

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.307 OF 2026
WITH
INTERIM APPLICATION NO.6661 OF 2026**

Atul Hiralal Shah and Anr. ... Appellants
versus
M/s. Unispace Landmark Pvt. Ltd. and Ors. ... Respondents

Mr. Naushad Engineer, Sr. Advocate with Mr. Sudarshan, Ms. Nidhi Singh, Mr. Ishan Gambhir, Ms. Aletea Fernandes, for Appellants.
Mr. Rubin Vakil with Mr. saurabh Nikalje, Ms. Nipa Ghosh, for Respondents.

CORAM: N.J.JAMADAR, J.

DATE : 16 SEPTEMBER 2026

JUDGMENT :

1. Heard Mr. Naushad Engineer, learned Senior Advocate for the Appellants, and Mr. Rubin Vakil, learned Counsel for the Respondents.

2. The following substantial question of law arises for consideration :

Whether the Appellate Tribunal did not apply correct principles in deciding the application for condonation of delay in preferring the appeal, and, thereby misdirected itself in rejecting the application for condonation of delay ?

3. In the light of the nature of controversy and the aforesaid substantial question of law that arises for consideration, with the consent of the learned Counsel for the parties, this Second Appeal is taken up for hearing and final disposal.

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4. This Second Appeal is directed against the order dated 6 April 2026 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai, in Misc. Application No.117 of 2026 in Appeal No.AT06//00076/2026, whereby the said application preferred by the Appellants for the condonation of delay of 143 days in filing the appeal against the judgment and order dated 30 June 2025 passed by the Maharashtra Real Estate Regulatory Authority (the Authority) in Complaint No.CC006000000354475 came to be dismissed.

5. The Respondents are the promoters of a project 'Sodah Sadan'. On 4 October 2016, the Appellants entered into two registered agreements for purchase of two flats in the said project. The possession of the flats was agreed to be delivered on 31 December 2018. Despite obtaining repeated extensions, the Respondents committed default in performance of their part of the contract. The Appellants, thus, filed a complaint before the Authority seeking possession, interest, compensation and other reliefs.

6. By an order dated 30 June 2025, the Authority was persuaded to partly allow the complaint. The claim for possession was rejected. However, the promoters were directed to pay interest for the delayed delivery of possession of the subject flats from 1 January 2019 till the date of offer of possession with OC, on the actual amount paid by the complainants towards the consideration of the said flats at the rate of Marginal Cost Lending Rate (MCLR) of SBI plus 2% as prescribed under the provisions of Section 18 of the RERA and the

rules made thereunder. The Authority further directed that the amount towards interest shall be paid by the Promoters to the complainants after obtaining full occupancy certificate. The Promoters were granted liberty to adjust the said amount of interest against the outstanding consideration towards the balance consideration along with interest thereon, if any.

7. The Appellants claimed that the Appellants bonafide pursued the Respondents to obtain full occupancy certificate under a genuine belief that no sooner the Respondents obtain OC, they would comply with their statutory obligations in the matter of payment of interest for the delayed delivery of possession of the subject flats. Despite repeated efforts by the Appellants, the Respondents failed and neglected to favourably respond to the request of the Appellants. Eventually, it transpired that there was no progress at the project site and possibility of obtaining the OC. Thus, there was delay in preferring the appeal before the Appellate Tribunal against the said order passed by the Authority. Hence, the Appellants preferred Misc. Application No.117 of 2026 seeking condonation of delay of 143 days in preferring the appeal.

8. The application was resisted by the Respondents.

9. By the impugned order dated 6 April 2026, the Appellate Tribunal was persuaded to reject the application observing that, though a liberal justice oriented approach was required to be adopted, yet, the said principle cannot

be used to defeat the substantive provisions of law contained in Section 3 of the Limitation Act, 1963. The Appellate Tribunal was of the view that the reasons ascribed in the application for condonation of delay did not constitute a sufficient cause and the Appellants failed to account for each and every day's delay. The Appellants appeared to be negligent in not exhausting the appellate remedy within the stipulated period.

10. Mr. Engineer, learned Senior Advocate for the Appellants, submitted that, though the Authority, on the one hand, granted the relief of interest for the delayed delivery of possession, yet, on the other hand, deprived the Appellants of the benefits thereof, by deferring the payout of interest to the date of obtaining the occupancy certificate. The Appellants / allottees were, thus, made to pursue the Respondents for the expeditious occupancy certificate so that the order passed by the Authority could become enforceable. The Appellate Tribunal, Mr. Engineer would submit, did not properly appreciate the predicament to which the allottees were put by the order passed by the Authority. The Appellate Tribunal, thus, could not have non-suited the Appellants by holding that the Appellants were negligent in pursuing their remedies.

11. In any event, the delay of 143 days in preferring the appeal cannot be said to be inordinate. The Appellate Tribunal adopted a very rigid standard and did not keep in view the principles which govern an application for

condonation of delay. Moreover, since the condonation of delay was sought by the allottees, having regard to the object of RERA 2016, the Appellate Tribunal ought to have considered the reasons ascribed by the Appellants liberally. An endeavour was made by Mr. Engineer to place on record the copies of the documents which indicate that the Appellants were bonafide pursuing the Respondents to obtain the occupancy certificate.

12. In opposition to this, Mr. Rubin Vakil, learned Counsel for the Respondents, would submit that the Appellate Tribunal was wholly justified in rejecting the application for condonation of delay as the reasons ascribed for delay can in no circumstance be said to be an explanation which accounts for the delay in preferring the appeal. At best, the said reason of non-compliance with the order passed by the Authority, can be a ground for delay in seeking enforcement of the order passed by the Authority. Non-compliance of the impugned order can never be a ground for approaching the Appellate Court belatedly. If there is no cause ascribed for the delay, the Court or Tribunal cannot record satisfaction that there was a sufficient cause for not preferring the appeal within the stipulated period and in the absence thereof, the Court / Tribunal has no authority to condone the delay.

13. Mr. Vakil further submitted that the documents now sought to be relied upon by the Appellants in support of the application for condonation of delay cannot be looked into at this stage, as those documents were not tendered

before the Appellate Tribunal.

14. I have given careful consideration to the submissions canvassed across the bar. In the application for condonation of delay, the Appellants have indeed ascribed the only reason that, after the order was passed by the Authority, in good faith, they were pursuing the Respondents to obtain the OC and discharge their contractual and statutory obligations. The Appellants claimed to have repeatedly requested the Respondents, approached them personally and sought compliance of their obligations. Having realized that there was no possibility of the compliance of the directions of the Authority and the delivery of possession of the subject flats along with the occupation certificate, the Appellants decided to approach the Appellate Tribunal.

15. In a very strict sense, it could be urged that the non-compliance of the impugned order, does not constitute a satisfactory explanation for the delay in preferring the appeal. However, in the considered view of this Court, the said aspect was required to be appreciated in the light of the attendant facts of the case and the situation in life of the parties.

16. Statutes of limitation are termed as, “statutes of peace”. Law of limitation is based upon the public policy that there should be an end to litigation by interdicting the right to remedy rather than the extinguishment of the right itself. 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 an end to litigation.

17. If a party does not exercise the right to remedy without any justifiable cause, such party forfeits the right to seek the remedy. If there is no period of limitation for exercising the right to remedy, it would result in a perpetual threat of action and the consequent unsettling of settled claims after a long lapse of time, causing a grave prejudice to the adversary.

18. The object of the Statute of Limitation was expounded by the Supreme Court in the case of ***Pundlik Jalan Patil vs. Executive Engineer, Jalgaon Medium Project***¹ in the following terms :-

“29. It needs no restatement at our hands that 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.” (emphasis supplied)

19. The term, 'sufficient cause' which is the linchpin of the provisions which empower the Courts/Tribunals to condone the delay often receives a liberal construction so as to advance the cause of substantial justice when no negligence, inaction, or want of *bona fide* is imputable to a party.

1 (2008) 17 SCC 448.

Undoubtedly, whether the cause ascribed would constitute a “sufficient cause” is rooted in the facts of the given case. The expression 'sufficient cause' cannot be confined in a straitjacket. Nor can a rule of universal application to judge the contours of sufficient cause for either condoning or declining to condone the delay can be devised. It is well settled by a long line of decisions that the term 'sufficient cause' is elastic in nature and does not admit of a definition in cast iron.

20. In the case of ***Shivamma (dead) by LRs. vs. Karnataka Housing Board and others***², the Supreme Court expounded the import of the term 'sufficient cause' in the following Liberation Sansterms.

“122. The exceptional provision of condonation of delay on grounds of “sufficient cause” is couched as a manifestation of substantive justice. This Court in Pathapati Subba Reddy (Died) by L.Rs. v. Special Deputy Collector (LA), reported in 2024 SCC OnLine SC 513, summarized the principles governing the exceptions imagined under “sufficient cause” vis-à-vis substantive justice as under: -

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be

² 2025 SCC OnLine SC 1969.

kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for conLiberation Sansdoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.” (Emphasis supplied)

123. From above, it is manifest that that the phrase “sufficient cause” in Section 5 of the Limitation Act is an expression of elastic import, incapable of precise definition, yet not without boundaries. Its purpose is to empower courts to advance the cause of justice by preventing genuine litigants from being shut out on account of unavoidable delays. At the same time, it is equally clear that the phrase is not a charter for indolence or a device to revive stale claims that the law of limitation otherwise extinguishes.

124. The burden to establish sufficient cause lies upon the party seeking condonation, and the court must be satisfied that the cause is real, bona fide, and free of negligence. Sufficiency of cause is to be determined contextually, on the totality of circumstances, with due regard to the conduct of the applicant and the prejudice caused to the opposite party. The inquiry is not mechanical but principled, resting on the dual pillars of bona fides and diligence.

125. The expression “sufficient cause” is not itself a loose panacea for the ill of pressing negligent and stale claims. The expression is to be construed with justice-oriented flexibility so as not to punish innocent litigants for circumstances beyond their control.

126. Courts must not condone gross negligence, deliberate inaction, or casual indifference, for to do so would undermine the maxim interest *reipublicae ut sit finis litium* and destabilise the certainty that limitation law seeks to secure.

127. The expression “sufficient cause” must be construed in a manner that advances substantial justice while preserving the discipline of limitation. The courts are not to be swayed by sympathy or technical rigidity, but rather by a judicious appraisal of whether the applicant acted with reasonable diligence in pursuing the remedy. Where explanation is bona fide, plausible, and consistent with ordinary human conduct, courts have leaned towards condonation. Where negligence, want of good faith, or a casual approach is discernible, condonation has been refused.”

(emphasis supplied)

21. Where the Court/Tribunal of the first instance has refused to condone the delay, the Appellate Court is required to delve into the matter in a little detail and examine for itself whether the delay deserves to be condoned, in the light of the reasons ascribed by the party. In such a case, the entire matter ordinarily remains open before the Appellate/Revisional Authority.

22. It appears that the Appellate Tribunal has adopted a slightly rigid approach in the matter of condonation of delay and did not keep in view the aforesaid principles, which ordinarily govern the application for condonation of delay. The justifiability of the cause ascribed for the delay was required to be judged on the touchstone of the reasonableness, bonafide and diligence. The element of justice oriented flexibility in appraising the sufficiency of cause is required to be kept in view. If it is a case of gross negligence, deliberate inaction or blatant indifference to the statutory mandate, the delay cannot be condoned as it would amount to showing undeserved generosity and misplaced sympathy. That is not the case at hand.

23. As noted above, the possession of the subject flats was to be delivered on 31 December 2018. Till passing of the impugned order, the Respondents had not offered possession of the subject flats, nor obtained full occupation certificate. The Appellants were the allottees. The expectation that the promoter would comply with its statutory and contractual obligations and the order passed by the Authority, cannot be said to be wholly unreasonable.

24. The nature of the order passed by the Authority, in the circumstances of the case, assumes importance. The direction to pay interest for the delayed delivery of possession was deferred till the Promoter obtained the occupancy certificate. The enforcement of the order passed by the Authority was, thus, made contingent upon the grant of the occupancy certificate. The compliance of the said condition was beyond the control of the allottees and hinged upon the volition and acts of the promoters.

25. From this standpoint, the action of the allottees in pursuing the promoters bonafide in the hope that the occupancy certificate would soon be obtained and the order passed by the Authority would then become enforceable, could not have been construed as negligence on the part of the allottees.

26. The length of delay is also a relevant consideration. Delay of 143 days cannot be said to be huge and inordinate. The principle that the party who seeks condonation of delay shall account for each and every days delay,

cannot be stretched to the point of the mathematical precision and exactitude in offering explanation for each day's delay.

27. The Appellants were pursuing the Respondents – Promoters to obtain the occupancy certificate and discharge their obligations. It is trite law that, on balance, the Court may also take into account the merits of the matter while considering an application for condonation of delay.

28. Mr. Vakil, learned Counsel for the Respondents, fairly submitted that, according to his instructions, the occupation certificate has yet not been obtained. In such a situation, if the Appellants seek enforcement of the order passed by the Authority, the said action would be termed pre-mature as the enforceability of the liability to pay interest is deferred to an uncertain event of obtaining the occupancy certificate. The legality and justifiability of such order passed by the Authority would be required to be examined by the Appellate Tribunal in the event the delay is condoned.

29. For the foregoing reasons, this Court is impelled to answer the question of law in the affirmative, and allow the appeal.

30. Hence, the following order :

ORDER

- (i) The impugned order stands quashed and set aside.
- (ii) Misc. Application for condonation of delay stands allowed.

(iii) The delay of 143 days in preferring the appeal before the Appellate Tribunal stands condoned, subject to the payment of costs of Rs.20,000/- by the Appellants to the Respondents, within a period of four weeks from the date of uploading of this order.

(iv) The Appellate Tribunal is requested to decide the Appeal in accordance with law.

(N.J.JAMADAR, J.)