specified by the Appellant in delay in filing the hard copy can be construed as a bonafide and reasonable cause for not filing the hard copies. However, even if that be so, the delay of more than 1000 days in making the application for restoration of the dismissed appeal would be something of which a serious note has to be taken and which would also indicate that the Appellant was not pursuing his remedy diligently. The Appellant being businessmen cannot be negligent in not tracking the fate of his appeal after having filed and that too for such a long period moreso because there were 3 appeals filed with respect to same project raising similar grievances by the Respondents allottees.

12. Certainly, it cannot be said that no prejudice is caused to the Respondents after the appeal having been dismissed, the Appellant did not take any steps for its restoration for a period of more than 1000 days and, thereafter, made application for restoration. This conduct keeps the sword of litigation hanging over the Respondents allottees and is further aggravated by the fact that the Appellant has also not given possession of the flat till today. The approach of the Appellant seems to be to adopt delay tactics on all fronts. This attitude and conduct should be considered as one of the factor for imposing exemplary cost. The Appellant has also not attended appeal hearing on various occasions as observed by the Appellate Tribunal.

13. On the basis of the above analysis, I am of the view that the Tribunal ought to have allowed the miscellaneous application for restoration of the appeals filed by the Appellant in the interest of justice by putting the Appellant on some strict terms and conditions.

Conclusion:

14. In view of the above, I am of the opinion that since the delay is only in filing the hard copies of the appeals, which were already filed in time online, the Appellant, as a matter of last chance, should be given one more opportunity to pursue the appeals filed before the Appellate Tribunal on following terms and conditions:

- (i) The Appellant is directed to deposit a sum of Rs.1,50,000/-, per appeal aggregating to Rs.4,50,000/-, as cost for the delay in applying for restoration and in filing hard copies of appeal to Kirtikar Law Library, Bombay High Court, Mumbai within eight weeks from the date of uploading the present order;
- (ii) The Appellant should further pay a sum of Rs.1,50,000/- to each of the Respondent aggregating to Rs.4,50,000/- within a period of eight weeks from the date of uploading the present order;
- (iii) On the Appellant making the above payment to Kirtikar Law Library and each of the Respondent, the Appellant would file hard copies of the appeals with the Appellate Tribunal within four weeks from the date of the payments referred to hereinabove;
- (iv) On furnishing of the hard copies of the appeal memos with the Appellate Tribunal, Appeal No. AT00600000010806, Appeal No. AT00600000010807 and Appeal No. AT00600000010808, filed by the Appellant before the Tribunal, may be restored and may be heard as expeditiously as possible;
- (v) I make it clear that the Appellant would not seek any adjournment of the appeals' hearing before the Appellate Tribunal;
- (vi) Appeals are allowed in terms of above order. No costs;
- (vii) In view of the disposal of the appeals, nothing survives in the interim applications made therein and the same are disposed of.